

HM Treasury

Selling Government Services into Wider Markets

Policy and Guidance Note

**Enterprise & Growth Unit
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SUMMARY

This paper sets out the Government's policy for selling services into wider markets. The key points of the policy are as follows:

Government departments, agencies and NDPBs are encouraged to make better use of their assets by engaging in commercial services based on them, where appropriate and within certain rules (Paragraphs 4-12)

The policy applies to the commercial exploitation of physical assets, including equipment, land and premises and non-physical assets: intellectual property, data and skills (2)

Departments, agencies and NDPBs will normally undertake more straightforward projects themselves. However many projects, particularly those which are larger and more complex, should be taken forward with the private sector, and wider markets is in large measure one strand of wider policy on Public Private Partnerships (14-20)

The revised policy on selling services into wider markets includes incentives. These are:

The automatic right to retain the benefit of receipts generated by sales into wider markets (29)

The ability to use receipts from selling into wider markets to offset running cost expenditure (in proportion to the running cost element of the expenditure) (33-34)

Departments will be responsible for signing off wider markets projects except where projects require approval by the Treasury because they raise issues of propriety or have the potential to affect the government's overall spending plans and priorities (24). Nevertheless certain controls remain in place:

Activity must be financed from within existing cash and running cost limits. Receipts will be subject to the usual arrangements on annuality (21,29).

The policy is intended to make better use of existing assets. The case for any new assets needs to be based on delivering core departmental objectives (6) and substantial investment in PPPs should normally be undertaken by the private sector (22).

Queries on the wider markets policy should be addressed to the Enterprise and Growth Unit at the Treasury: Tel (0171) 270 4777/4987; Fax (0171) 270 4414.

SELLING SERVICES INTO WIDER MARKETS

Introduction

1. The Government is committed to increasing the efficiency of the public sector, both through the more effective management and delivery of public services and the fuller utilisation of public assets. To this end the Government published the National Asset Register(NAR) in November 1997. At the same time it announced incentives for departments and agencies both to sell off surplus assets and to make the best use of those retained. This guidance sets out details of the revised arrangements in respect of retained assets and a framework for enabling departments to develop proposals for their more efficient use through commercial activity, where appropriate.
2. The Government's policy is that departments and their agencies, and NDPBs, should enhance the utilisation and value of their assets, whether physical or non-physical. The policy therefore applies to software, databases, skills and intellectual property as well as to physical assets such as equipment, land and premises.

Exploiting Commercial Potential

3. In some cases, and subject to sensible safeguards, the most efficient use of an asset may involve exploiting its commercial potential. Such public sector commercial activity has the ability to generate additional resources for core departmental objectives; and to benefit the economy as a whole through more productive use of assets, for example by marketing widely high quality goods and services originally developed in the public sector.

Scope of the Policy

4. This guidance note is intended to help departments, agencies and NDPBs to undertake new commercial activities where it is sensible and proper to do so. It does not apply to bodies classified to the public Corporations Sector (other than to NHS Trusts, NDPBs and Trading Funds) or to local authorities. Local authorities are covered by their own arrangements, under the Local Government (Goods and Services) Act 1970 and the Local Government and Housing Act 1989. In many cases, commercial activity can best be taken forward as a form of public-private partnership (PPP) and the guidance should, in large measure, be seen as one strand of PPP policy.

5. This guidance sets out a framework of incentives designed to encourage wider market activity by allowing departments normally to benefit from wider markets receipts. Departments are encouraged where appropriate to allow their agencies and NDPBs to benefit from receipts generated from their own sales into wider markets.
6. The guidance essentially concerns making best use of existing public sector assets. The case for acquiring any new assets should continue to be based on delivering core departmental objectives.
7. This guidance applies to commercial activity of a discretionary nature which is:
 - not a statutory service¹ except where the enabling power for a (non-regulatory) service specifically states that charges can be made on a commercial basis;
 - not sold only to other government departments and other bodies listed in the definition of “inter-departmental services” (in the Fees and Charges Guide), but also includes sales to local authorities and other bodies in the wider public sector and/or the private sector;

and where:

- public sector customers receive the same pricing structure and conditions of sale and service as private customers;
- customers are not tied to the supplying department, and are free to buy the goods or services concerned from whatever source provides the best value for money.

In circumstances where departments are unclear regarding the status of particular activities departments should consult Treasury spending teams, but ensure that the Growth Unit is copied in.

¹ A statutory service is normally defined as one where there is, or would need to be, a provision in statute, including statutory instruments giving effect to EC Directives, to recover a fee or charge for the service. (A specific statutory charging power is required if charges are to be made for services of the nature of a State regulatory service, but may also be considered appropriate in other cases.)

8. The term department is used throughout this guidance to refer to departments, agencies and NDPBs, except where otherwise indicated.

Asset Tests

9. Departments intending to undertake a commercial activity which involves selling a good or service derived from assets in the public sector (other than in cases which involve carrying out a statutory function) should have regard to the following points.

Should the asset concerned be retained in the public sector?

10. Departments should consider thoroughly whether the asset is needed at all to meet core public sector objectives. If not, the best option will usually be disposal subject to any necessary authority. For example in the case of material which is Crown copyright, only the Controller of HMSO is legally authorised to assign or transfer Crown copyright. The Government has announced incentives for the disposal of capital assets. PES (98) 5 refers.

If the public sector continues to need services derived from the asset, would it nonetheless be more efficient to transfer that asset to the private sector and purchase the services from a private sector provider, by means of a private finance or some other structure?

If the asset is to be retained in the public sector, is there commercial potential to be exploited?

11. If, following the thorough application of the above tests, the assets concerned are retained in the public sector:
 - a. are the assets, and goods and services already or potentially derived from them, unique or of sufficiently high quality that they have the potential to generate successful commercial spin-offs?
or,
 - b. is there spare capacity, after delivering the public sector body's core objectives, which could be used for commercial purposes?
12. If the conditions at 11(a) or 11(b) are satisfied then, subject to the following points, departments should consider positively the scope for marketing the goods or services concerned to third parties. This consideration should take into account the possibility of increasing the

utilisation of the asset by sharing it with other parts of the public sector including local authorities. Where the conditions at paragraph 7 are met, wider markets projects involving trade between departments, NDPBS and local authorities are covered by the wider markets guidance.

Nothing in this guidance is intended to discourage departments from using their assets to sell services only to other departments on inter-departmental service terms. (This applies whether the services are of a type which are unlikely ever to be suitable for wider markets, or which at some future date might also be sold as a commercial activity into wider markets).

