

6

Fees, Charges and Levies

Charges for services provided by public sector organisations normally pass on the full cost of providing them. There is scope for charging more or less than this provided that Ministers choose to do so, the Assembly consents and there is full disclosure. Public sector organisations may also supply commercial services on commercial terms designed to work in fair competition with private sector providers. It is expected that there will be proper controls over how, when and at what level charges may be levied.

6.1 Introduction

6.1.1 Certain public goods and services are financed by charges rather than from general taxation. This can be a rational way to allocate resources because it signals to consumers that public services have real economic costs. Charging can thus help prevent waste through badly targeted consumption. It can also make comparisons with private sector services easier, promote competition, develop markets and generally promote financially sound behaviour in the public sector.

6.1.2 There are unavoidable reasons why policy on charging is important:

- charges substitute for taxation (or, in the short term, borrowing) as a means of government finance. Decisions on charging policy shall therefore be made with care;
- for this reason, the Assembly expects to consider legislation on whether charges shall be levied; how they should be structured; and on charge levels; and
- international standards¹ determine how income from charges is classified in the national accounts. Certain charges are treated as taxes.

6.1.3 As in other areas of managing public funds, the Assembly expects DoF to make sure that its interests are respected, including pursuit of efficiency and avoidance of waste or extravagance. Because Estimates and budgets are shown net of income, special effort is required to give the Assembly information about both gross and net costs, and about the sources and amounts of income.

6.2 Basic principle

6.2.1 The standard approach is to set charges to recover full costs. Cost should be calculated on an accruals basis, including overheads, depreciation (e.g. for start-up or improvement costs) and the cost of capital. Annex 6.1 sets out how to do this.

¹ Public accounts follow classification decisions taken by the Office for National Statistics (ONS), an independent organisation which is guided by the international standards set out in the European System of Accounts

6.2.2 This approach is simply intended to make sure that the Executive neither profits at the expense of consumers nor makes a loss for taxpayers to subsidise. It requires honesty about the policy objectives and rigorous transparency in the public interest.

6.2.3 As elsewhere, organisations supplying public services should always seek to control their costs so that public money is used efficiently and effectively. The impact of lower costs should normally be passed on to consumers in lower charges. Success in reducing costs is no excuse for avoiding the principles in this guidance.

6.2.4 This Chapter applies to all fees and charges set by Ministers and by an extensive range of public bodies: departments, trading funds, NDPBs, Health and Social Care bodies and most public corporations. Departments should be able to satisfy themselves that their Arm's Length Bodies (ALBs) can deliver the financial objectives for the services they charge for. This Chapter also applies when one public organisation supplies another with goods or services; and to certain statutory local government charges set by Ministers.

6.3 Setting a charge: standard practice

6.3.1 When a charge for a public service is to be made, it is normally necessary to rely on powers in primary legislation. The legislation should be designed so that Ministers decide, or have significant influence over, both the structure of the charge and its level. It is common to frame primary legislation in general terms, using secondary legislation to settle detail. Prior DoF approval is required for primary legislation empowering charges.

6.3.2 Even if the primary legislation does not call for it, the delegated authorities within which the organisation operates will often insist upon DoF consent for charges.

6.3.3 It is sometimes possible to rely on secondary legislation rather than primary to determine charges:

- an Order under s56 of the Finance Act 1973 can be used.
- restructuring of charges can sometimes be achieved by an Order under the Fees and Charges (Northern Ireland) Order 1988 No. 929 (N.I.8) (see Box 6.1).

Box 6.1: Restructuring charges using the Fees and Charges (Northern Ireland) Order 1988 No. 929 (N.I.8)

- the Order can extend or vary powers in existing primary legislation;
- it can permit restructuring by specifying factors to be taken into account when setting fees; and
- explicit prior DoF consent is always essential.

But

- the Order cannot create a power for new charges where no primary legislation exists;
- nor can it lift restrictions in (or in any other way undermine) primary legislation; and
- because such Orders amend primary legislation they would be unpopular in the Assembly and should therefore be rarely used.

6.3.4 When deciding the level of a charge, it is important to define:

- the range(s) of services for which a charge is to be made; and

- how any categories of service are to be differentiated, if at all, in setting charges.

