Pecyn dogfennau cyhoeddus

Y Pwyllgor Menter a Busnes

Lleoliad:
Ystafell Bwyllgora 3 - y Senedd

Dyddiad:
Dydd Mercher, 25 Medi 2013

Amser:
10:30

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

I gael rhagor o wybodaeth, cysylltwch â:

Policy: Siân Phipps
Clerc y Pwyllgor
029 2089 8582
Pwllygor.Menter@cymru.gov.uk

Agenda

Cyfarfod preifat cyn y prif gyfarfod (10.30-11.00)

1 Cyflwyniad, ymddiheuriadau a dirprwyon

2 Craffu ar waith Gweinidog yr Economi, Gwyddoniaeth a Thrafnidiaeth (11:00 - 12:00) (Tudalennau 1 - 3)

Tystion:

- Edwina Hart AC, Gweinidog yr Economi, Gwyddoniaeth a Thrafnidiaeth
- Dr Elizabeth Haywood, cyn gadeirydd y Grŵp Gorchwyl a Gorffen ar y Dinas-ranbarthau
- Professor Kevin Morgan, Athro Llywodraethu a Datblygu yn yr Adran Cynllunio Dinesig a Rhanbarthol Prifysgol Caerdydd.
- Dave Gilbert, Cyfarwyddwr a Dirprwy Prif Weithredwr Cyngor Sir Gar

Dogfennau atodol:

EBC(4)-35-13(p1) - Tystiolaeth Ysgrifenedig gan Weinidog yr Economi, Gwyddoniaeth a Thrafnidiaeth ar y Dinas-ranbarthau ar gyfer cyfarfod 25 Medi 2013

3 Papurau i'w nodi (Tudalennau 4 - 17)

EBC(4)-35-13 (p2) - Memorandwm Cydsyniad Deddfwriaethol ar gyfer y Bil Eiddo Deallusol

Trafod y dystiolaeth (12.00-12.20)

Y Pwyllgor Menter a Busnes
Dinas-ranbarthau

Y Cefndir

1. Mae dros 300 o ddinas-ranbarthau ledled y byd sydd â phoblogaethau o fwy nag un filiwn. Mae gan o leiaf ugain dinas-ranbarth boblogaethau o dros ddeng miliwn. Maent yn amrywio o grynodrefi metropolitanaidd sydd â chraidd datblygedig amlwg, megis rhanbarth Llundain neu ddinas Mecsico, i unedau daearyddol sydd â nifer o ganolfannau, fel y gwelir yn rhwydweithiau trefol Randstad neu Emilia-Romagna.

2. Sefydlais y Grŵp Gorchwyl a Gorffen ar Ddinas-ranbarthau yn Hydref 2011 o dan gadeiryddiaeth y Dr Elizabeth Haywood, i ystyried a fyddai hon yn ffordd briodol o fynd ati i hyrwyddo datblygu economaidd yng Nghymru. Canfu'r Grŵp Gorchwyl a Gorffen ar Ddinas-ranbarthau fod gan Gymru draddodiad cryf o aneddiadau wedi eu seilio ar fasnach a diwydiant, a oedd wedi cysylltu Cymru â'r byd ehangach. Arweiniodd datblygiad diwydiannol ledled Cymru o ail hanner y ddeunawfed ganrif ymlaen at fwy o dwf trefol. Mae datblygiad llawer o'n dinasoedd wedi digwydd o ganlyniad i ddatblygiad diwydiannol Cymoedd y De.

Adroddiad Annibynnol ar Ddinas-ranbarthau

3. Cyhoeddais adroddiad terfynol y Grŵp Gorchwyl a Gorffen ar Ddinas-ranbarthau ar 11 Gorffennaf 2012. Roedd 22 o argymhellion yn yr adroddiad.

4. O safbwynt y negeseuon cyffredinol, roedd yr adroddiad yn dweud o'r cychwyn cyntaf y dylid mabwysiadau'r dull Dinas-ranbarthau yng Nghymru. Argymhellodd y dylid cydnabod dwy ddinas-ranbarth – un yn y De-ddwyrain ac un arall ym Mae Abertawe.

5. Ni ddaeth y Grŵp o hyd i ddigon o dystiolaeth o blaid sefydlu Dinas-ranbarth mewn unrhyw ran arall o Gymru. Serch hynny, roedd y Grŵp Gorchwyl a Gorffen wedi ystyried y posibilrwydd o ranbarth economaidd trawsffiniol yn y Gogledd-ddwyrain. Er mwyn sicrhau bod pob darn o dystiolaeth wedi ei astudio ac er mwyn ystyried materion ehangach megis potensial economaidd y rhanbarth a rôl Cynghrair Mersi a'r Ddyfrdwy, comisiynais Gadeirydd y Grŵp Gorchwyl a Gorffen i edrych ar hyn unwaith eto yn fanylach.