Appropriateness, propriety and legality

13. The proposed commercial activity should be one which the department's accounting officer would be able to defend as an appropriate use of resources. Departments should take into account:
 - whether they have the Parliamentary authority that may be needed for any expenditure concerned. For example, departments may need to seek a change in the ambit of the appropriate Vote;
 - Parliamentary and public expectations about the type of activity in which public sector bodies should properly engage;
 - domestic and European procurement rules. In this context, departments should consider carefully whether any arrangement with a private sector partner would represent a contract for the provision of goods or services to which either government or the EC procurement rules might apply. Annex A sets out more detailed guidance on the scope and application of the EC procurement rules in wider markets projects;
 - competition policy. Departments should consider whether the proposed activity would be subject to domestic or EC competition rules (including state aids rules). Crown bodies are only subject to current UK law in limited circumstances but as a matter of policy are required to act as if subject to it. Crown bodies which are "undertakings" are subject to EC competition rules. The Competition Bill is expected to repeal parts of current UK law and introduce new provisions based on the EC rules (see Annex B);

- the public sector body's core objectives (other than in simple cases involving utilisation of spare capacity, a commercial activity unrelated to a public sector body's core objectives may be hard to justify);
- any conflicts of interest between the public sector body's policy objectives and the proposed commercial activity.

Developing a business case

14. Among the first steps in the process of considering the potential of the proposed commercial activity should normally be the development of a business case. This should normally include the potential income of each individual project weighed against its costs and how it will be priced and managed. Annex B sets out the issues to be considered in developing a business case, although the level of detail required will vary considerably depending on the complexity of the proposed project. Departments should consider carefully the nature and duration of the commitment they enter into, assessing the potential risks and benefits, and any potential liabilities should the department, or its private sector partner, wish to withdraw from the arrangement.

Commercial structures

15. The nature of the commercial structure appropriate to each case will vary according to individual circumstances. The following examples illustrate some of the possibilities.

- **Relatively straightforward cases: simple public sector structures**

In some cases, a department will be engaged in a relatively simple, and probably small, operation: for example, letting out some spare capacity in a building. In such cases (equating broadly to the category at paragraph 11b above), the department is likely to undertake the activity on its own, or with the help of an agent.

- **Relatively straightforward cases: simple PPPs**

In other cases, a public sector body may enter an arrangement with a private sector firm to sell an existing good or service to third parties, in return for some form of fee. This might be the most appropriate structure for the commercialisation of: access to a database; a piece of software; or a publication. Again, the commercial structure involved is likely to be

relatively simple, for instance through a licensing agreement.

- **More complex cases: more complex PPPs**

In some cases, further development of the public sector asset may be necessary to enable the department to make a commercial return on it. Developing these projects may require more complex structures. This would also apply, for example, if a public sector body does not have the necessary expertise and experience in areas such as product development and marketing; or if the proposed commercial activity is on a substantial scale relative to the asset base of the department.

In such cases, or in any event where selling the good or service concerned requires a free-standing new business, joint arrangements of some kind with the private sector would normally be appropriate. Some such cases and others which fall within the scope of paragraph 11a above may lead to the establishment of a joint venture company.

Establishment of public-private partnerships: points to bear in mind

16. PPPs, including both the relatively simple and more complex cases outlined above, should generally be established on the basis of a business plan and following discussions with a number of potential private sector partners. Departments may wish to obtain professional advice on their business proposition. In many cases, the process of seeking a private sector partner should be seen as an important means of testing the commercial viability of a proposal.
17. Departments should be prepared to receive and consider project proposals initiated by the private sector, subject to the wider markets guidance in general and the points below in particular and paragraph 8 of Annex A.
18. Particularly when responding to such proposals, but also more generally, departments need to consider carefully the full implications of choosing a private sector partner. Departments should consider obtaining external professional advice, bearing in mind the possible procurement involved and the need to use appraisal criteria appropriate to the project.

Procurement. The EC procurement rules can, in some circumstances, apply to the selection of private sector partners. Even where EC rules do not apply, a selection process, where

possible by open competition, should normally be undertaken on grounds of value for money and propriety. Further guidance on the EC procurement rules is at Annex A

Evaluation. Potential partners should be evaluated using criteria relevant to the proposed project. Departments will need to take into account partners' financial and management record, and other factors. Some generic appraisal criteria are contained in Annex C.

19. The level of risk involved in a PPP will vary project by project. Risks should be apportioned between the private and public sectors according to which party is best placed to manage them. In most cases the private sector will make its input through, for example, marketing and development. The public sector's principal input will usually be its asset. The ownership and reward structure is likely to reflect the input and level of risk borne by each partner.
20. Departments should ensure that they have in place adequate internal arrangements to monitor the progress of their interests in PPPs and to liaise with private sector partners.

Investment

21. Any investment in wider market activity must be financed from within existing Departmental Expenditure Limits/Control Total provision and existing cash and running costs limits.
22. Substantial investment in a PPP should normally be undertaken by the private sector partner. New public sector investment in human or physical resources related to commercial activity covered by this guidance should normally be marginal relative to the asset base of the public sector body. Appraisals of any public sector investment should be carried out in accordance with "Appraisal and Evaluation in Central Government" (see Annex B).

Protecting core objectives

23. Departments will have to meet from existing budgets any costs which may arise from commercial ventures. They should therefore ensure that they have a clear understanding of the nature of the commitments they enter into; and should satisfy themselves that they will be able to meet those commitments, which may often be long-term in nature, without diverting significant management resources or otherwise prejudicing

delivery of core public sector objectives. Careful account should be taken of the risk that anticipated receipts will not materialise; and of the need to avoid diverting resources from core objectives to make good shortfalls in receipts or to fund new commercial activity.

Consulting the Treasury

24. Departments and agencies are responsible for assessing and developing the commercial potential of their assets. Drawing on the new approach to PFI being taken by the Treasury Taskforce, there are circumstances however where the Treasury will be involved:-
- a. In the initial stages of assessing the wider market potential of assets or activities, departments may find it useful to consult a central source of best practice advice. The Treasury Growth Unit will perform this role in a similar way to the Private Finance Policy Team on PFI projects. The unit should be able to answer general queries and provide examples of how other departments have tackled projects. Departments will also wish to take advantage of existing Private Finance and Efficiency contacts.
 - b. Departments should consult the Treasury Growth Unit on wider markets projects for which they do not have the necessary experience or expertise. This will include cases where the projects are particularly innovative or complex relative to departmental experience or large relative to their asset base. If in doubt about whether a project is caught by these criteria, departments should consult the Growth Unit who will draw upon Private Finance Task Force advice on issues such as contract structure, financing, apportioning of risks, and the process of selecting partners.
 - c. In such cases which will usually imply the formation of a PPP, the Treasury Growth Unit will coordinate a formal project 'sign off' by the Taskforce. This 'sign off' procedure is designed to ensure that, in the early stage of the initiative, potentially important projects including those which may be replicable or high profile, have the necessary elements to be marketable before private sector partners are sought. This is in line with the Bates recommendations for PFI projects.
 - d. The sign off procedure does not supplant the department's project assessment and quality control procedures. Departments will

remain fully responsible for all aspects of ‘signed off’ wider market projects and will wish to consider the appointment of their own professional advisers.

