



House of Commons

Business, Innovation and Skills  
Committee

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**Open Access:  
Responses to the  
Committee's Fifth  
Report of Session  
2013–14**

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**Third Special Report of Session 2013–  
14**

*Ordered by the House of Commons  
to be printed 19 November 2013*



## Business, Innovation and Skills Committee

The Business, Innovation and Skills Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Business, Innovation and Skills.

### Current membership

Mr Adrian Bailey MP (*Labour, West Bromwich West*) (Chair)  
Mr William Bain MP (*Labour, Glasgow North East*)  
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Ann McKechin MP (*Labour, Glasgow North*)  
Mr Robin Walker MP (*Conservative, Worcester*)  
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The following members were also members of the Committee during the parliament.

Luciana Berger MP (*Labour, Liverpool, Wavertree*)  
Jack Dromey MP (*Labour, Birmingham, Erdington*)  
Julie Elliott MP (*Labour, Sunderland Central*)  
Margot James MP (*Conservative, Stourbridge*)  
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Mr David Ward MP (*Liberal Democrat, Bradford East*)

### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at [www.parliament.uk/bis](http://www.parliament.uk/bis). A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

### Committee staff

The current staff of the Committee are James Davies (Clerk), Amelia Aspden (Second Clerk), Peter Stam (Committee Specialist), Josephine Willows (Committee Specialist), Ian Hook (Senior Committee Assistant), Pam Morris (Committee Assistant), Henry Ayi-Hyde (Committee Support Assistant).

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## Third Special Report

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The Committee published its Fifth Report of Session 2013–14, *Open Access*, on 10 September 2013. The Government's Response was received on 12 November 2013 and is appended to this Report at Appendix 1. The Research Council UK's Response was received on 11 November 2013 and is appended to this Report at Appendix 2.

### Appendix 1: Government Response

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The Government welcomes the Business, Innovation and Skills Committee (BISCOM) report on Open Access (OA). Government's OA policy is based on the principle that the taxpayer should have free access to the published findings of publicly funded research. Better access should result in a more productive research process, greater use of research findings and consequently more economic and social benefits from research.

The Committee's report has helpfully acknowledged that the Government is right to make publicly funded and published research freely and openly available and that in the long term the most effective form of OA will be Gold OA. Government was pleased to note that there is no distinction to be made between the Government's and BISCOM's direction of travel for OA. The envisaged final destination is likely to be what the Finch Group termed a 'mixed economy' of Gold and Green OA, the proportions of which the decisions of researchers and behaviour in the market will decide.

Government's approach, therefore, amounts to a subtle re-engineering of the present market. By 'nudging' the flow of revenue for the publishing industry towards it becoming income from Article Publication Charges (APCs) for Gold OA, decisions made by individual researchers on the payment of APCs for publication in the journal of their choice will eventually create a more competitive 'substitute good' research publications market. This change should help to moderate the historical trend of the current 'complementary good' market that has witnessed increasing costs to libraries as referred to in the Committee's report.

The approach that Government took throughout the Finch Group process was intended to recast relationships and establish shared values and objectives to effect real change in the public interest. Whilst, as we keep saying, we are on a journey, the evidence so far is encouraging. David Willetts was recently invited by Janet Finch to the long-standing final meeting of the Finch Group to reflect on progress that has been made. Janet Finch will be publishing her independent report on progress incorporating discussions at that meeting. The Publishers Association positively reported that, on the basis of a recent survey conducted amongst its members, within only a year:

- 70% of journals now publish Gold or include a Gold OA option;
- Of these, 82% allow the author to choose a CC-BY licence;
- 96% of journals have an embargo period of 24 months or less;
- 64% of journals have an embargo period of 12 months or less.

This illustrates the extent to which the Government's policy already is being complied with, but there is no room for complacency in the UK research publications industry and scope for further improvements are discussed below. RCUK's review in late 2014 will be able to independently report on that, but the journey is underway.

As a result of the Finch Group's work, a programme devised by publishers, through the Publishers Licensing Society, and without funding from Government, will culminate in a Public Library Initiative. A technical pilot was successfully started on 9 September 2013 (see <http://exchanges.wiley.com/blog/2013/09/18/uk-public-libraries-initiative-launches-technical-pilot/>). This further demonstrates the industry's commitment to OA.

In December 2013 Government will also be announcing the official launch of the Research Councils' Gateway to Research (see [www.rcuk.ac.uk/research/Pages/gtr.aspx](http://www.rcuk.ac.uk/research/Pages/gtr.aspx)). This will demonstrate the enthusiasm that our Research Councils and their research communities have for sharing their knowledge in the interest of economic growth and enhancing our quality of life. These various initiatives have stemmed from OA.

The Government's responses below should reassure the Committee that we share a common objective and vision for the OA journey that Government and RCUK have successfully embarked the UK upon.

DAVID WILLETTS

12 November 2013

## Current Open Access Policy in the UK

*We are disappointed by the Government's conclusion that "development of infrastructure for repositories will primarily be a matter for institutions themselves", not least because the Government has spent £225m on repositories in recent years. We recommend that the Government takes an active role in working with the Joint Information Systems Committee and the UK Open Access Implementation Group to promote standardisation and compliance across subject and institutional repositories. (Paragraph 25)*

As stated in evidence to the Committee, repositories are being proactively developed and supported throughout the UK research community. Examples cited were the Economic and Social Research Council's (ESRC's) Research Catalogue and the Department for International Development's R4D (Research for Development).<sup>1</sup> Similarly the Medical Research Council (MRC) requires research papers to be placed in Europe PubMedCentral.<sup>2</sup> The organic growth of repositories extends to international coordination and co-operation between repositories. The COAR (Confederation of Open Access Repositories) plays a leading role and has a number of UK members including EDINA which represents the interests of Jisc and the UK repository infrastructure.<sup>3,4</sup>

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1 See <http://r4d.dfid.gov.uk/>

2 See <http://europepmc.org/>

3 See <http://edina.ac.uk/>

4 Historically Jisc stood for Joint Information Systems Committee but over the last decade the organisation has evolved and as a company is now known as Jisc. See <http://www.jisc.ac.uk/>



Within the UK Jisc is developing a set of services to improve the performance of the UK's shared repository infrastructure in partnership with EDINA and other delivery partners including MIMAS (a Jisc data centre at Manchester University), the Open University and Nottingham University, but all led and managed by Jisc. This role for Jisc has resulted from a sector consultation and the need to address governance and coordination across the multiple partners whilst pursuing its objective to improve the national repository infrastructure, promote good practice and greater interoperability.