6. O safbwynt rhannau eraill o Gymru, rwyf yn rhoi dulliau datblygu economaidd mwy priodol ar waith, megis Ardaloedd Menter, Ardaloedd Twf Lleol, yn ogystal â gweithgareddau datblygu busnes ledled Cymru.

7. Roedd yr argymhellion eraill yn canolbwyntio ar y strwythurau i gefnogi'r dull Dinas-ranbarthau yng Nghymru. Roeddent yn cynnwys nifer o argymhellion ynglŷn â gweithio'n well ar y cyd, yn ofodol ac yn rhanbarthol, gan gynnwys creu haenau cynllunio strategol rhanbarthol a dull rhanbarthol strategol o weithredu ym maes tai.

8. Roedd yr adroddiad yn canolbwyntio hefyd ar addysg a sgiliau ac, i'r un perwyl â'r argymhellion eraill, yn galw am ddulliau rhanbarthol mwy strategol o edrych ar fylchau mewn sgiliau. Roedd yn amlygu pwysigrwydd y rolau sydd gan sefydliadau

addysg uwch i'w chwarae yn y Dinas-ranbarthau ac yn nodi bod yn rhaid meithrin cysylltiadau â hwy.

9. Roedd un o'r argymhellion yn nodi y dylid sicrhau bod cynaliadwyedd yn rhan annatod o'r dull Dinas-ranbarthau, ac yn awgrymu y gallai deddfwriaeth Gymreig arfaethedig gynnig cyfle i wneud hynny.

10. Roedd nifer bach o argymhellion ar drafnidiaeth yn y De-ddwyrain ac ym Mae Abertawe, a hynny o safbwynt trafnidiaeth gyhoeddus a gwelliannau strategol i ffyrdd er mwyn cefnogi Dinas-ranbarthau.

11. Canolbwyntiai rhai o'r argymhellion ar gyllid, ac yn neilltuol ar bwysigrwydd arian oddi wrth yr Undeb Ewropeaidd ac ar fanteisio ar y cylch ariannu nesaf er mwyn cefnogi'r Dinas-ranbarthau, a fyddai hefyd yn cynnwys Llywodraeth Cymru yn dadlau o blaid mwy o hyblygrwydd fel y bo modd cefnogi cysylltedd yng Nghymru. Argymhellodd yr adroddiad hefyd y dylid gweithio gyda Llywodraeth y Deyrnas Unedig a rhoi pwysau arni i sicrhau pwerau benthyca ac i gynyddu cyfanswm y gwariant cyfalaf sydd ar gael.

12. Yn olaf, roedd yr adroddiad yn argymell bod angen i Lywodraeth Cymru roi arweiniad, ac yn awgrymu hefyd y dylid penodi Gweinidog dros Ddinas-ranbarthau a llunio polisi a rhaglen ar gyfer y dull Dinas-ranbarthau, ac ymrwymo i'r dull hwnnw yn yr hirdymor. Argymhellwyd hefyd y dylid sefydlu sefydliad ymchwil economaidd i baratoi data economaidd rhanbarthol.

Ar ôl Cyhoeddi'r Adroddiad Terfynol

13. Cynheliais drafodaeth ar Adroddiad y Grŵp Gorchwyl a Gorffen ar Ddinas-ranbarthau yn y Cyfarfod Llawn ar 16 Hydref 2012. Yn ystod y drafodaeth honno, llwyddwyd i gael cefnogaeth drawsbleidiol gyffredinol i'r dull Dinas-ranbarthau. Cafwyd cryn dipyn o gefnogaeth gan randdeiliaid eraill hefyd, gan gynnwys Cyngor Adnewyddu'r Economi.

14. Comisiynais y Dr Elizabeth Haywood i wneud darn byr o waith i ymchwilio ymhellach i'r cyfleoedd datblygu economaidd yn y Gogledd-ddwyrain ac i'r materion economaidd trawsffiniol. Cynhaliodd y Dr Haywood gyfarfodydd gyda rhanddeiliaid, gan gynnwys Aelodau Cynulliad, aelodau o'r gymuned fusnes ac eraill, gan gynnwys digwyddiad a gadeiriwyd gan Gynghrair Mersi a'r Ddyfrdwy.

15. Cwblhaodd y Dr Haywood 'Adolygiad o Economi Trawsffiniol Rhanbarth Dyfrdwy – y Camau Nesaf' ym mis Mawrth 2013. Roedd yr adolygiad terfynol hwn yn canolbwyntio ar gryfhau cysylltiadau trawsffiniol yn rhanbarth y Ddyfrdwy, rôl Cynghrair Mersi a'r Ddyfrdwy, a'r manteision economaidd posibl.