- e. Some projects may require Treasury approval because they have the potential to affect the Government’s overall spending plans and priorities, or they have the potential to be contentious or repercussive. At present all projects where the full annual cost is £1 million or more require Treasury approval (although Fees and charges thresholds are currently under review). Where this is the case projects should be cleared by Treasury spending teams, but departments should ensure that the Growth Unit is copied in.

Pricing, costs and returns

- 25. Pricing must be fair, in accordance with the requirements of the Fees and Charges Guide. It must also reflect a full and robust measurement of the department’s costs. Subject to those points, departments should subject all proposals to a thorough commercial appraisal in developing the business case, taking into account factors including the degree of risk involved, to ensure that they can expect to secure an adequate return. Further detailed guidance on costing and pricing is contained in Annex B.

Internal Wider Markets Officers

- 26. Departments should nominate an official as an internal Wider Markets Officer, to ensure adherence to the law and relevant guidance, particularly in relation to pricing and competition so as to ensure a “level playing field” with the private sector. The Wider Markets Officer’s agreement to the pricing structure will be required though in some circumstances this may be delegated where Departments have satisfactory alternative arrangements in place (see Annex D paragraph 5). It is therefore important that the Wider Markets Officer is consulted at the project development stage. The Wider Markets Officer should be available as a point of contact for private sector firms and others with queries about individual cases, and will also be responsible for ensuring that reviews of pricing are undertaken. Further guidance on the role of the Wider Markets Officer is at Annex D.

Freedom of Information & Crown copyright

- 27. Departments should consider the potential implications of the

Government's proposals for a Freedom of Information Act and the review of Crown copyright. Annex E sets out the key issues in each case. Projects designed to sell government information into wider markets could be affected by the evolving policy. The impact of this policy, as it emerges, should be considered by departments before proceeding with specific proposals.

Reporting

28. Departments, Next Steps Agencies and other public sector bodies should provide a full account in their annual reports and accounts of commercial activity carried out under this guidance. This should include information about the scale of resources devoted to significant projects (or groups of projects which together are of a significant size), value for money information about the efficient use of public sector assets and indicators of commercial performance. Those bodies with higher levels of wider markets activity may wish to consider publishing a separate report of their commercial activity.

Receipts

29. Subject to the points set out above, departments have an automatic right to benefit from receipts classified as negative public expenditure in Departmental Expenditure Limits (DEL) (for 1998/9 the Control Total) other than in exceptional circumstances where the scale of the receipts may be significant enough to distort the Government's spending plans and priorities². Where the receipts are of a type which, with Parliamentary approval of an Estimate, can be appropriated in aid of a Vote (ie are related to the Vote and classified as negative public expenditure) the Treasury will therefore approve necessary main and supplementary Estimates action (an example of the process works is contained in Annex F). If however in any year actual receipts exceed the total of appropriations in aid on the vote, the excess receipts have to be surrendered to the Consolidated Fund. NDPBs should seek amendments to their Financial Memoranda to enable them to benefit from receipts generated in-year above the baseline agreed with their sponsoring department.

² Where annual receipts from Wider Markets appropriated-in-aid exceed 5 per cent of departmental (ie Class) cash-limited provision, departments should consult Treasury Spending teams.

30. Trading Funds will continue to benefit from commercial receipts in the normal way.
31. Departments are encouraged where appropriate to allow their agencies and NDPBs, to benefit from receipts generated by their own sales into wider markets. In drawing up framework documents, financial memoranda or management statements, departments should consider how best to incentivise wider market activity in their agencies and NDPBs within a similar framework. Any such arrangements will need to safeguard the department's responsibility to meet its overall cash limit.
32. Departments and agencies are encouraged, particularly in cases where a proposal requires significant investment or where specialist skills are required to realise the potential of an asset, to develop projects through joint arrangements with the private sector, possibly through Joint Venture Companies.

Under the current public expenditure classification, dividends received from private sector bodies in which the government is a minority shareholder are treated as revenue. In future the dividends paid by such bodies will be reclassified as negative public expenditure in Departmental Expenditure Limits (DEL). This classification change will take effect for the numbers used in the CSR and for Main Estimates 1999-2000.

Departments will have an automatic right to benefit from these negative public expenditure dividend payments subject to the points set out above. This applies to minority shareholdings acquired at any time but will take effect in respect of dividends paid after 1 April 1999.

Apportionment of receipts.

33. Where expenditure on wider markets is from running costs, departments will be permitted to offset against their running costs limit the proportion of the wider markets receipt which relates to running costs (a worked example can be found at Annex F).
34. The rules on the apportionment of receipts are intended to ensure that, over the lifetime of a project, receipts are spent in rough proportion to share of costs across a department's budget headings. So, receipts from a running cost intensive project should largely benefit running cost expenditure. Receipts from a project with mixed running and non-running costs will benefit running and non-running cost expenditure. Because

some projects may have startup costs that fall under one heading but ongoing costs that fall under another heading, the annual apportionment is calculated on the basis of total inputs over the project lifetime or five years, whichever is the shorter. So:

- a. in approving Estimates the Treasury will allow running costs-related receipts to be offset against running costs limits. Other receipts may be offset against the appropriate vote heading. However these guidelines will not affect departments existing discretion within individual lines to vire between non-running cost headings or to vire *out of* running costs;
- b. the proportion of each year's receipts which can be allocated to running costs and offset against running costs limits will be determined by the proportion of running costs in the department's expenditure over the lifetime of the project or the first five years, whichever is shorter;
- c. departments with projects with an estimated life time in excess of five years will need to agree reassessed receipts apportionments in proportion to forecast cost by subheading at the end of each five year period;

Treatment of existing projects

35. The purpose of the revised treatment of receipts in this guidance is to create the right framework of incentives for departments to consider new forms of wider markets projects. It is not intended that this guidance should apply automatically to existing activity.
36. The arrangements set out at paragraph 29 above apply to any project which begins to generate receipts on or after the announcement of the revised wider markets policy (24 November 1997). In addition, in existing projects, departments have the automatic right to benefit from additional receipts generated above the highest level received in the past three years.
37. Nevertheless Treasury spending teams will be prepared to consider on a case by case basis, arguments for similar treatment of other existing projects. Departments will need to demonstrate good reasons for justifying an extension.