The Government, through HEFCE and the Research Councils, will continue to encourage Jisc, the Open Access Implementation Group (OAIG) and others to promote standardisation and compliance across subject and institutional repositories. This is what the Government means by "the development of infrastructure for repositories being primarily a matter for the institutions themselves". Work is already underway and it will by no means be a straight forward task. Taxonomies will require universal agreement and views within the large and dispersed academic community will differ. Even so, future work of the Governments' Research Sector Transparency Board (RSTB) and activities stemming from the National Data Strategy will also serve to improve the UK's repository infrastructure.

The Committee is right to point out that Government is making a substantial investment in repositories. This investment includes the necessary infrastructure to access the growing volume of data being generated by the research community, as illustrated by ELIXIR a new £75 million repository for bioscience data which I officially opened at Hinxton, near Cambridge, on 28 October 2013.<sup>5</sup>

Government shares the Committee's concern, therefore, that some measure of coordination could help the UK to secure the best use of its investment in repositories but the Government would maintain that it does not want to inadvertently stand in the way of the collaborative progress already being made by many institutions in a rapidly developing high technology field.

### **Strengthening Deposit Mandate to Increase Open Access**

*We recommend that HEFCE implements its proposals, and maintains the strength of its proposed immediate deposit mandate in the appropriate institutional repository as a pre-condition of Research Excellence Framework eligibility. (Paragraph 30)*

HEFCE will be finalising its proposals including its immediate deposit mandate in the light of its recent consultation. As stated in HEFCE's consultation document the use of repositories will be an important feature of OA as applied to the Research Excellence Framework (REF) and this is entirely consistent with and complementary to the Government's and RCUK's OA policy.

*RCUK should build on its original world leading policy by reinstating and strengthening the immediate deposit mandate in its original policy (in line with HEFCE's proposals) and improving the monitoring and enforcement of mandated deposit. (Paragraph 31)*

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5 See <http://www.elixir-europe.org/> and <http://www.sanger.ac.uk/about/press/2012/120613-ebi.html>

Government welcomes how Research Councils and Funding Councils have promoted deposit in repositories as an important component of their OA policy. RCUK have balanced the objective of timely OA to all users with the need to respect, through a mutually acceptable embargo period, sustainable business models. Publishers and Learned Societies alike who play an important part in the administration of the peer review process and, particularly in the case of Learned Societies, cultivating knowledge and skills in the sectors they represent, have welcomed RCUK's approach.

## Open Access Worldwide

*Government and RCUK should rigorously monitor global take up of Gold and Green and international developments in open access policy worldwide. This data should be used to inform both the reconvening of representatives of the Finch working group in the Autumn of 2013, and RCUK's review of its open access policy in 2014. (paragraph 35)*

Government and RCUK are developing a greater understanding of the take up of Gold and Green OA internationally. This is becoming available through the research literature itself, such as the analysis provided by Laakso and Bjork, but also from the future International Comparative Performance of the UK Research Base-2013, which will include analysis of the trends in international take up of Gold and Green OA.<sup>6</sup> An international perspective will also be gleaned from follow up to the recent meeting of G8 Science Ministers, discussions with the Commission and bilaterals. This will feed into future reviews of OA policy.

## The Transition to Open Access: Costs and Hidden Costs

*RCUK has undertaken to publish data on "how the open access block grants are being used, specifically the numbers of research papers which are being made open access through payment of an APC and the actual APCs being paid to publishers". We recommend that RCUK also requires data on subscription expenditure from UK HEIs to establish the impact of its policy on subscription purchasing and pricing. (Paragraph 41)*

RCUK will give due and independent consideration to this recommendation.

## Embargo Periods

*The stated policy objective of the Government and RCUK is to increase access to publicly funded research. Long embargoes are a barrier to access. We recommend that the Government and RCUK revise their policies to place an upper limit of 6 month embargoes on STEM subject research and up to 12 month embargoes for HASS subject research, in line with RCUK's original policy published in July 2012. (Paragraph 50)*

A re-engineering of the research publications market entails a journey not an event. Necessarily it requires a period of transition for the process of change. Longer embargo periods, as illustrated below, play an important part under some circumstances during the transition process.

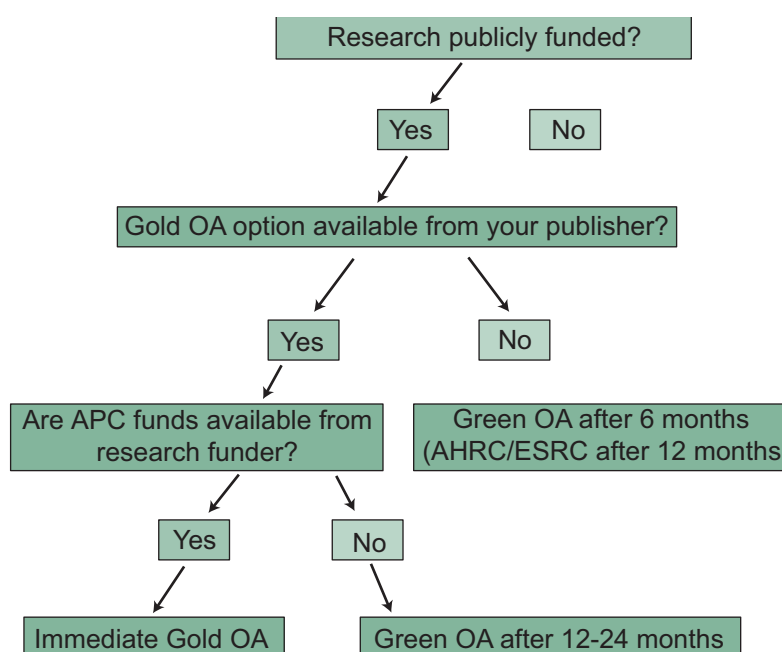
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6 See [www.biomedcentral.com/1741-7015/10/124](http://www.biomedcentral.com/1741-7015/10/124)

Government and RCUK believe that the embargo periods for Science Technology Engineering and Mathematics (STEM) and the Arts Humanities and Social Sciences (AHSS) as discussed in the RCUK's Guidelines published on 8 April 2013 need to take account of how best to achieve both timely free access and a sustainable publishing business model during a five year transition period.<sup>7</sup> This is the basis for the UK's OA Decision Tree (which results from agreements reached by Government, Research Councils and the publishers in line with the Finch Group's recommendations). The UK OA Decision Tree, set out below, reflects the UK's agreed approach to embargo periods for the publication of publicly funded research.