16. Gwnaeth yr adroddiad bedwar argymhelliad a oedd wedi'u targedu'n bennaf at rôl Cynghrair Mersi a'r Ddyfrdwy, ei haelodaeth, ei swyddogaeth a'i phresenoldeb rhanbarthol strategol. Nododd yr adroddiad hefyd y dylid sefydlu Memorandwm Cyd-ddealltwriaeth rhwng Llywodraethau Cymru a'r Deyrnas Unedig ynghylch cynllunio trafnidiaeth.

17. Wrth gyhoeddi'r adroddiad, euthum ati ar unwaith, rhwng mis Mawrth a mis Mai 2013, i geisio barn am y canfyddiadau sydd ynddo. Cafwyd naw ymateb ac fe'u rhoddwyd ar wefan Llywodraeth Cymru. Ysgrifennais hefyd at Ysgrifennydd Gwladol Llywodraeth y Deyrnas Unedig dros Fusnes, Arloesi a Sgiliau pan gyhoeddwyd yr adroddiad.

18. O ran hysbysu'r Aelodau ynglŷn â chynnydd mwy cyffredinol gyda'r Dinas-ranbarthau arfaethedig, darperais ddatganiad ysgrifenedig am y camau nesaf ar 13 Rhagfyr 2012. Ynddo, nodwyd y trefniadau ar gyfer symud yr agenda yn ei blaen yn y ddwy Ddinas-ranbarth. Pwrpas y rhain oedd annog dull integredig o weithredu a hyrwyddo'r cydweithio sydd ei angen i sicrhau llwyddiant y Dinas-ranbarthau yn yr hirdymor.

19. Sefydlais grŵp gorchwyl a gorffen bychan ar gyfer y naill a'r llall, wedi ei gadeirio ar y cyd gan Arweinydd Awdurdod Lleol ac uwch gynrychiolydd o'r sector breifat i sicrhau momentwm yn ystod y misoedd cyntaf.

Y Datblygiadau Diweddaraf

20. Yn dilyn trafodaethau gyda'r ddwy Ddinas-ranbarth, cytunais fod angen symud ymlaen i gyfnod newydd. Yn dilyn argymhellion gan Grŵp Gorchwyl a Gorffen Dinas-ranbarth Bae Abertawe, cyhoeddais, mewn digwyddiad lansio ar gyfer Strategaeth Adfywio Economaidd y rhanbarth ar 18 Gorffennaf 2013, fod Bwrdd yn cael ei sefydlu ar gyfer Dinas-ranbarth Bae Abertawe.

21. Bydd y Bwrdd yn cynnwys cynrychiolaeth ar lefel Arweinydd o'r pedwar awdurdod lleol yn y rhanbarth, yn ogystal â phedwar cynrychiolydd o'r gymuned fusnes a dau o faes Addysg Uwch. Gofynnais i'r Cynghorydd David Phillips, Arweinydd Cyngor Abertawe fod yn Gadeirydd, ac i'r Cynghorydd Meryl Gravell, Aelod Gweithredol o Fwrdd Adfywio a Hamdden Cyngor Sir Caerfyrddin i fod yn Ddirprwy Gadeirydd. Gofynnais hefyd am enwebiadau ar gyfer y pedwar cynrychiolydd o'r sector preifat ac ar gyfer y ddau gynrychiolydd o faes Addysg Uwch.

22. Rôl y Bwrdd fydd arwain, pennu cyfeiriad a chadw golwg ar y Strategaeth Adfywio Economaidd ar gyfer y rhanbarth.

23. Gofynnir i'r Bwrdd ystyried a blaenoriaethu prosiectau allweddol a all drawsnewid economi'r Ddinas-ranbarth. Gallai fod yn briodol i rai ohonynt gael eu hariannu gan Lywodraeth Cymru, eraill drwy'r Cronfeydd Strwythurol Ewropeaidd, yr awdurdodau lleol neu'r sector preifat.

24. Rwyf bellach yn ystyried y trefniadau ar gyfer Dinas-ranbarth y De-ddwyrain a byddaf yn rhyddhau rhagor o fanylion maes o law.

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales

Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/FM/0800/13

Nick Ramsay AM
Chair
Enterprise and Business Committee
National Assembly for Wales
Cardiff Bay
Cardiff

9th September 2013

Dear Nick,

Legislative Consent Memorandum for the Intellectual Property Bill

Thank you for your letter dated 11 July, which raises a number of points about the provision for which the Assembly's consent is sought in the Intellectual Property Bill (the Bill) which has the effect of amending the Freedom of Information Act 2000 (FoIA) by inserting a new exemption for pre-publication research. The relevant provision now appears at Clause 19 of the Bill.

Before answering the specific questions you have raised, I thought it would be helpful to set out some further background information about the proposed exemption.