ANNEX A: THE EC PROCUREMENT RULES AND WIDER MARKETS PROJECTS

Introduction

1. This annex considers the circumstances in which the EC procurement rules apply. Specifically it sets out:
 - the key tests which should be applied by departments to decide whether and how the Rules might apply;
 - how the rules might apply in certain circumstances.
2. The guidance points here are intended to assist in the development of projects by highlighting key issues and questions. The points in this annex should not be regarded as definitive guidance in respect of any specific project and departments are *strongly advised* to apply the key tests set out in Paragraph 3 below. Nevertheless, in general terms:
 - it is unlikely that the Rules will apply to projects in which a department sells spare capacity unless in doing so it enters into other arrangements which do involve procurement (such as the appointment of agents or contracts involving, for example, renovation);
 - in other situations, departments may procure marketing or other services from firms, which then act on the department's behalf to sell (or assist a department to sell) a good or service into wider markets. Here the Rules are likely to apply unless the agreement can be classed as a Service Concession Contract. It is probable that this will often be the case. If so, the Rules will not apply;

in most circumstances, it is unlikely that the Rules will apply to joint ventures.

Basic guidance on the EC Procurement Rules together with the current thresholds can be found on the Treasury web site.

The Key Tests

3. The tests are as follows:
 - a. *is the body placing the contract/setting up the arrangement, a body*

which is covered by the Rules (known as a “contracting authority”)? Bodies such as Government departments and local authorities are clearly covered. The definition of “contracting authority” also includes a general category which could mean that a joint venture vehicle could itself be covered, though this is unlikely in projects established under the wider markets guidance;

- b. is the contracting authority seeking an offer in relation to a proposed supplies, works or services contract?* The relationship between the contracting authority and the other party needs to be in nature of a procurement contract for the Rules to apply;
- c. does the contract fall into a category which is specifically excluded under the Rules?* Contracts with estimated values below the relevant threshold are excluded. Service concession contracts fall entirely outside the Rules. These are defined as:

“Contracts under which a contracting authority engages a person to provide services to the public lying within its responsibility and under which the consideration given by the contracting authority consists of or includes the right to exploit the provision of the service”

- d. in the case of a service contract is it for a Part A or a Part B service?* Part B services are subject to a lighter regime under the Rules, under which, for example, there is no need for a contract notice calling for competition to be published in the Official Journal of the EC. Classification is frequently difficult. Nevertheless, misclassification in order to avoid a call for competition must be guarded against.

Applying the EC Procurement Rules

- 4. Because of the heterogeneous nature of projects, general guidance on the application of the Rules is of limited value. The paragraphs below illustrate some of the key issues in relation to the three project-types set out in Paragraph 15 of the main guidance.
- 5. *Relatively Straightforward Cases: Simple Public Sector Structures.* In simple cases such as the letting out of premises or under-utilised equipment, there would not normally be a procurement and the Rules would not apply. However, care needs to be exercised if an agreement involves refurbishment of the premises or any other activity which might constitute

procurement, and if the value of the works exceeds the relevant threshold. In these cases the Rules would apply.

6. *Relatively Straightforward Cases: Simple PPPs.* The types of project which might be covered here include contract licences. For example, a contracting authority might enter into a contract with a private sector firm for the exploitation of a piece of software which the contracting authority had developed for its own use, under which the firm would market the software and would be entitled to retain part of the income by way of remuneration.

This particular example and other like it raise two issues:

- a. *is the agreement a contract for services?* Possibly. The case above *could be* interpreted as a contract for services. It may be a contract for marketing services if the role of the private sector firm was simply related to the marketing of the existing product. If the firm invests in the further development of the product it may constitute a contract for IT services. Under the EC Procurement Rules these would be Part B and Part A services respectively;
 - b. *would the agreement constitute a Service Concession Contract (see test c)?* In many cases, yes, this type of arrangement could be regarded as such a contract, however the type of arrangement described above be regarded as falling into this category only if it involves a contract for the provision for services lying within the contracting authority's responsibilities. Where a contracting authority is satisfied that this is the case and that the other criteria set out in Paragraph 3 (c) above are fulfilled, the arrangement would probably be classed as a service concession contract and the Rules will not apply. In cases of doubt advice should be sought from purchasing units, which in turn may wish to consult the Treasury's Procurement Policy (PP) Division
7. *More Complex Projects: More Complex PPPs.* The points above may apply in respect of joint ventures. Other issues need to be considered in these cases however:
 - a. *is the agreement to establish a joint venture a contract for services to which the procurement Rules apply?* In most cases, the view taken in the UK has been that such an arrangement is unlikely to constitute a contract for goods, works or services.

- b. is the joint venture itself a contracting authority?* Joint ventures established under the wider markets guidance would not normally be covered by the Rules.
- 8. *Protecting Intellectual Property.* Departments should take appropriate steps to protect the intellectual property of potential partners. Particularly in circumstances where an innovative proposal is made to a department, any subsequent procurement process should be designed to test whether the market can deliver alternative propositions rather than competing claims for potential revenue generation based on the proposing firm's original idea.
- 9. The points set out above are for general guidance. It is important, in developing each wider markets project, that effective consultation is undertaken on the application of the Rules. This should involve discussions with the relevant purchasing unit or department at an appropriately early stage and where necessary, legal advice should be sought.

ANNEX B: DEVELOPING A BUSINESS CASE FOR WIDER MARKETS PROJECTS

Introduction

1. This annex provides guidance for departments on the development of business cases for wider markets projects. It sets out some generic sign-off criteria developed with the Treasury Taskforce, which should inform the development of business cases. The remainder of the annex considers the policy framework for wider markets in general, and sets out in particular the issues raised by wider markets projects in respect of competition policy and pricing and some practical considerations for dealing with them.

Taskforce Signing-off Criteria

2. The following criteria are the type used by the Taskforce in signing off larger and more complex projects (for procurement). Departments may also find them helpful in more straightforward projects and should consider relevant criteria in their business cases.

Option Appraisal

- a. Alignment with departmental objectives for commercialisation/wider markets
- b. Should the project be structured as a Public Private Partnership?
- c. Scope of the structure to allow for and innovation and development.

Affordability

- a. Recurring costs affordable over the whole life of the project, taking into account the timing of income flows.
- b. Affordability analysis, and impact on budgets, accepted by the Department or Agency.

Bankability & Output Specification

- a. Strength of the overall business case, especially:

- projected rate of return. Normally 8 per cent real as a minimum but commensurate with risk/competition;
 - strength of departmental cost analysis;
 - evidence and strength of analysis and understanding of the product or service market;
 - projected market penetration and sales level;
 - effects on existing providers and how this will be minimised
 - evidence of interest from potential partners;
 - definition of partner's role and responsibilities;
 - partner's likelihood and extent of commercial return.
- b. Willingness to consider all opportunities for generation of other revenues, e.g. wider commercialisation opportunities.

Risk Allocation

- a. All the foreseeable risks associated with the scheme have been identified and a preliminary risk allocation made on the basis of each party bearing the risks it is best placed to manage.
- b. The allocation of risks associated with levels of sales, residual values, technology and obsolescence and changes in legislation or regulation.