The only exception to this general rule, which the Government fully supports, is the treatment of biomedicine and for this the RCUK Guidelines state:-

“Research papers in biomedicine should be published immediately, or with an embargo period of no longer than six months, as has been the MRC's mandated policy since 2006.”



*Given the importance of ensuring that UK open access policy does not result in reduced access in the UK or worldwide, the Government and RCUK must monitor and evaluate the impact of their open access policy on embargo lengths imposed by UK publishers. The impact on different subject areas must also be carefully monitored. That information must inform future meetings of the Finch Group and RCUK's reviews of open access policy. (Paragraph 51)*

Government believes that the first signs of the impact of its OA policy on embargo periods have been beneficial. The Government is aware of the concerns raised by the Committee relating to the behaviour of one publisher which interpreted the above embargo periods as requirements, whereas they actually indicate maxima durations. Publishers are free to opt for shorter embargo periods as they wish. More generally, as stated in David Willetts' letter

7 See [www.rcuk.ac.uk/documents/documents/RCUKOpenAccessPolicy.pdf](http://www.rcuk.ac.uk/documents/documents/RCUKOpenAccessPolicy.pdf)

of 20 June 2013, UK policy already is leading to shorter embargo periods for Green OA. Wiley's 1,600 titles, before the RCUK implementation guidance came into effect in April 2013, would sign a copyright transfer agreement with no Green OA option. All of Wiley's titles now carry a Green OA option and have adopted the required embargo periods. Similarly, Taylor Francis report that the Finch Group's recommendations and the RCUK's and Government's OA policy provided the impetus for them to ensure that such a Green OA option was available across their approximately 1,700 titles.

The Government and RCUK will welcome evidence from the research community on how Government and RCUK policy is impacting on embargo lengths imposed by UK publishers and such findings will be considered for the RCUK's review in late 2014.

### Levels of Article Processing (Publication) Charges

*We recommend that the Finch working group commissions an independent report on APC pricing, which should include average APC prices of pure Gold journals and hybrid journals, domestically and internationally. (Paragraph 58)*

The Finch Group held its final meeting on 24 September 2013, but its former members will continue to take an interest in such things as APC prices and will share their information with RCUK to inform its review in late 2014.

*We strongly support the recommendation of the Science and Technology Committee of the House of Lords that the Government undertake a full cost-benefit analysis of open access policy, including the impact on different subject areas. This analysis must include data to reflect actual rather than projected costs during the transition period. (Paragraph 59)*

The Government already has taken the initiative to have a study undertaken to determine the feasibility of a full cost benefit analysis (CBA) of the Government's OA policy. A contract is being awarded to Matrix for this and the scope of work for their feasibility study will include:-

- Setting up a CBA framework structured around the three policy options – Do Nothing; Green option; and Gold option.
- Carrying out a methodological and empirical literature review, identifying gaps and developing a feasible plan to fill them.
- Drafting a report that includes their assessment on feasibility of a CBA, proposals to fill key evidence gaps setting out how they will enhance the robustness of the CBA, and a provisional CBA assessment (if feasible) based on extant data and evidence with appropriate caveats about robustness.

### Affordability of APCs for Authors and UK Research Organisations

*We are concerned that the expectation appears to be that universities and research organisations will fund the balance of APCs and open access costs from their own reserves. We look to the Government and RCUK to mitigate against the impact on university budgets. The Government must not underestimate the significance of this issue. (Paragraph 64).*

Publication of the results of publicly funded research is an integral part of the research process. Government fully recognised this to be the case and within the constraints of a flat cash science budget supported the decision by Research Councils to make available £17 million in 2013/14 (rising to £20 million in 2014/15) of dedicated funding to create over 100 HEIs' OA Publication Funds. This was in addition to an initial £10 million made available to 30 HEIs to 'pump-prime' the process.

The sums of £17 million and £20 million were based on RCUK's initial assumption that 45 per cent of the 26,000 RCUK funded papers produced each year would be Gold OA and require funding for APCs. The fact that the revised RCUK position is for the same 45 per cent target to now include both Green and Gold OA should mean that the expected demand for APC funding could fall. Hence, HEIs have received adequate funding from RCUK, given that the original allocations of £17 million and £20 million have remained unchanged. To the extent that other non RCUK publicly funded research requires funds for the payment of APCs, HEFCE and other Funding Councils have agreed that QR funding may be used for this purpose at the discretion of the HEIs. Hence, HEIs have access to the necessary public funds to cover the cost of implementing the Government's and RCUK's OA policy.

The Government is aware of the reluctance of some HEIs to promote the Government's preference for Gold OA, on the grounds that it represents a reduction in funding available for research, but the cost of the Government's funded OA policy is estimated to be less than £50 million per annum or approximately one per cent of the science budget (which totals £4.6 billion per year). This is a marginal cost expected to be outweighed by the benefits to the economy arising from direct innovation and spill over benefits. The social rate of return for investment in R&D is typically in the range of 20 to 50 per cent per annum and could be enhanced by improved access, through OA, to the results of research.<sup>8</sup>

## The Shared Ultimate Goal of Full Gold Open Access

*The Government and RCUK should clarify that Gold open access is the ultimate goal of, rather than the primary route to, their open access policies. We recommend that the Government and RCUK reconsider their preference for Gold open access during the five year transition period, and give due regard to the evidence of the vital role that Green open access and repositories have to play as the UK moves towards full open access. (Paragraph 70)*

The Government and RCUK have consistently indicated that the transition to a Gold Open Access approach to publishing publicly funded research entails a journey rather than a single event. It holds the long term promise of a more competitive (substitute good based) research publications market and stands to stimulate innovation both within the publications industry and more generally. It will not be possible to reach the desired destination of much greater, free and unrestricted access to published research results without first setting a direction of travel. Government and RCUK policy with an expressed preference for Gold OA does that.