The Justice Select Committee (the Committee) were asked by the UK Government to conduct a post-legislative review of FoIA. A summary of the evidence they examined and their considerations is attached as an Annex to this letter. In their report (see section 214 of the Annex) the Committee recommended that the existing exemption which protects information intended for future publication *"…should be amended to give research carried out in England and Wales the same protection as in Scotland…[and to]* ***protect ongoing research****".*

The Committee's recommendation was made in response to evidence that was submitted from the Higher Education Sector (see section 202-208 of the Annex). Universities UK, the Russell Group and the 1994 Group all submitted a significant amount of evidence to the Committee. It should be noted that all nine Welsh universities are represented by Universities UK and Cardiff University is a member of the Russell Group.

The pre-publication research exemption has been designed to protect from premature disclosure sensitive information obtained during, or derived from, the course of a research programme. It is very similar to the exemption which already

exists in the Freedom of Information (Scotland) Act 2002 and it's proposed inclusion would bring parity between higher education institutions in England, Wales and Northern Ireland, with those in Scotland.

The exemption provides clarity and reassurance to the higher education sector [and their private sector partners] that sensitive research information is not susceptible to premature release under FoIA. If the exemption did not apply in Wales, Welsh universities would not be afforded the same level of protection as other universities throughout the UK. The Welsh Government wants to avoid putting Welsh universities at a disadvantage in terms of the protection available for research information.

Public consultation on the proposed exemption

Public consultation was an integral part of the Committee's review. In all they received 140 pieces of written evidence during a nationwide call for submissions between December 2011 and February 2012. They also took oral evidence from 37 witnesses in 7 evidence sessions.

The Committee was lobbied heavily by the Higher Education sector for additional protection to Section 22 - (the existing pre-publication exemption). In November 2012, the UK Government published its response to the Committee's report and accepted the Committee's recommendation to introduce a new exemption for pre-publication research as one of a package of measures that was designed to improve the effectiveness of the FoIA.

As outlined above, Universities UK and the Russell Group both provided a great deal of evidence to the Committee. Universities UK represent 133 higher education institutions, including nine Welsh Universities[1]. The Russell Group, (to which Cardiff University belongs) responded to the consultation to say that "data collected in the pursuit of universities' research missions should enjoy a partial protection which would allow universities to withhold publication until—and only until—the results of the research have been published in a peer reviewed journal or equivalent recognised outlet."

I can therefore reassure you that the views of Welsh Universities were represented through these umbrella bodies.

Subsequent to the publication of the Committee's recommendation, the Ministry of Justice also met Universities UK (and the 1994 and Russell Groups) to discuss their preferred solution. The UK Government has informed my officials that Universities UK and the Russell Group are supportive of the inclusion of the new exemption in the Bill. In particular, they welcomed the prospect of removing the existing disparity between Scotland and the rest of the UK.

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1. Universities UK represents nine Welsh Universities: Aberystwyth University, Bangor University, Cardiff Metropolitan University, Cardiff University, Glyndwr University, University of South Wales, Swansea University, University of Wales, University of Wales Trinity St David's.

In terms of the other specific issues raised by the Committee:

Definition of pre-publication research and whether it is confined to intellectual property

The term "pre-publication research" is not confined to intellectual property. It can potentially apply to any type of research, as long as it can be demonstrated that the information in question forms part of an ongoing programme of research. In addition to academic institutions, the exemption would potentially be available to any other public authority that is subject to the FoIA. However, in practice it is anticipated that the exemption will be available for use in limited circumstances.

The wording of the proposed exemption is very similar[2] to the exemption that is available in Scotland (section 27(2) of the Freedom of Information Scotland Act 2002). It should be noted that the exemption can only be used to protect information obtained or derived from an ongoing research programme, e.g. data and analysis, until the time that the results of the programme have been published. The UK Government has stated that the proposed pre-publication research exemption cannot be used to withhold any other information relevant to a research programme, such as information relating to funding programmes, methodology or the peer review process. Although, of course other existing exemptions as detailed in the FoIA could potentially apply to this type of information.

There is no legal definition of pre-publication research. However, it is the UK Government's intention that the same interpretation as that used by Scottish public authorities is applied in England, Wales and Northern Ireland, namely that an ongoing research programme is one which has not yet reached its termination date. An intention to publish the information must exist before the request for information is received. Requesters who feel that their request for information has been dealt with incorrectly can also apply for an internal review from that authority, as well as making a complaint to the Information Commissioner's Office.

The exemption does not stipulate a timeframe by which the research needs to be published in order to engage the exemption. This is intended to prevent being overly prescriptive given the very long term nature of some research programmes. However it is not proposed that the exemption should be used to withhold research information indefinitely and it is often the case that research institutions frequently publish results of ongoing projects.

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[2] (1) There are two minor differences necessary to ensure consistency with other FoIA exemptions. The first is the need to show 'prejudice' rather than 'substantial prejudice'. Many of the exemptions contained in the Scottish Act require public authorities to show that release of the requested information would, or would be likely to cause substantial prejudice, in order for the exemption to apply. As there is no statutory test of "substantial prejudice" in England and Wales, the proposed provision, reflects the terminology used in FoIA.
(2) The second difference is the inclusion of a neither confirm nor eny provision (NCND) in clause 19 of the Bill. An NCND allows a public authority, upon receiving a request which engages any exemption in Part 2 of FoIA, to 'neither confirm nor deny' whether the information is held. For consistency in drafting, clause 19 includes an NCND provision.