Key Terms and Conditions

- a. Heads of term or outline contract prepared.
- b. Ownership and reward structure which reflects risk allocation.
- c. Use of a Public Sector Comparator where appropriate (for joint ventures)
- d. Following a Treasury Taskforce template for commercial and legal terms where one exists (eg. payments and step in rights)

Suitability of Proposed Advisers

- a. Arrangements for obtaining legal, financial and technical advisers, with appropriate experience, and demonstrating VFM from advisers.
- b. Willingness of advisers to share lessons and approaches, without undue confidentiality and copyright constraints.
- c. Arrangements for periodic review of performance of advisers.

(See Treasury Taskforce Best Practice on the appointment and management of advisors).

Indicative Timetable

- a. Timetable prepared.
- b. Stages of procurement process kept to a minimum consistent with achieving VFM.
- c. Total elapsed time from OJEC (where appropriate) to completion realistic.
- d. Fit between expenditure and likely receipts streams: extent of exposure to annuality and contingency plan.

Project team

- a. Project management experience.
- b. Appropriate range of skills and experience, whether from advisers or in house, for the deal envisaged.

Policy Context

3. Departments' business cases should be developed with reference to the legislative and wider policy framework. Some of the main policies are as follows:

The Fees and Charges Guide, issued by the Treasury, sets out procedures for calculating the costs of different types of service and the principles on

which costings may be based. The current (1992) Fees and Charges Guide is in part superseded by this guidance. A letter will be issued to Principal Finance Officers to this effect;

Appraisal & Evaluation in Central Government, issued by the Treasury sets out the principles of, and guidance on, project evaluation including discussion of rates of return. The guide is particularly useful in developing ex ante assessments of more complex projects. (Contact: Mike Parsonage 0171 270 4969);

The Government Held Tradeable Information Guidelines issued by the DTI, are under review. Departments developing projects involving the exploitation of government databases should refer to the DTI for further information. (Contact: Mark Swarbrick 0171 215 1969);

Crown Copyright in the Information Age, the Green Paper (January 1998) setting out the options for the future management of Crown copyright (considered further at Annex E);

Your Right to Know: Freedom of Information the White Paper (December 1997) setting out the Government proposals in respect of Freedom of Information legislation (considered further at Annex E);

The Competition Bill, although it has no specific provisions relating to selling government services into wider markets is expected, in 1999, to strengthen and develop existing Competition policy in the UK. The paragraphs below consider some key aspects of the Bill in respect of wider markets projects.

4. In addition to these general policies, departments need to ensure that they take account of any relevant specific limitation placed on their activity by legislation, agency framework documents or other administrative agreements. Agencies may seek to review relevant aspects of their framework documents to take account of the change in policy, either at quinquennial review or sooner. NDPBs may wish to review their equivalent documents.

Competition Policy and Wider Markets Projects

5. In developing their business cases and more generally, departments need to consider whether they are subject to domestic and EC competition rules and, if so, act within those rules.

UK Competition Law. Agreements entered into by Crown bodies for commercial reasons are currently immune from the restrictive trade practices legislation. Although Crown bodies may not have remedies imposed upon them under legislation dealing with “monopoly situations” and “anti-competitive practices”, as a matter of policy, they should operate as if subject to the legislation, and cooperate with OFT enquiries. Legislation on mergers may apply to Crown bodies in limited circumstances. The existing legislation on restrictive practices and anti-competitive practices are likely to be repealed when the Competition Bill comes into force. The Bill is expected to introduce new prohibitions on anti-competitive agreements and abuse of a dominant position based on Articles 85 and 86 of the EC Treaty but without the need to show an effect on trade between Member states. These will, as with EC law, apply to Crown bodies that are carrying on commercial or economic activities.

6. *EC Competition Law.* EC competition law applies if a government body is acting as an “undertaking”. Whether this is the case depends on whether the body undertakes “economic activity” rather than its legal status. By engaging in commercial activities government bodies might be considered to constitute “undertakings” for the purposes of EC Competition law. The key rules applicable to undertakings are as follows.

Article 85: prohibits agreements between undertakings which may affect trade between member states which have the object or effect of preventing, restricting or distorting competition. In particular, agreements which fix prices, limit production, share markets or discriminate against third parties or which impose territorial restrictions are prohibited. Exemptions from prohibition may be available if an agreement has certain countervailing benefits.

Article 86: prohibits the abuse of a dominant position within the common market or substantial part of it, which affects trade between Member States. Such abuse could include: predatory pricing, limiting production, markets or technical development; refusal to supply; or the imposition of discriminatory trading conditions to the competitive disadvantage of others.

EC Merger Regulation: applies to mergers and certain joint ventures by undertakings which meet specified criteria and requires that approval is sought from the European Commission.

Article 90: prohibits the Government from enacting or maintaining in force in relation to public undertakings or undertakings to which the

state grants special or exclusive rights, any measure contrary to the EC Treaty; in particular Articles 85 and 86.

Articles 92 & 93: concern state aids. If a government body is an undertaking, any advantage granted to it by its home department (including but not limited to financial assistance) may constitute a state aid. Similarly if the activity undertaken provides a benefit (e.g. reduced costs) to another commercial undertaking this may be a state aid. Any queries related to the applicability of the state aid rules to specific projects should be addressed, at the earliest opportunity, to the State Aid Policy Unit at the DTI on (0171) 215 4428.

7. Departments should take their own legal advice as appropriate and if there are competition concerns in respect of their commercial activities they should consult the DTI. Departments should *always* consult the DTI before asserting that they are an “undertaking” which may have wider implications for other government bodies, via the DTI’s Competition Policy legal team on (0171) 215 3460 (Bryan Welch, Head of Unit).

Principles Underlying the Pricing of Wider Markets Projects

8. The principles on which departments should set prices are set out in the Fees and Charges Guide. The rules are that:
 - a. departments should not subsidise their wider markets projects in general and should avoid cross-subsidy between individual activities. Where a department has product or service ideas with commercial potential, they clearly need to be competitive. If the product or service cannot be brought to the market at a competitive price, the project should not be developed;
 - b. where departments sell into competitive markets, particular attention needs to be paid to pricing, using full cost attribution including cost of capital, and based on total rather than the marginal costings. Running costs should be included: for heat and light etc; labour costs should include pension and employers’ NICs, allowances for training and development etc; and capital costs should include assessment of the cost of equipment and premises.
9. The Fees and Charges Guide sets out rates of return appropriate to different types of commercial projects. A real rate of return on capital of 6 per cent is appropriate where departments sell services in support of an activity required by statute or for supply to other parts of the public sector

and the private sector where there is no competition. However a real rate of return of 8 per cent would be appropriate for output sold to the private sector in competitive markets; more than 8 per cent may be justified if, for example, the activity is high risk. Departments should not engage in pricing behaviour which could be interpreted as exploitation of a dominant position; and should also exercise caution if, when developing activities, their proposed prices appear to be significantly lower than the current market level. In both cases, departments should ensure that their pricing reflects the *full* attribution of cost and an *appropriate* rate of return on capital. Selling into wider markets should not normally be undertaken where the real rate of return is less than 8 per cent.