Decisions by researchers and the responsiveness of the publishing industry will determine whether Gold OA proves to be the prime route to OA, as Government and RCUK would

<sup>8</sup> Salter & Martin's (2001) literature review suggests that the social rate of return (SRR) to research is typically 20-50%. See [http://in3.dem.ist.utl.pt/master/stpolicy03/temas/tema6\\_1a.pdf](http://in3.dem.ist.utl.pt/master/stpolicy03/temas/tema6_1a.pdf)

prefer to be the case. Analysis of global research publication trends by Laakso and Bjork (published in October 2012 and cited above) indicates that: "Approximately 17% of the 1.66 million articles published during 2011 and indexed in the most comprehensive article-level index of scholarly articles (Scopus) are available OA through journal publishers, most articles immediately (12%) but some within 12 months of publication (5%)." This suggests that Gold OA, at 12 per cent, is now proving to be the dominant form of OA. Not all Gold OA requires payment of an APC but the same study found that about 49 per cent of all the OA articles published in 2011 did require payment of an APC. Hence, the Government's and RCUK's policy preference for Gold OA, decided ahead of the findings from this study, appears to be going with, rather than against, the grain of an underlying global trend.

What the final destination looks like is not yet clear (in so far as the decision on where to publish remains with researchers and therefore the eventual mix of Gold and Green published research is speculative at this stage). Even so, the Government and RCUK would maintain that the merits of Gold OA (immediate, final published version, compatibility with data mining, unrestricted access and re-use, with attribution) mean that it is preferred to Green OA.

Green OA will continue to be an important complement to Gold OA. Furthermore, it should not be assumed that repositories, which Government considers to be important, are only relevant to Green OA with which they frequently associated. The use of repositories is a feature of both Gold and Green OA. In terms of the sustainability of long term access to published research and data it is important that this should be the case. Institutional repositories, such as in HEIs, may prove to be longer lived than those owned by some publishers whose financial viability will be subject to their continued competitiveness in the market. Continued access to valuable research results will be needed. The additional use of institutional repositories, as promoted by both RCUK and Funding Councils, provides a valuable degree of built in redundancy in the national information and data infrastructure.

*RCUK's current guidance provides that the choice of Green or Gold open access lies with the author and the author's institution, even if the Gold option is available from the publisher. This is incompatible with the Publishers Association decision tree, and RCUK should therefore withdraw its endorsement of the decision tree as soon as possible, to avoid further confusion within the academic and publishing communities. (Paragraph 71)*

As discussed above the UK OA Decision Tree sets out clearly the direction of travel. This is not incompatible with researchers having a free choice as to whether or not to follow the preferred path. Government and RCUK hope they will choose to do so. Government welcomes RCUK retaining this decision tree. It has been agreed by all affected parties, and does not simply reflect the publishers' position, but the consensus position arrived at by members of the Finch Group.

## **Achieving a Functional Market**

*If RCUK and the Government continue to maintain their preference for Gold, they should amend their policies so that APCs are only paid to publishers of pure Gold rather than hybrid journals. This would eliminate the risk of double dipping by journals, and encourage innovation in the scholarly publishing market. (Paragraph 77)*

Government understands that precisely this approach has been adopted in Germany, where hybrid journals are believed to not be allowed. In 2012, the UK opted for a different approach, which has also proven to reflect the position of the Global Research Council published in May 2013.<sup>9</sup> The Government's approach allows for the publication of Gold OA papers in subscription based journals, making them so called 'hybrid' journals, as well as publication in pure Gold OA journals. Government believes that by doing so the rate of adoption of Gold OA by publishers and researchers alike will accelerate. Evidence quoted above from the Publishers Association suggests that this is already proving to be the case. Researchers would be disappointed to have publication in their favoured journals denied to them if they opt for Gold OA and publishers would not want the inefficiencies, or brand dilution effects, of always putting publication of Gold OA material in to a new and separate journal.

Having said all that, Government is concerned to see much greater movement in the market to improve on the transparency of how revenue from APC payments is impacting on subscription rates charged to those institutions making serious efforts to comply with the Government's and RCUK's preference for Gold OA. Publishers consider subscription charges and APCs to be separate considerations for different offerings. To the institutional customer faced increased total publication costs they are related. Hence, HEIs implementing Gold OA understandably feel that publishers are 'double-dipping'.

Government does not consider it appropriate for publishers to rely on retrospectively amortising their APC revenue to discount global subscription rates, as some now do. This may address 'double-dipping' in one sense, (no increase in total revenue to the publisher) but it does nothing to address the concerns of research intensive individual institutions, wherever they are located around the world. Such institutions paying APCs for Gold OA publication in particular journals should see some related and proportional discount in their total subscription fees, with the same publisher, to avoid them disproportionately funding the translation to Gold OA.

Government welcomes the initiative taken by the Royal Society of Chemistry in this regard, but looks to the publishing industry to immediately develop other innovative and sustainable solutions to addressing the 'double-dipping' issue as perceived by institutions. By doing so Government believes that publishers will be seen to be rewarding rather than inadvertently being perceived to be penalising early adopters. The final obstacle to a greater take up of Gold OA would be removed enabling universal acceptance of 'hybrid' journals.

Government will look for firm evidence of such initiatives by publishers in RCUK's independently chaired review to be held in late 2014.