Wider implications of the exemption

This new exemption has been introduced to provide clarity and reassurance to the higher education sector that sufficient safeguards are provided in the FoIA against the inappropriate and premature disclosure of sensitive research information in circumstances where it is in the public interest to do so.

This new exemption will help institutions in England, Wales and Northern Ireland achieve parity with institutions in Scotland and other countries such as Ireland and America, where safeguards of this nature already exists.

This new exemption will help Welsh institutions maintain their competitive position in the field of research. There is some evidence to suggest that UK universities occasionally encounter difficulties in entering into research contracts given the perception of a lack of protection[3] that a dedicated research exemption similar to that which exists in other jurisdictions can create.

As there are several conditions which must be met before a public authority can cite this exemption; the Welsh Government does not anticipate that there will be any significant impact on transparency in this area.

Clarity about how the exemption will operate in practice

The intention is that the exemption would operate in a similar way to the research exemption contained in Scotland's Freedom of Information Act 2002. In practice, any public authority receiving a request for information must first of all be satisfied that the information that it holds properly falls within the scope of this exemption. Namely, the information in question must have been obtained or derived from an ongoing research programme, in circumstances where a report of the research is due to be published (and that the intention to publish that research exists already).

There are several conditions which must be met by a public authority before the exemption can be cited, which operates as a safeguard against its misuse. If the information is considered to fall within the scope of the exemption, a public authority would need to be satisfied that the test of prejudice can be met. This would mean assessing the harm or damage that release would, or would be likely to cause to the specific factors listed in subsection (1)(b) (i) – (iv):

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3. **Post-Legislative Scrutiny Report: Problems with pre-publication under the 2000 Act**
203. We heard from universities that the pre-publication exemption does not sufficiently protect their research work. Universities UK told us: "research is currently subject to the FOIA, and early release of research findings and data can have potentially serious implications for the quality and reputation of UK research, universities' competitive position nationally and internationally, and relationships with commercial partners."[357] The 1994 Group agreed:
It is a necessary first principle that research is conducted to the highest standards. It is this principle, embodied by the peer review system, which has contributed to the UK's international excellence in research. Requirements for research data and information to be made publically available must be in harmony with this principle, and cannot be allowed to jeopardise the viability of the research conducted in the UK.[358]

"22A Research

(1) Information obtained in the course of, or derived from, a programme of research is exempt information if—

(a) the programme is continuing with a view to the publication, by a public authority or any other person, of a report of the research (whether or not including a statement of that information), and

(b) disclosure of the information under this Act before the date of publication would, or would be likely to, prejudice—

(i) the programme,
(ii) the interests of any individual participating in the programme,
(iii) the interests of the authority which holds the information, or
(iv) the interests of the authority mentioned in paragraph (a) (if it is a different authority from that which holds the information)."

If a public authority is satisfied that the test can be met, they would then need to consider the public interest in releasing or withholding the information. A public authority can only withhold information in circumstances where it is satisfied that the public interest in favour of withholding is sufficient to outweigh that in favour of disclosure. There is an in-built presumption in the FoIA that it is in the public interest to disclose information unless a public authority can demonstrate that there is a greater public interest in withholding it.

The FOIA only applies to public authorities, and companies wholly owned by them, and would not apply to research being conducted by private sector organisations (although it will apply to research carried out by, or in conjunction with, a private sector organisation where that research is 'held' by the public authority).

If a requester has concerns that the exemption is being misused by a public authority (e.g. where a higher education claims that there is an intention to publish but no such intention exists) they can ask the Information Commissioner (ICO) to investigate the public authority's handling of the request. The ICO is the UK independent regulatory authority who has responsibility for enforcing FoIA.

The equivalent exemption for pre-publication research in Scotland's Freedom of Information Act has only been used on six occasions and to date, no complaints have been lodged with the Scottish Information Commissioner about its use.

In the circumstances, neither the UK Government nor the Welsh Government anticipates that there will be any significant reduction in transparency as a result of this exemption being introduced.

Is there any way of measuring or evaluating wider views on the exemption (from public and commercial interests)?

Public consultation was an integral part of the Committee's review. A nationwide call for written evidence on the FoIA was launched between December 2011 and February 2012.

If the proposed exemption is taken forward, the ICO will investigate any complaints that are referred to it about its application.