10. In developing business cases and plans for projects, departments are recommended to include analysis of the basis on which pricing frameworks have been developed. Whether and how this is done is ultimately a matter for departments themselves.
11. Departments should review cost recovery at least annually, but should also adopt a policy of periodic more fundamental review of their charging regimes for wider market activities. Such reviews should not normally take place at intervals of more than three years.

Practical Issues in Business Case Development for Wider Markets Projects

12. No two projects developed under this guidance will be the same. The application of the principles outlined above will therefore need to take place along with a wider assessment of the particular circumstances of the project in question. Projects will be required to take account of:

Government's role in the market. In some areas, government may be the only source of information or know-how; in others government may have a dominant position although with substitutes available; in many government will be one among a larger number. Departments need to consider carefully which of these applies and should ensure that pricing and contractual arrangements are appropriate. Departments should ensure in particular that their actions do not constitute abuse of a dominant position.

The terms on which services are currently available. In information-based projects in particular, what has been available to third party users previously? If information has been available at low if any cost, can commercialisation be justified against freedom of information requirements? It may be appropriate to consult with any interested parties or to develop a tiered system of free or low cost basic and charged value-

added information.

The added-value of the service. What is the proposed project adding to the market? Is it substantially different to other products or services on the market? If not, what is the basis for assuming that an adequate rate of return can be earned?

Existing patterns of commercial activity. Where the proposed service is not unique or not clearly differentiated from existing market offerings, what will be the impact on current providers, especially small firms? In particular, what will be the effect where there is a localised rather than a national or international market?

Departments' ability effectively to cost the service. Are management accounting systems sufficiently robust to provide a full attribution of costs for the project? If not how can pricing structures be justified?

ANNEX C: DEVELOPING EFFECTIVE PARTNERSHIPS

Introduction

1. Departments should establish Public Private Partnerships which are suited to their proposed wider markets project and ensure that the arrangements are developed and configured correctly. This annex considers some of the key issues:

Contract or joint venture?

Choosing a private sector partner (appraisal criteria)

Developing partnership

Departments should consider carefully whether they have the expertise and experience to develop partnerships, particularly joint ventures. In general, the development partnership arrangements should be undertaken with the assistance of professional advisors.

Contract or joint venture?

2. Where a department wishes to develop a partnership for the provision of a wider market service, one key step is the decision to structure the arrangement as a contract, such as a licencing agreement, or a joint venture. In taking this decision, departments should bear in mind:

the nature of the arrangement. Agreements which are based on the procurement of services may be structured as contracts more easily than those which involve joint inputs to develop more uncertain and mutually beneficial commercial potential;

the nature of the public asset. Where a department may require the use of an asset, if this would affect the commercial arrangement, the asset should not normally be vested in a joint venture. In a situation such as this, a contractual arrangement for the use of the asset (and possibly the activity in general) may be more appropriate; where a joint venture is, nevertheless, deemed to be the more appropriate commercial structure, the asset should normally be leased to the Joint venture on appropriate terms which should be set out in a separate contract. Where, exceptionally, an asset is to be vested in a joint venture, or where a joint venture acquires assets wholly or partly with public funds, the department should seek to ensure that in the event of the disposal of the asset, an appropriate share of the proceeds accrues to the Exchequer.

their own vires. Paragraph 13 of the guidance highlights this issue. Departments should ensure that their vires do not prevent them from entering into Joint arrangements. Departments should be aware that contractual options remain open to them in circumstances, such as that of Trading Funds, where their vires place limitations on their ability to enter into formal joint arrangements.

Choosing a private sector partner

3. Departments should take steps to ensure that they choose an appropriate partner. As part of the selection process therefore, where possible in competition, departments should use partner appraisal criteria. Some generic appraisal criteria are set out below.

Relationship Management

- Vision - why they want to get involved
- Objectives - what they want to get out of the partnership
- Stated policy on partnering/sponsorship
- Transparency in dealings

This is an important criterion. Companies should be judged in relation to both their overall vision and project-specific objectives through discussions. This will help to establish the partnership on a firm foundation and facilitate the development of clear agreements. This is considered further in Paragraph 4 below.

Organisation

- Company background
- Principal activities
- Management Capacity
- Ownership structure - parent and subsidiaries
- Organisation chart
- Professional /commercial affiliations.

The nature of the contractor should be considered in relation to the competition and the proposed project. For example, could a sole trader sustain an on-going relationship involving significant investment in the same way as the subsidiary of a larger corporation?

Core Business

- Stability of market place in which the company operates
- Diversity of operations
- Performance and reliability within the market place

How does the proposed project relate to the core business of the firm. Is it central, part of a possible diversification or related in some other ways to the partner's objectives? Does this have implications for the suitability of the partner?

Financial Assessment

- Copies of the last three annual reports and audited accounts (including parents where applicable) and details of any qualifications to them.
- Statement of turnover in respect of proposed project
Key Ratios:

profitability
liquidity
gearing
debtor days
stock turnover

These can be supplemented by external assessment of the commercial strength of proposed partners. For example, a range of services are available which help to assess the financial standing of firms and the likelihood of corporate failure.

These would be used to assure the department that the firm is in a position to provide funds, services or goods without undue commercial risk to the project. The emphasis should be on identifying potential partners showing falling long term profitability, poor liquidity, high gearing or an over-reliance on short-term debt.

In simple PPPs departments may wish to undertake partner appraisals themselves. In most circumstances however, departments should consider using external advisers.

Developing Effective Partnerships

4. Partnership does not depend solely on the financial stability and suitability of partners. Effective partnership also requires: shared vision and purpose; matching styles and culture; and agreed management and corporate governance structures.

Shared Vision and Purpose

- Develop and agree a clear statement of partnership aims.
- Agree the scope and boundaries of the partnership and the respective responsibilities of each partner.
- Understand each partner's expectations.
- Develop a shared acceptance of a common control framework.
- Agree a common understanding of success and failure: targets and milestones.

Matching Style & Culture

- Ensure that there is basic compatibility in terms of core values; business practices; behaviour and action.

Agree Management and Governance Structures

- Understand and manage differences in approach and conflicts of interest between partner organisations.
- In particular resolve differences in culture: corporate governance and public accountability.
- Ensure that those appointed to boards understand the roles they are playing.
- Agree and be clear about public reporting, rights of access including audit access and remuneration.
- Ensure that financial systems are fit for purpose.

5. Other points to Bear in Mind

Access for auditors. The provision of access for auditors will need to be kept in mind. There is a variety of possible situations: access for the Department's internal auditors; access for the auditors appointed by the Department; and access for the Comptroller and Auditor General. The need to provide access for the Comptroller and Auditor General should always be considered.