*The evidence we saw suggested that authors have little price sensitivity when they choose a journal in which to publish. We recommend that RCUK amends its policy to allow grant funds to be used for publishing charges, which is by far the most common model internationally. This would re-introduce price pressure by prompting authors to make an informed decision on where to publish. We recommend that the Government endorse genuine price transparency from publishers so that it is clear to subscribers which services and*

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9 The Global Research Council includes 70 Heads of Science and Research Councils from around the world. See <http://globalresearchcouncil.org/meetings/2013-meeting>

*costs are and are not included in the overall subscription price, enabling subscribers to assess the costs and benefits of purchasing. (Paragraph 78)*

Government is not aware of any evidence that including publishing charges in grant funds has any positive effect on researchers experiencing price pressure. Indeed, this has been the arrangement to date until the introduction of block grants by RCUK in April 2013 for Publication Funds. During the period of previous arrangements the Committee, in its report (at Figure 1), has been able to point to significant growth in the cost of library subscriptions relative to the CPI.

A more structured approach that strategically 'nudges' the research publications market towards individual substitute good type transactions using Gold OA is needed to introduce a more systemic awareness of price sensitivity. Whilst the Committee is right to suggest that individual authors need to be more exposed to price pressure for the publication of their work, the process by which researchers choose how best to pay for publication should be the result of a collegiate exercise within HEIs. Each HEI will have different publication strategies and priorities and Government welcomes the fact that RCUK wisely decided to allow this process, involving the management of Publication Funds, to be determined locally within HEIs and not to try to adopt a 'one size fits all' type of approach.

Government agrees with the Committee that there should be price transparency for APCs. Publishers will be required to publish their APC price list to qualify for the payment of APCs using public funds.

*We strongly agree with the recommendations of the House of Commons Science and Technology Committee and the Finch Report that the Government should work to introduce a reduced VAT rate for e-journals. Given the emphasis the Government has placed on the benefits of increasing open access, the Government should seek a derogation on this point from the European Commission. (Paragraph 79)*

The Government has already considered this issue in depth and Treasury have issued a public statement (annexed for completion).

*We further recommend that the Government indicates clearly that non-disclosure clauses should not be included in publishing contracts which involve public funds. In the first instance, this should be achieved through dialogue between Government, publishers and universities. If the use of non-disclosure clauses persists, then the Government should consider referring the matter to the Competition Commission. (Paragraph 80)*

Government agrees that HEIs should not be required by publishers to accept non-disclosure clauses in publishing contracts which involve public funds. The Government will discuss this issue with publishers and representative bodies. If what is considered to be inappropriate use of non-disclosure agreements is evident discussions will be held with the Office of Fair Trading (OFT) to seek their advice and whose responsibility it would be to make any referral to the Competition Commission (currently transiting to become the Competition and Markets Authority which will bring together the Competition Commission and much of the OFT).



## Licensing

*We recommend that the Government reports the outcomes of its further investigations into licensing to us and communicates them clearly through RCUK as soon as possible in order to assuage concerns of authors and their institutions. (Paragraph 85)*

Where public funds are used for payment of an APC for the publication of publicly funded research the use of a Creative Commons, CC-BY licence is the expected requirement.<sup>10</sup> RCUK has in hand discussions with stakeholders on its preferred approach to the use of licences. The Government will be pleased to report RCUK's agreed conclusions to the Committee.

*RCUK should monitor complaints from authors and/or their institutions about breach of licensing conditions or inappropriate re-use of content, consider these at its review of open access policy, and identify appropriate action if necessary. (Paragraph 86)*

This is a matter for RCUK, but, Government would not expect RCUK to 'police' the relationship between researchers/authors, publishers and third parties in relation to any possible breaches of license terms and conditions entered in to by researchers/authors and publishers. Government would expect RCUK to be interested to know how well OA licensing is working in practice and this will be a feature of RCUK's review and any appropriate action will be identified if necessary.

## Open Access Innovation and Growth

*We believe that BIS must review its consultation processes to ensure that lessons are learned from the lack of involvement of a broader range of businesses, particularly SMEs, in the formation of open access policy. It is particularly important to ensure that future policies and initiatives (for example Gateway to Research) take into account the specific needs of the communities they are intended to serve, to ensure optimum functionality and a more efficient use of public funds. (Paragraph 91)*

BIS is always keen to ensure that the interests of SMEs are considered in the development of its policies and strategies. SMEs as potential users benefit from the proposal to provide them with expanded free access to published publicly funded research. The interests of SME publishers was considered to be represented through several Learned Societies included in the Finch Group.

In relation to the Gateway to Research (GtR), SMEs have been directly engaged throughout as they are the target users for the facility. This representation has included SME participation in the presentation to Ministers of the beta version launched in November 2012, SME participation in workshops held with users in August 2013 and direct involvement by SMEs in a planned 'hack day' in November to ensure that the GtR is tailored to the needs of SMEs. This event is being organised with Nesta, whose activities are very much directed at the needs of SMEs.

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<sup>10</sup> Creative Commons BY licence allows you the reader/user to share (copy distribute and transmit the work) and remix (adapt the work) and make commercial use of the work. This is with the proviso that you must attribute the work in the manner specified by the author or licensor (but not in a way that suggests that they endorse you or your use of the work.) See <http://creativecommons.org/licenses/by/3.0/>.

## Annex

### *VAT e-journals*

Treasury Note for the House of Commons - Business Innovation and Skills Committee

### Introduction

The Business Innovation and Skills Committee took evidence from Rt Hon David Willetts MP and Ron Egginton on 14 May 2013. Questions 154 to 157 considered the topic of VAT on e-journals. The Chair, at Q 156, expressed a wish to see the detailed explanation of why it is not permitted for the United Kingdom to have a zero rate or reduced rate of VAT on e-journals.

### Background

#### *Zero Rates*

When VAT was introduced in the United Kingdom in 1973, the European legislation (contained in the First and Second VAT Directives) allowed considerable flexibility in the coverage of the tax. This meant that it was free to define which items were:

- taxed at the standard rate,
- defined as exempt (where suppliers are unable to recover the VAT they incur), and
- wholly relieved of the burden of VAT through the zero rate.

It was against this background that books and newspapers, previously relieved of Purchase Tax, were zero rated when VAT was introduced in 1973.