I trust that this letter has provided the clarity and reassurance Committee members seek regarding the proposed pre-publication research exemption. A failure to include an exemption for pre-research publication in Wales could place Welsh public authorities subject to the FoIA (and in particular our University sector) at a significant disadvantage. As such I would hope you and members of the Enterprise and Business Committee now consider able to recommend that the Assembly approves the LCM in the debate on 1 October so that Welsh Universities can compete on a level playing field with those in England, Northern Ireland and Scotland.

Yours sincerely

CARWYN JONES

Annex – extract from Justice Committee - First Report Post-legislative scrutiny of the Freedom of Information Act 2000

7 The pre-publication exemption (section 22) and health and safety exemption (section 38)

202. Section 22 provides that public bodies may exempt from publication information which they intend to publish at a future date, whether or not determined, if "the information was already held with a view to such publication at the time when the request for information was made" and "it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to [...]"[355] This time scale is not defined. The public body is not required to confirm or deny the existence of any information if that would amount to disclosure of the information.[356]

Problems with pre-publication under the 2000 Act

203. We heard from universities that the pre-publication exemption does not sufficiently protect their research work. Universities UK told us: "research is currently subject to the FOIA, and early release of research findings and data can have potentially serious implications for the quality and reputation of UK research, universities' competitive position nationally and internationally, and relationships with commercial partners."[357] The 1994 Group agreed:

It is a necessary first principle that research is conducted to the highest standards. It is this principle, embodied by the peer review system, which has contributed to the UK's international excellence in research. Requirements for research data and information to be made publically available must be in harmony with this principle, and cannot be allowed to jeopardise the viability of the research conducted in the UK.[358]

The Russell Group said it "believes that data collected in the pursuit of universities' research missions should enjoy a partial protection which would allow universities to withhold publication until—and only until—the results of the research have been published in a peer reviewed journal or equivalent recognised outlet."[359]

204. Dr Rodney Eastwood, Registrar of Imperial College London who appeared before us on behalf of the Russell Group, said the current pre-publication exemption:

[...] does not work for research, which is a complex activity that involves a lot of people, a lot of data and information and many inputs. The university will clearly publish the research—the whole point of a university is to publish its research and to make it available—but only after all that has been done and it has been peer-reviewed. Publishing bits of it prematurely runs the big risk of the recipient, the public, drawing the wrong conclusions.[360]

205. Professor Ian Diamond emphasised the length of time research may take:

[...] research follows a course, and one's ideas about the final results can change over time as one does the analysis and one looks at different variables in different ways and with different experiments. Some projects can take years, and saying that, if you have some data, they must therefore be made public and your conclusions must be ready in six months does not allow for the proper conduct of research and could lead, in my opinion, to poor results being propagated.[361]

Professor Diamond highlighted social research relying on longitudinal data as an area where information may be gathered over many years,[362] or even decades.[363] Universities UK told us that there was no case law establishing how far in the future a publication date may be for the purposes of section 22:

However, when this issue was raised in a workshop hosted by the Research Information Network, representatives of the ICO said timescales of months or years might not be considered favourably. This makes it appear less likely that the exemption could be effectively used where the period was (i) likely to be several years in the future, and (ii) where the precise point of publication could not yet be determined.[364]

A further problem with releasing longitudinal data is that the time taken to 'clean' it means incomplete or under-analysed data may be published.[365]

206. Professor Diamond told us the issue was not one of intellectual property: "Under the Economic and Social Research Council, all data collected using public funds—certainly in the social sciences—have to be lodged at the data archive, where the information is available for re-analysis by bona fide researchers from anywhere in the world. That kind of open access exists at the moment, so it is not about IP. It is simply about the development of research and premature findings being available."[366]

207. Witnesses also expressed concerns that the risk of publication they perceived coming from the Act put the domestic university sector at a disadvantage when competing for research work. The University of Oxford said it had encountered the following problems:

Companies worry about the effect that the disclosure of information about a project will have on their business or their ability to exploit intellectual property rights. To try to assuage these concerns, the University has to engage in lengthy and complex negotiations with commercial partners over the treatment of FOIA in research contracts. Recent examples include a large multinational that refused to sign a contract for a studentship worth £24,000 a year; a major UK company that required the University to use its best endeavours to ensure any disclosed information was treated as confidential and to co-operate with it in any action it took to resist or narrow disclosure; and a further multinational that asked for a clause that would allow it to sue the University if it disagreed with its response to a request under the FOIA.[367]

208. Professor Diamond told us he did not think there was an "enormous" amount of evidence of funding going to other countries because of the fear of disclosure but "the Act is still in its infancy" and: "We are in immense global competition to undertake research, and it is the top research that is absolutely essential given the competitive nature of the UK over the next few years. We need to ensure that we are able to undertake research absolutely properly, and anything that had that impact should be thought about very carefully."[368] Universities UK observed that proving a negative, that funding was not awarded to domestic universities, was difficult:

[...] evidence of commercial partners being put off working with UK institutions is largely anecdotal. However, in a case involving the Environmental Information Regulations (EIR) recently settled by the Information Commissioner for drafts of a published paper, the University of East Anglia highlighted that:

In another matter, we recently received exactly such representations from the IPCC TSU [Intergovernmental Panel on Climate Change Technical Support Unit] based in Geneva, Switzerland in which they explicitly noted that release of such material would "[...] force us to reconsider our working arrangements with those experts who have been selected for an active role in WG1 AR5 [Working Group One, Fifth Assessment Report] from your institution and others within the United Kingdom."[369]

The pre-publication exemption in Scotland

209. Section 27 of the Freedom of Information (Scotland) Act 2002 provides an exemption for information for future publication. Section 27(1) is stricter than the similar provision in section 22 of the 2000 Act in that it requires the publication date be no more than 12 weeks after the date of the request. Section 27(2), however, provides an exemption for ongoing research: "Information obtained in the course of, or derived from, a programme of research is exempt information if:

(a)the programme is continuing with a view to a report of the research (whether or not including a statement of that information) being published by—

(i)a Scottish public authority; or

(ii)any other person; and

(b)disclosure of the information before the date of publication would, or would be likely to, prejudice substantially—

(i)the programme;

(ii)the interests of any individual participating in the programme;

(iii)the interests of the authority which holds the information; or

(iv)the interests of the authority mentioned in sub-paragraph (i) of paragraph (a) (if it is a different authority from that which holds the information).[370]

210. The Russell Group told us that "Universities in Scotland have confirmed that the research exemption has been used effectively."[371] The University of Salford told us that the Scottish approach would bring "clarity" to the pre-publication exemption.[372] The University of Bath said it would "strongly support" an amendment to the Act which would bring the publication exemption in line with the position in Scotland.[373] The University of Oxford emphasised that such an exemption applies to pre-publication material only: "Once the results of a study have been published, we recognise there may be a public interest in the disclosure of the underlying data."[374] It was noted in the House of Lords that similar exemptions exist in USA and Irish legislation.[375] The University of Surrey went further and called for a blanket exemption without a prejudice test: "An extension to section 22 which states that all research data should be considered as being for future publication would help to resolve this issue."[376]

211. However, the University of Stirling recently had difficulties rejecting a request from Philip Morris, the tobacco company, for data on underage smokers collected in a study sponsored by Cancer Research. The University was concerned that the data would be used to market tobacco to young people, which could also have the effect of deterring sponsors. The pre-publication exemption did not apply because the University was not intending to publish that dataset. The request was finally refused on the grounds of the cost of compliance.[377]

212. Section 102 of the Protection of Freedoms Bill 2012 provides that:

Where—

(a)an applicant makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the public authority, and

(b)on making the request for information, the applicant expresses a preference for communication by means of the provision to the applicant of a copy of the information in electronic form,

the public authority must, so far as reasonably practicable, provide the information to the applicant in an electronic form which is capable of re-use.

213. Amending section 22 in line with the Scottish exemption on pre-publication was discussed by the House of Lords Grand Committee during its deliberation on section 102 of the 2012 Act. Lord Henley told the Committee: "As a coalition Government, we are committed to greater transparency. I want to make it clear that we will not introduce exemptions into the Freedom of Information Act unless we can have that clearly demonstrated."[378] Appearing before us, Lord McNally said:

It is quite legitimate of the universities and other research institutes to want to protect intellectual property, and I very strongly support that, but some of the lobbying that I have received paints a more lurid picture than when I am told what the Act already protects.[379]

We note that it was no part of the original campaign for freedom of information to seek the premature disclosure of university research.

214. **We recommend section 22 of the Act should be amended to give research carried out in England and Wales the same protection as in Scotland. While the extension of section 22 will not solve all the difficulties experienced by the universities in this area, we believe it is required to ensure parity with other similar jurisdictions, as well as to protect ongoing research, and therefore constitutes a proportionate response to their concerns. Whether this solution is sufficient and works satisfactorily should be reviewed at a reasonable point after its introduction.** We address concerns over commercial competitiveness under section 43 below.

215. A number of universities, including Manchester, Essex and Durham, suggested that universities should only be subject to the Act in terms of management functions, like the BBC and the division between its journalism and broadcasting and management sectors.[380] Other submissions from universities suggested that the university sector should be taken out of the jurisdiction of the Act altogether. We explore these issues in the following Chapter.