The government's approach is that public bodies audited by the Comptroller and Auditor General should ensure that he has appropriate access to contractors' records where necessary for purposes connected with the auditing of the public body concerned. For services or functions provided to departments under contract, an agreed contract clause is set out in the Treasury Central Unit on Procurement's Guidance on Model Conditions of Contract (No 59D: Documentation: Model Conditions of Contract). The relevant extract is set out below.

For the purposes of:

a) the examination and certification of the Authority's accounts; or

b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources,

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

The clause above should be used where the relationship is contractual and NAO access is necessary for the audit of the Department. Other forms of partnership, such as Joint Ventures, may need a different approach. The Treasury Officer of Accounts team in the Treasury will advise on individual cases. The NAO should also be consulted.

The Accounting Treatment of Joint Ventures. The treatment of joint ventures and other joint arrangements is covered by a new Financial Reporting Standard, FRS 9, "Associates and Joint Ventures". It distinguishes between different types of interests in joint bodies and their accounting treatment. Departments should make themselves aware of the accounting treatments and consequences of each at an appropriately early stage in project development. The Treasury will issue a DAO letter on FRS 9 shortly.

6. *The Public Expenditure Classification of Joint Ventures.* Joint ventures (JVs) will be classified for national accounts and public expenditure purposes according to who owns and controls them, including indirect control. Where the department owns or controls the JV the whole of the JV will be treated as a public sector body. In these cases, the JV's dealings with the outside world will score in Departmental Expenditure Limits. So any JV expenditure financed by borrowing, including borrowing from the department's private sector partner, will score against the department's control total. If the JV is classified to the private sector, only the department's dealings with the JV score in public expenditure. A guidance note on classification *Public and Private Sectors* is available from the Treasury's Public Inquiry Unit Tel 0171-270 4558; Fax 0171-270 5244.

ANNEX D: THE Wider Markets Officer: RESPONSIBILITIES AND REPORTING ARRANGEMENTS

Introduction

1. This annex sets out some of the important issues to be addressed by departments for ensuring that they comply with the requirement for fair trading in their wider markets projects. It considers:
 - the responsibilities of the Wider Markets Officer;
 - issues to be considered when establishing a fair trading function;
 - practical issues concerning the role of the Wider Markets Officer.

The Responsibilities of the Wider Markets Officer

2. The Wider Markets Officer has three broad areas of responsibility. They are:
 - to ensure compliance with the law and relevant guidance both at the project development stage and through periodic reviews;
 - to be a central repository of experience and guidance, particularly in relation to pricing and competition issues;
 - to act as a point of reference for outside queries relating to the pricing of services and to ensure consistency within departments.
3. Annex B considers further aspects of the legal and regulatory framework and how it applies in pricing-related issues. The remainder of this annex considers other aspects of the Wider Markets Officer's role.

Establishing the Fair Trading Function in Departments

4. The principle which should underlie the development of departmental arrangements is compliance with the requirements set out above. The size and position of the fair trading function will vary from department to department depending on: the size of the department; existing arrangements for central reporting; and the proposed level of activity to be undertaken.

5. The precise nature of arrangements is ultimately a matter for departments. However, the following points constitute the minimum essential requirements of the fair trading function:

- a Wider Markets Officer must be officially designated. Some departments may decide to add the responsibilities of the Wider Markets Officer to those of their existing fees and charges co-ordinator. In other departments the commitment may require otherwise;
- the Wider Markets Officer should have a duty to advise operational teams (i.e. those proposing wider markets projects) on their projects' proposed marketing and pricing structures;
- operational teams should follow the advice of the Wider Markets Officer assisted by any other relevant guidance from their Principal Finance Officer.

Where satisfactory alternative arrangements and fair trading criteria are in place, departments may wish to consider delegating responsibility for the clearance of more straightforward projects to the Directorate/Business Unit or other appropriate level.

Practical Issues Concerning the Role of the Wider Markets Officer

6. The role of the Wider Markets Officer is intended to be supportive whilst ensuring rigour and coherence in the development of wider markets projects. The Wider Markets Officer will have a key role in a variety of circumstances. Some of these are considered below:

- *assessing whether proposed wider markets projects would constitute fair trading.* This is a core element of the Officer's role. Prior to the launch of projects, operational teams are required to develop a business case (as per Annex B of this guidance). This will, of necessity, contain assumptions regarding costs and proposed pricing structures. Here, the Wider Markets Officer needs to ensure that the following key question has been considered: do the proposals for the project comply with relevant law and other guidance? This will necessitate judgements on whether the proposal has made a reasonable assessment of:

the full operating and capital costs which should be attributed

to the project;

in particular whether the return on capital is on a comparable basis with the private sector;

the proposed price/projected level of sales and how this compares with the market.

These judgements should be informed not only by the circumstances of the immediate case but also by appropriate risk analysis, other contracting experience and (where possible) the department's track record in similar activity;

The pricing and competition criteria to which projects need to conform are set out in Annex B. Where project proposals do not fulfill these criteria or where insufficient evidence to justify pricing policies has been produced, the role of the Wider Markets Officer will be to advise on the further refinement of proposals;

- *dealing with enquires from the private sector.* The Wider Markets Officer should be the first point of contact for such enquiries about departments' role in wider markets and to provide as full an explanation as is consistent with maintaining an appropriate level of commercial confidentiality;

The Wider Markets Officer's role in relation to complaints should be decided by departments. The role may be to inform the complainant of the department's normal procedures, or where appropriate, to receive and to deal with complaints;

- *periodic review of charging regimes.* The Wider Markets Officer should be responsible for ensuring that periodic reviews of wider market activity are undertaken. Reviews should be two-fold. First to ensure that the department's activities still constitute fair trading; and second, to identify projects where under-performance requires reassessment of the activity. Reviews should not normally take place at intervals of more than three years.

ANNEX E: FREEDOM OF INFORMATION AND THE REVIEW OF CROWN COPYRIGHT

Introduction

1. Several current policy developments impinge on the policy of selling government services into wider markets. There are: proposals for legislation on Freedom of Information; the review of Crown copyright; and the forthcoming European Commission Green Paper on “Public Sector Information in the Information Society”.
2. The paragraphs below set out key issues raised by the Freedom of Information (Fol) proposals and review of Crown copyright and some guidance points for departments in developing projects under the wider markets policy.