In 1978 the Sixth VAT Directive replaced the Second Directive, this had been negotiated by all the member states at the time with unanimous agreement. The Sixth Directive was more prescriptive in what could be exempt from VAT, and only allowed a very narrow scope for domestic zero rating.

However it allowed member states to continue to exempt or zero rate goods supplies where the relief was already in place. The Sixth Directive was amended in 1992 to make it clear that zero rates in force on 1 January 1991 could be retained, but extending or creating new zero rated items was not permitted. When the Sixth Directive, including all its amendments, was consolidated into Directive 2006/112 "The Principal VAT directive", these provisions were restated. This means that the United Kingdom is able to retain the zero rates it has, but is not able to extend their scope.

#### *Reduced Rates*

The Principal VAT Directive allows member states to have one or two reduced rates set at a minimum of 5%, but the scope of reduced rates is restricted to the list of goods and services set out in Annex III. Books and newspapers are included. However electronically supplied services are specifically excluded from the reduced rate.

### ***Electronically supplied services***

When the provisions of the Sixth VAT Directives were negotiated in the 1970's the concept of supplying services electronically was at best in its infancy, so little regard was taken. However as broadcasting services and electronically supplied services developed, it was necessary for member states to consider how these should be taxed. The result was that, with effect from 1 January 2003, electronically supplied services were specifically mentioned and excluded from the scope of the reduced rate.

In addition, in order to provide clarity and uniformity as to what constituted electronically supplied services, the member states unanimously agreed the wording of a Council Regulation in 2005 that defined and listed examples of electronically supplied services.

The regulation includes "subscription to online newspapers and journals", and "the digitised content of books and other electronic publications", so these items must be taxed at the standard rate.

### **Prospects for change**

It can be seen that there has been an open debate among member states, which has focused solely on the issue of defining the scope and VAT treatment of electronically supplied services, and these services include the provision of online digitised content. The unanimous agreement on that treatment is that standard rate VAT should apply.

There are several factors that count against the prospects for any change:

- The European commission has a long term and firm commitment for broad scope of VAT at the standard rate, and would resist any proposal for another reduced rate. In order to introduce a new reduced rate, a European Commission proposal would be needed, and given its long term commitment the prospects of such a proposal are remote.
- The scope of the United Kingdom's zero rates and reduced rates is under continuous scrutiny of the European Commission, so to raise the issue of extending the reduced rates even to online journals, is considered high risk and politically sensitive, even mentioning the issue may lead to adverse reaction and additional pressure from the Commission to broaden the scope of our standard rated tax base.

Against this background we do not consider the UK should pursue a policy of re-opening the issue of reduced and zero rates.

HM Treasury

*12 June 2013*

## Appendix 2: Response from Research Councils UK

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Research Councils UK (RCUK) is a strategic partnership of the UK's seven Research Councils which each have a Royal Charter and together annually invest around £3 billion in research. We support excellent research, as judged by peer-review, which has an impact on the growth, prosperity and wellbeing of the UK. To maintain the UK's global research position we offer a diverse range of funding opportunities, foster international collaborations and provide access to the best facilities and infrastructure around the world.

We also support the training and career development of researchers and work with them to inspire young people and engage the wider public with research. To maximise the impact of research on economic growth and societal wellbeing, we work in partnership with other research funders including the Technology Strategy Board, the UK Higher Education Funding Councils, business, Government, and charitable organisations. Further details are available at [www.rcuk.ac.uk](http://www.rcuk.ac.uk).

This response is submitted by RCUK and represents its independent views. It does not include, nor necessarily reflect, the views of the Department for Business, Innovation and Skills. The response is made on behalf of all seven Councils:

- Arts and Humanities Research Council (AHRC)
- Biotechnology and Biological Sciences Research Council (BBSRC)
- Engineering and Physical Sciences Research Council (EPSRC)
- Economic and Social Research Council (ESRC)
- Medical Research Council (MRC)
- Natural Environment Research Council (NERC)
- Science and Technology Facilities Council (STFC)

### **RCUK response to the House of Commons Business, Innovation and Skills Committee Report: Open Access**

The report from the Business, Innovation and Skills Committee on their enquiry into Open Access contributes to the on-going debate on how best to implement Open Access within the UK, and RCUK will give appropriate consideration to the recommendations made and issues raised in the report, as part of the planned review focusing on the implementation and impact of RCUK's Open Access policy that will take place in the final quarter of 2014.

The RCUK Policy on Open Access (published in July 2012), and its implementation plan, were developed within the context of the Finch 'process' and refined following extensive discussion with key stakeholders.

RCUK's approach to implementation of its policy is one of evolution and not revolution. The phrase we often use is that it is a journey and not an event. The aim is to move to peer-reviewed papers arising from Research Council funded research being available open access over a transition period of some five years. During the transition period it is planned that the compliance targets for the numbers of papers made available Open Access will be increased year-on-year, as will the funding we make available to support Article Processing Charges (APCs). During the transition period, we are allowing authors to use journals with embargo periods longer than the headline figure in the policy, but in line with those agreed by the Government, for publicly funded research where no funds are available to cover the payment of APCs. The compliance targets also mean that researchers in discipline areas which have yet to develop a range of compliant OA publishing routes will still be able to publish without penalty.

At the heart of the RCUK philosophy on Open Access is our desire to ensure the widest possible access to the outputs of the research that we fund, recognising that there is a wide range of potential users from private individuals to innovators and SMEs, as well as researchers. Researchers are an important part, but not the only part of this constituency. Our policy has been designed to support this wider constituency, recognising that not all users will be familiar with how the research communications system works, and may not appreciate the differences between pre and post peer-reviewed versions of papers, and author manuscript versions versus final published versions. Ensuring easy access to the final, peer-reviewed version of a paper is extremely important. In a world where anybody can publish anything on the internet, RCUK recognises that it has a duty to ensure that users have ready access to high-quality, peer-reviewed published papers arising from Research Council funded research. We are not convinced that institutional repositories are always the best way of providing this, and that solutions such as 'request a copy' button or emailing the researcher for a copy of the paper are not scalable to a wider constituency of users. In addition, the headline figure quoted in the report that 60% of journals already allow immediate un-embargoed self-archiving of the peer-reviewed version of the article does not reflect the reality for Research Council funded authors. A comparable figure for journals used by Research Council funded authors is between 17% and 20% .

