

Commercialisation – Frequently Asked Questions

1. What is the Wider Markets Initiative?

Public assets such as land, buildings, people and intellectual property, which are needed to deliver core services, can often be used more fully. The Wider Markets Initiative is a government policy designed to encourage the more intensive use of such assets through the development of new, non statutory goods and services which are sold on a commercial basis. The more efficient use of public assets that results helps the public sector to reduce its cost base and improve its skills base. ([Ref here](#))

2. Which public bodies does the policy apply to?

The policy applies to departments ([Ref here](#)), including their agencies and Trading Funds, NDPBs, and most public corporations, including NHS Trusts and other NHS bodies ([Ref here](#)). It does not apply to 'self-financing public corporations' (where so defined in agreement with the Treasury General Expenditure Statistics Team) 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.

This policy also applies to the devolved administrations although they may have alternative arrangements in place for the treatment of income. Devolved bodies should consult with the relevant wider markets contact regarding any particular arrangements.

3. What type of assets does the policy apply to?

The policy applies to physical assets (equipment, land, premises etc.) and non-physical assets (intellectual property (IP), data, skills etc.) It does not apply to surplus assets which are no longer needed in the public sector and which should be disposed of, or to assets which are fully utilised in delivering core government services.

4. Is a public sector organisation allowed to make money from licensing? ([Ref here](#))

The re-use of most public sector information is allowed free of charge as it is prepared as part of the basic public task.

The taxpayer, having met the cost of collecting the information, is entitled to see a reasonable return on their investment (in the form of income from licensing) where such information has the potential to be re-used for commercial gain.

OPSI – The Office of Public Sector Information – enforces the Re-use of Public Sector Information Regulations. ([Ref here](#))

Information should be made available for re-use on fair, consistent and non-discriminatory terms, with transparent pricing and licensing, in a timely manner and with the establishment of a quick and easily accessible complaints procedure.

5. What issues need to be considered before implementing Wider Markets opportunities?

HM Treasury guidance ([Ref here](#)) states that the proposed commercial activity should be one which the responsible accounting officer would be able to defend as an appropriate use of resources. Public bodies should take into account the following:

- 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 (Request for Resource).

- Whether they have the legal powers (vires) to undertake the activity, for example there may be constraints on the scope of a public body's activity or its ability to form a joint venture company. Public bodies should be aware that contractual options remain open to them even where their vires place limitations on their ability to form a formal joint venture company.
- Parliamentary and public expectations about the type of activity in which public sector bodies should properly engage. Even when public bodies have the necessary vires, they may require statutory authority as a matter of financial propriety under the Concordat between the Treasury and the Public Accounts Committee (refer to Government Accounting).
- Domestic and European procurement rules. In this context, selling into wider markets is not generally governed by public procurement rules, but 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.
- Value for money. Public bodies are required to achieve and demonstrate value for money for any expenditure or use of a public sector asset in a wider markets project. In the context of wider markets, value for money should be assessed as the net returns the public sector is projected to receive from the activity over its lifetime, consistent with the effective management of risks and liabilities to the public sector and consistent with achieving other policy objectives. This requires setting appropriate financial targets and may require undertaking valuations of public sector assets being contributed to a wider markets activity.
- Competition law and pricing policy. Public bodies should consider whether the proposed activity would be subject to domestic or EC competition rules (including state aids rules).

The Competition Act 1998 (as well as EC competition rules) applies to all bodies that are acting as 'undertakings', regardless of legal status and the way in which they are funded.

The term 'undertaking' has a broad meaning which encompasses any entity that is engaged in economic or commercial activities. For the purposes of wider markets activities, public bodies should assume that they will be treated as 'undertakings' and hence be subject to UK and EC competition law. Guidance on Competition Law and pricing is provided at Annex B.

- Freedom of Information and Crown copyright. Projects designed to sell government information into wider markets should take account of the Freedom of Information Act and policy on Crown Copyright.
- The public 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 competences or objectives may be hard to justify.
- Any conflicts of interest between the public sector body's policy objectives and the proposed commercial activity.
- An assessment of risks and liabilities which could arise with the commercial activity. Risks should be managed and minimised to ensure that core budgets are protected from wider markets activities.

6. Can Departments retain income from Wider Markets activities? [\(Ref here\)](#)

The Treasury encourages Departments to engage in Wider Market activities. Not only does the income they generate support public spending, but also undertaking pioneering or inventive activity can enhance the skill set of civil servants, and can lead to more innovative provision of public services. The Spending Review (SR) provides an opportunity for challenging departments'

expected level of such activities and encouraging departments to exploit spare capacity. At this stage in the evolution of the Wider Markets initiative, the Treasury believes that it creates a helpful incentive for Departments to be allowed to keep wider markets income classified as negative DEL, and will set Departmental Expenditure Limits in this spirit.

Departments are allowed to keep the negative DEL income that they obtain in the SR period up to the amount that was taken into account in the SR. Income cannot be predicted wholly accurately, and the Treasury wishes to encourage departments to find new income streams where appropriate. Departments may therefore in any year retain negative CDEL income up to 20% above the level envisaged for that year as part of the SR settlement and set out in their DIS without an adjustment to budgets.

In the case of the SR04 period, for those departments where the SR settlement did not clearly set out an expected level of income, departments may in any year retain total negative RDEL income up to 5% of spending in Resource DEL without an adjustment to budgets. If departments expect to obtain more income than provided for above, they should talk to the Treasury about whether they may retain all or part of the income without an adjustment to budgets. When considering proposals, the Treasury will wish in particular to encourage Wider Markets activities where opportunities could not be foreseen at the time of the SR and other cases where the additional income represents the results of positive management action, as opposed to under-forecasting.

7. Are Public Bodies subject to UK or EC competition rules?

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