Freedom of Information - The White Paper’s Proposals

3. The Government’s Fol proposals constitute a significant change in policy introducing the presumption that information will be available in most circumstances. Therefore wider markets projects involving non-physical assets, that is rights such as copyright and database rights, need to have regard to the effects of the proposed Act.
4. The White Paper provides some further pointers on how this will work in practice. The key points are:
 - a. *availability of Information.* The Fol proposals seek to promote access to information. In principle, wider markets projects are means of adding value to and disseminating information. Nevertheless, whilst the White Paper recognises the role of commercial activity in securing revenue, this needs to be balanced against the priority of not restricting access. The responses to the review of Crown copyright will inform the precise nature of the Government’s proposals in this area (Para. 2.37). Nevertheless access to information does not necessarily entail an entitlement to use the information further. So long as Crown copyright is not waived or removed, the re-use of such information will be controlled;
 - b. *the Price of Information.* The Government’s proposals will place restrictions on departments’ pricing of certain information limiting charges to cost recovery. However, the type of information which departments are likely to wish to commercialise is largely in the

category of Government Tradeable Information which is proposed specifically to be excluded from the limitations on charging (para 2.38);

- c. *intellectual property* such as patents, registered designs and copyrights of the type which agencies and departments are likely to seek to commercialise may be exempted from disclosure under the Fol provisions. Whilst openness is the guiding principle, this is one area in which the Government's exemption (under the Fol provisions) on grounds of commercial confidentiality may apply.
5. The Fol draft Bill is expected later in 1998. Departments need to consider the emerging Fol framework when developing their policies and projects.
6. Suggestions on dealing with Fol issues in developing projects are contained in Annex B (paragraph 12). If in doubt as to whether or in what ways developing a commercial service based on information departments hold is affected by the Fol proposals, advice should be sought from (Graham Davies) In the Freedom of Information Unit in the Cabinet Office (Tel. (0171) 270 1950).

The Review of Crown Copyright: Crown Copyright in the Information Age

7. The Green Paper has been produced as a result of the review of the future management of Crown copyright. A wide range of options are under consideration. These options include a range of possibilities between the retention of existing arrangements and abolition. The Green Paper therefore raises issues for wider markets projects involving some non-physical assets in that the current arrangements whereby they are covered by Crown copyright may change. These issues are addressed in the paragraphs below.
8. *Current Arrangements and Wider Markets Projects.* All work originated within Government by a Government employee has the protection of Crown copyright. Material attracting database rights is covered by similar Crown provisions. This copyright protection allows the licensing and relicensing of Government information, generating revenue and facilitating control of the integrity and accuracy of information;
9. *Pricing & Licensing Commercial Activity Under Existing Crown Copyright*

Arrangements. Departments have developed a wide variety of value-added services which are protected by Crown copyright. This type of material falls into the categories “value added or discretionary works”.

10. Different arrangements exist for different types of material. In most cases departments can publish information-based products produced under the wider markets guidance using First Publication rights for the endorsed version. Market pricing (as per Annex B) is appropriate. However, these arrangements are non-exclusive, and the Controller of HMSO may relicence the information, though normally only in a value added context.

As regards intellectual property more generally, departments are currently afforded more freedom and may patent their IP and licence its use on an exclusive or non exclusive basis as they deem appropriate. Pricing is not currently subject to any specific limitation. These arrangements are unlikely to be affected by the review of Crown copyright.

11. *Future Changes to Crown Copyright and Wider Markets Projects.* Whilst a wide range of potential options could emerge from the review, the Green Paper makes clear the Government’s wish for the development of a wider range of commercial publications and products of a discretionary or value added nature, particularly through Public Private Partnerships (Para 3.8). The Green paper raises the question of whether, to stimulate the development of a more extensive market for information, Departments should make a listing of the material they produce;

Implications for Departments

12. Departments should actively consider the implications of the Crown copyright review for any existing and all future projects. This relates not only to future policy on the management of Crown copyright, but also the inter-relationship of the of the Crown copyright review with the emerging FoI legislation.
13. Where departments develop wider markets projects involving materials protected by Crown copyright, HMSO should be consulted at an early stage for advice on copyright and wider IP issues. Jim Wretham, Head of the Copyright Unit at HMSO (Tel. (01603) 723001) within the Cabinet Office can provide further guidance both on project-specific issues and on the Crown copyright review more generally. This policy is set out on the HMSO Website at hmso.gov.uk.

ANNEX F: RETAINING RECEIPTS - HOW DEPARTMENTS BENEFIT

Example 1: Working within total net provision

Summary

		(£)
1	Total agreed net provision	100
2	Gross expenditure at Main Estimates	110
3	Wider market receipt at Main Estimates	-10
4	Unchanged net provision at Main Estimates	100
5	Additional in-year receipt	-2
6	Additional gross headroom	2
7	Gross expenditure after Supplementary Estimate	112
8	Total wider markets receipts after Supplementary Estimate	-12
9	Unchanged net provision after Supplementary Estimate	100

Detail

In the example above, a department develops a wider market project which it expects to produce receipts of £10 in the first year. The project costs £1 from within its agreed total net provision of £100 (line 1). At the time of preparing its Main Estimate, the department increases automatically its agreed gross provision by £10 to £110 (line 2) and introduces wider markets receipts of £10 (line 3) to be appropriated in aid. Total net provision remains at £100 (line 4). The project is commenced and the receipt of £10 arrives during the year. As the receipt is already taken into account in the Main Estimate, the department simply appropriates it in aid.

In-year the project gives rise to an additional £2 of unanticipated receipts. Provided this is known before the final (Spring) Supplementary Estimate round, ie before January, the department submits a request for a Supplementary Estimate to appropriate in aid the additional £2 (line 5) and to increase gross expenditure by a corresponding amount (line 6) to £112 (line 7).³ Total wider market receipts increase to £12 (line 8) and the total net provision remains

³ But, in practice, Winter Supplementary Estimates may be better timing as Spring Supplementaries are not normally voted until mid-March.

unchanged at £100 (line 9). Treasury automatically approves the bid for the Supplementary Estimate which is, of course, subject to Parliament's approval.

In this example the department has spent £112 (line 7); kept within its net provision of £100 (line 9) whilst retaining the benefit of the receipts totalling £12 (line 8) which includes a surplus of £11 taking into account the initial £1 of expenditure.

Example 2: Working within Running Cost Limits

Summary

		(£)
1	Running cost limit	50
2	Wider market receipt	-3
3	Running cost related element (50%)	-1.50
4	Gross running cost expenditure	-51.5
5	Unchanged running cost limit	50

Detail

In the example above a department develops a wider market project, 50% funded from running costs, which it expects to produce receipts of £3 in the first year. The project is developed in-year and therefore no account was taken of the wider markets receipts when the Main Estimate was prepared. The project costs £1 of which £0.50 is from within its agreed running cost limit of £50 (line 1). The Treasury would automatically allow the department to raise a Supplementary Estimate to increase expenditure and allowable receipts, assuming that there is no compensating under-recovery elsewhere on the Vote.

The project is commenced and the receipt of £3 arrives in-year (line 2). In this example, £1.50 (or 50%) of the receipt is running cost-related (line 3). The receipt is of a kind which can be appropriated in aid and the department offsets this expenditure against its running cost limit. The department's gross running cost ceiling rises to £51.50 (line 4). The department nevertheless remains within running cost limit (line 5). The department receives the total benefit of the £3 receipt including a running cost-related element of £1.50 and a surplus on running costs of £1.

Should additional running cost-related receipts arise in-year these could be treated similarly.