RCUK defines Open Access as unrestricted, on-line access to peer-reviewed and published research papers. There are various models for achieving open access, some of which allow more immediate access. RCUK has a preference for immediate, unrestricted, on-line access to peer-reviewed and published research papers, free of any access charge and with maximum opportunities for re-use. This is commonly referred to as the 'gold' route to Open Access. RCUK prefers 'gold' Open Access as we consider it provides the best way of providing immediate access, free of charge to the final peer-reviewed versions of papers to the widest group of users. Papers are referenced by the journal in which they are published. Therefore, by going directly to the journal web site a reader can be confident that they are accessing the final peer-reviewed and formally published record of research.

Detailed responses to the report's recommendations are made below.

## Strengthening deposit mandates to increase open access

*RCUK should build on its original world leading policy by reinstating and strengthening the immediate deposit mandate in its original policy (in line with HEFCE's proposals) and improving the monitoring and enforcement of mandated deposit (paragraph 31).*

The current RCUK Open Access policy is the first such RCUK policy. Previous policies have been implemented by individual research councils, and varied between councils. Only the MRC had a requirement (since 2006) for availability of papers via a repository (Europe PubMed Central) within a specific time period (6 months). The policies for other councils required deposit and access subject to publishers' copyright and licensing conditions. The current RCUK policy is much stronger in requiring deposit and access within clearly defined time periods. Reinstating individual council policies would be a backward step.

With some 26,000 research papers arising per year from Research Council funded research, the monitoring and enforcement of deposit is never going to be a simple task. RCUK is working with repositories, publishers and others to find ways of making this as simple, and administratively efficient as possible.

## Open Access worldwide

*Government and RCUK should rigorously monitor global take up of Gold and Green and international developments in open access policy worldwide. This data should be used to inform both the reconvening of representatives of the Finch working group in the Autumn of 2013, and RCUK's review of its open access policy in 2014 (paragraph 35).*

RCUK keeps a watching-brief on international developments in Open Access policy, and it is intended that the position of the UK as compared to other countries will inform the RCUK review in 2014.

## Pure Gold and Hybrid Gold

*RCUK has undertaken to publish data on "how the open access block grants are being used, specifically the numbers of research papers which are being made open access through payment of an APC and the actual APCs being paid to publishers". We recommend that RCUK also requires data on subscription expenditure from UK HEIs to establish the impact of its policy on subscription purchasing and pricing (paragraph 41).*

RCUK supports the need for much greater transparency of the costs of publishing in and subscribing to journals. This not only covers costs of APCs and subscriptions, but also the largely 'hidden' costs of page and colour charges levied by some subscription journals when publishing a paper. Access to data on subscription expenditure may be restricted by confidentiality agreements between publishers and institutions. Information on amounts spent on page and colour charges tends not to be centrally accounted for by institutions. RCUK will work with HEFCE and representatives of the research library community to find ways of gaining maximum transparency of these costs.

## Embargo periods

*The stated policy objective of the Government and RCUK is to increase access to publicly funded research. Long embargoes are a barrier to access. We recommend that the Government and RCUK revise their policies to place an upper limit of 6 month embargoes on STEM subject research and up to 12 month embargoes for HASS subject research, in line with RCUK's original policy published in July 2012 (paragraph 50).*

The RCUK policy on embargo periods is unchanged since July 2012, and requires publishers to provide a 6 month embargo period for STEM and 12 month period for HASS subjects, where they do not provide a compliant 'gold' OA route. During the transition period we are allowing authors to use journals with embargo periods longer than the headline figure in the policy, but in line with those agreed by the Government for publicly funded research where no funds are available to cover the payment of APCs – i.e. 12 months for STEM and 24 months for HASS subjects, except for biomedical research, where a maximum embargo period of 6 months is required, in line with the MRC's 2006 policy. This flexibility is required to ensure that, during the transition, researchers that we fund are not unduly constrained in the choice of journal they have available to them to publish in.

*Given the importance of ensuring that UK open access policy does not result in reduced access in the UK or worldwide, the Government and RCUK must monitor and evaluate the impact of their open access policy on embargo lengths imposed by UK publishers. The impact on different subject areas must also be carefully monitored. That information must inform future meetings of the Finch Group and RCUK's reviews of open access policy (paragraph 51).*

RCUK keeps a watching-brief on changes in embargo periods, and these will form part of the evidence examined as part of the 2014 review of our policy. In this context, we welcome the recent reduction in embargo periods by Elsevier, such that the majority of its journals now offer a green option with 12/24 month embargo periods in line with those agreed by the Government for publicly funded research where no funds are available to cover the payment of APCs, as well as a hybrid-gold option.

## Affordability of APCs for authors and UK research organisations

*We are concerned that the expectation appears to be that universities and research organisations will fund the balance of APCs and open access costs from their own reserves. We look to the Government and RCUK to mitigate against the impact on university budgets. The Government must not underestimate the significance of this issue (paragraph 64).*

Publication of research results is an integral part of the research process, and is thus a legitimate part of the cost of undertaking research. RCUK is committed to providing the necessary funding to cover the costs of publishing papers arising from the research funded by the Research Councils. The size of the RCUK publishing fund has been based on estimates of the number of papers arising from Research Council funded research and the average value of APCs, and it is distributed to institutions as block grants, in proportion to the amount of funding they receive to employ researchers (direct labour costs). So far, block grants have been awarded only for the first two years of the transition. The size of the

publication fund for future years, and the algorithm for allocation of block grants to institutions will be reviewed as part of the 2014 review of the RCUK policy, and will be subject to the outcome of the next Spending Review. We will look to institutions to provide us with evidence on numbers of publications and APC costs to help inform the 2014 review.

The initial size of the publication fund and the mechanism for its distribution is of course based on estimates and assumptions. However, we had to start somewhere, and this is an initial funding line for the first two years of the transition. We are disappointed that some institutions, e.g. the Russell Group, are continuing to say that in 2013/14 RCUK is providing only enough funding to cover 10% of papers produced. Whilst this is technically correct, it refers to 10% of total papers produced by an institution, and not 10% of those funded by RCUK. We continue to believe that RCUK funding is sufficient to allow institutions to meet their overall OA compliance targets for Research Council funded publications (through both Gold and Green combined) of 45% in year-1 and 53% in year-2.