The Act and the Animal (Scientific Procedures) Act 1986

216. Understanding Animal Research noted that testing on animals for the purposes of medical research into disease and injury was:

[...] controversial and while most of the public are supportive, it can provoke strong feelings among those who oppose it. Most of those opposed to animal research engage in passionate debate and sometimes employ radical propaganda, but campaign within the law. However, a small minority of radical animal rights extremists are prepared to use intimidation or outright violence to further their cause. This has ranged from threats to arson attacks and letter bombs.[381]

217. Section 24 of the Animal (Scientific Procedures) Act 1986 (ASPA) makes the disclosure of details of licences involving animal testing a criminal offence punishable by up to two years in jail. Section 44 of the Freedom of Information Act exempts information from disclosure when there is a statutory bar preventing it. Understanding Animal research noted that under European law disclosure of information "should not violate proprietary rights or expose confidential information" and "published details should not breach the anonymity of the users".[382] The relationship between the two was explored by the Upper Tribunal following an application to Newcastle University by the British Union for the Abolition of Vivisection (BUAV) for information contained in project licences for primate research.[383] It should be emphasised in this context that both the Upper Tribunal and Newcastle University agreed that BUAV campaigned peacefully and were not connected with any group which advocated violence.[384]

218. The Upper Tribunal held that "section 24 of ASPA was not a statutory bar to disclosure" but that some information could be redacted from the copies of the licences disclosed under section 38 (where disclosure would endanger the mental or physical health or safety of University staff and students) and 43 (the commercial

exemption). Newcastle University did not appeal and redacted information was passed to BUAV. The University described the case to us as a "legal 'Catch 22' situation" and added that "it is deeply regrettable that conflicts in legislation are left to such test cases to resolve."[385] Dr Rodney Eastwood told us:

[...] the Home Office declined to prosecute [the University of Newcastle] for doing so, but, on the basis that if any future case came up it would have to be directed by a tribunal to find in favour of the university, the universities are now in the position that, in order to follow the case, they may have to undergo expenditure of a substantial amount in legal fees to go through the tribunal process each time in order to prove to the Home Office that the information was properly released. The conflict between the two is quite difficult to resolve.[386]

219. David Thomas, Legal Consultant for BUAV, agreed that there was "partial" conflict between the Animal Scientific Procedures Act and the Act but identified it as being within the Home Office:

The Court of Appeal in a BUAV case interpreted section 24 in a way that effectively said that researchers, in terms of what they gave to the Home Office, had a veto over what the Home Office could subsequently disclose. The Home Office was then taking it a stage further—we think quite wrongly—by saying that under section 24 it cannot disclose even information that it has generated itself—for example, action that it has taken following breaches of licence conditions. It says that it cannot even tell Parliament what action it takes. There is a real problem as far as the Home Office is concerned. That is why the BUAV and many others believe that section 24 should go and leave things to the exemptions under the FOI Act to strike the balance that needs to be struck between accountability and transparency on the one hand and legitimate concerns on the other.[387]

220. Dr Nick Palmer, Director of Policy for BUAV, told us that "the new European Union directive on animal experiments is recognised by the Home Office to be incompatible with section 24 as it stands."[388] On 17 May 2012, Lynne Featherstone MP, Parliamentary Under Secretary of State for Equalities and Criminal Information, told the House of Commons:

We also propose to retain the current requirement that individuals carrying out regulated procedures on animals must hold a personal licence authorising them to do so. We will, however, explore the opportunities to simplify the detail of personal licence authorities and to remove current requirements which increase regulation without adding to the effectiveness of the licensing process. We will ensure any changes avoid detrimental impacts on levels of compliance or animal welfare and protection.[389]

221. **As section 24 of the Animal (Scientific Procedures) Act 1986 remains under review by the Home Office following changes in European law we make no recommendation as to how the Government should act but will consider the outcome of the review when it is received. It should not be necessary to amend the Freedom of Information Act to meet the concerns of universities in this area.**

222. **We strongly urge universities to use to the full the protection that exists for the health and safety of researchers in section 38 of the Act, and expect that the Information Commissioner will recognise legitimate concerns. No institution should be deterred from carrying out properly regulated and monitored research as the result of threats; this was not Parliament's intention in passing the Act and we are happy to reiterate that that remains the position.**

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355 Section 22 Back

356 Section 22(2) Back

357 Ev 120 Back

358 Ev w89 Back

359 Ev 106 Back

360 Q 104 Back

361 *Ibid*. Back

362 *Ibid*. Back

363 Ev 170 Back

364 *Ibid*. Back

365 *Ibid*. Back

366 Ev w199 Back

367 Ev w76 Back

368 Q 108 Back

369 Ev 170 Back

370 Section 27(2) Back

371 Ev 106 Back

372 Ev w62 Back

373 Ev w33 Back

374 Ev w76 Back

375 HL Deb, 12 Jan 2012, col GC14 Back

376 Ev 113 Back

377 Brief 2 Back

378 HL Deb, 12 Jan 2012, col GC26 Back

379 Q 549 Back

380 Ev w111 Back

381 Ev w3 Back

382 *Ibid*. Back

383 BUAV v Information Commissioner and Newcastle of University EA/2010/0064 Back

384 *Ibid*. Back

385 Ev w202 Back

386 Q 114 Back

387 Q 377 Back

388 *Ibid*. Back

389 HC Deb, 17 May 2012, col 39WS Back