### **The shared ultimate goal of full Gold open access**

*The Government and RCUK should clarify that Gold open access is the ultimate goal of, rather than the primary route to, their open access policies. We recommend that the Government and RCUK reconsider their preference for Gold open access during the five year transition period, and give due regard to the evidence of the vital role that Green open access and repositories have to play as the UK moves towards full open access (paragraph 70).*

RCUK's ultimate goal is to remove the barriers that restrict access to the outputs of the research funded by the Research Councils, in order to ensure the maximum availability to the widest possible constituency of users. There are barriers of both cost and of delay to access. RCUK supports a twin-track approach to Open Access, by both Gold and Green routes. RCUK's preference is for immediate, unrestricted on-line access, aka Gold open access, for reasons defined in section 2 of this response.

*RCUK's current guidance provides that the choice of Green or Gold open access lies with the author and the author's institution, even if the Gold option is available from the publisher. This is incompatible with the Publishers Association's decision tree, and RCUK should therefore withdraw its endorsement of the decision tree as soon as possible, to avoid further confusion within the academic and publishing communities (paragraph 71).*

Endorsement of the 'decision tree' was part of the outcome of developing the RCUK policy within the context of the Finch process. It represents the post-transition 'end state' when RCUK expects to be providing sufficient funding to cover the publication costs for the majority of research papers arising from Research Council funding.

The RCUK policy has been in force now for over six months. Whilst there was some confusion in the early period, the evidence we have is that institutions now understand the flexibility we are offering during the transition period, and that the 'decision tree' has to be seen within the context of this flexibility.



## Achieving a functional market

*If RCUK and the Government continue to maintain their preference for Gold, they should amend their policies so that APCs are only paid to publishers of pure Gold rather than hybrid journals. This would eliminate the risk of double dipping by journals, and encourage innovation in the scholarly publishing market (paragraph 77).*

RCUK made an explicit decision not to restrict the RCUK block grants only to covering APC costs for pure Gold journals. To have done so would have restricted the choice of authors as to where they could publish their research by limiting them to pure Gold journals if they wanted to 'go gold', and we believe it would also have limited innovation in scholarly publishing. RCUK commitment to provide APC funding without restriction has already driven change within the publishing industry, with many major subscription journals now offering a hybrid-gold option for the journals that Research Council authors chose to publish in. It is unlikely that publishers would have made these changes if RCUK had restricted its APC funding to pure Gold journals.

RCUK considers that publishers need to ensure that subscriptions paid by institutions for hybrid journals reflect any additional revenue that the journal has received through the APCs that the institution has paid in order to publish 'gold' papers in that journal. RCUK will work with JISC Collections, representatives of the research library community and publishers to ensure that differential pricing of subscriptions is introduced at an institutional level.

Whilst RCUK does not restrict its policy to supporting only pure Gold journals, institutions are free to decide how they allocate their RCUK block grants, and this could include declining to make APC payments to specific hybrid Gold journals that institutions may consider guilty of 'double-dipping'.

Depending on the evidence for 'double-dipping' and the extent of differential pricing provided by publishers, RCUK will review its position on support for hybrid Gold as part of its 2014 review.

*The evidence we saw suggested that authors have little price sensitivity when they choose a journal in which to publish. We recommend that RCUK amends its policy to allow grant funds to be used for publishing charges, which is by far the most common model internationally. This would re-introduce price pressure by prompting authors to make an informed decision on where to publish. We recommend that the Government endorse genuine price transparency from publishers so that it is clear to subscribers which services and costs are and are not included in the overall subscription price, enabling subscribers to assess the costs and benefits of purchasing (paragraph 78).*

It is unfortunate that the report has conflated the issue of price sensitivity to subscription journals with the mechanism for support of APC payments. It is hoped that one of the benefits of introducing author side payments through APCs will be to introduce much greater price sensitivity in the research publications market, whilst still preserving the quality achieved by effective peer-review. How APC funding is made available to authors is a secondary issue, and RCUK is not aware of any evidence that providing block grants to institutions for payments of APCs is leading to authors making un-informed decisions as to where to publish.

The previous funding mechanism, where researchers requested APC funds as part of a grant application, did not work effectively. Funding provided within grants has to be used and accounted for within the lifetime of the grant. Papers do not arise neatly at a set point in the research process. Some arise before the research is finished, and some arise after the end of a grant, with some papers being the result of research carried out with multiple grants. Many researchers were not effectively using the grant funding route to request APC funds, whilst at the same time Research Councils were being approached by researchers who wanted to 'go gold' but who did not have access to APC funds in their grants. Restricting APC funding to those who had requested it in grants would have disenfranchised a large number of researchers funded in the past three to four years, who had not thought to request APC funds, but who now wanted the opportunity to 'go gold'.

RCUK made an explicit decision to introduce a block grant for APC payments as a way of recognising that papers arise throughout the whole research life cycle and not just within the lifetime of specific grants. The block grant is for all papers arising from Research Council funded research submitted for publication from 1 April 2013, regardless of when the research was funded.

It is the responsibility of institutions awarded the RCUK block grants to ensure that the APC funds are allocated in such a way as to enable researchers to make informed decisions as to where to publish, based in part of price sensitivity.

## Licensing

*We recommend that the Government reports the outcomes of its further investigations into licensing to us and communicates them clearly through RCUK as soon as possible in order to assuage concerns of authors and their institutions (paragraph 85).*

*RCUK should monitor complaints from authors and/or their institutions about breach of licensing conditions or inappropriate re-use of content, consider these at its review of open access policy, and identify appropriate action if necessary (paragraph 86).*

RCUK commits to communicating information on issues around licensing as and when the information becomes available. RCUK will also monitor any complaints relating to breach of licence conditions. Evidence of issues relating to licensing will be considered as part of the 2014 review, which will include identifying appropriate actions as necessary.

11 November 2013