6.3.5 The standard approach is that the same charge should apply to all users of a defined category of service, so recovering full costs for that category of service. Different charges may be set for objectively different categories of service costing different amounts to provide. Box 6.2 shows how this can work.

Box 6.2: How different charges can apply to different categories of service

Different categories could be recognised by:

- distinguishing supply differences, e.g. in person, by post or online;
- priorities, e.g. where a quicker service costs more;
- quality, e.g. charging more for a premium service with more features; and
- recognising structural differences, where it costs more to supply some consumers.

However, different groups of customers should not be charged different amounts for a service costing the same, e.g., charging firms more than individuals. Similarly, cross subsidies are not standard practice, e.g., charging large businesses more than small ones where the cost of supply is the same.

6.3.6 Charges within and among central government organisations shall normally also be at full cost, including the standard cost of capital. Any different approach would cause one party to make a profit or loss not planned in budgets agreed by Ministers collectively; while the customer organisation(s) would conversely face charges higher or lower than full costs. A number of objectionable consequences might flow from this. For instance, a question of subsidy controls/State aid could arise; or private sector consumers of the customer organisation might be charged distorted fees.

6.3.7 Shared services (Box 6.3) are a special case of charging within the public sector.

Box 6.3: Shared services

It is often possible to make economies of scale by arranging for several public service organisations to join together to deliver services cheaper, e.g. by using their joint purchasing power. One organisation supplies the other(s). Since all the parties should lower their costs, the Accounting Officer of each organisation should have no difficulty in recognising improved value for money for the Executive as a whole and so justify going ahead.

Public sector organisations supplying (or improving) shared services should consult DoF at an early stage of planning. Typically supplier organisations face the cost of setting up provision on a larger scale than they need for their own use. As with setting up any new service, plans in budgets should amortise initial costs so that they can be recovered over an appropriate period from the start of the service. More detail on shared services is in Section 7.5.

It is not acceptable for supplier organisations to plan to profit from, or subsidise, supply to customer organisations in the public sector. Nor is it acceptable for Accounting Officers to resist shared services just because the impact on their own organisation is not perceived to be favourable.

6.4 Setting a charge: non-standard approaches

6.4.1 Ministers' policy objectives for a service where a charge is levied may not fit the standard model in Section 6.3. In such cases it may be possible to deliver the policy objective in another way. Some ways of doing this are described below. Explicit DoF consent, and often formal legal authority, is always required for such variations. It is desirable to consult DoF at an early stage to make sure that the intended strategy can be delivered.

Charging below cost

6.4.2 Where Ministers decide to charge less than full cost, there should be an agreed plan to achieve full cost recovery within a reasonable period. Each case needs to be evaluated on its merits and obtain DoF clearance. If the subsidy is intended to last, this decision should be documented and periodically reconsidered.

Charging above cost

6.4.3 Office for National Statistics (ONS) normally classifies charges higher than the cost of provision, or not clearly related to a service to the charge payer, as taxes. Taxation is not generally a devolved matter and any proposal to use such charges requires explicit approval from the Chief Secretary to the Treasury.

Cross subsidies

6.4.4 Cross subsidies always involve a mixture of overcharging and undercharging, even if the net effect is to recover full costs for the service as a whole. So cross subsidised charges are normally classified as taxes. They always call for explicit Ministerial decision and Assembly approval through either primary legislation or use of the Fees and Charges (Northern Ireland) Order 1998 No. 929 (N.I.8).

Information services

6.4.5 In the public interest, information may be provided free or at low charge. This approach recognises the value of helping the general public obtain the data they require to function in the modern world. There are some exceptions - see Annex 6.2.

6.5 Levies

6.5.1 Compulsory levies, e.g. payments for licences awarded by statutory regulators, or duties to finance industry specific research foundations, are normally classified as taxation. Such levies may be justified in the wider public interest, not because they provide a direct beneficial service to those who pay them. Depending on the circumstances, DoF may allow such bodies to retain the fees charged if this approach is efficient and in the public interest.

6.5.2 As with other fees and charges, levies should be designed to recover full costs. If the legislation permits, the charge can cover the costs of the statutory body, e.g. a regulator could recover the cost of registration to provide a licence and of associated supervision. It may be appropriate to charge different levies to different kinds of licensees, depending on the cost of providing different kinds of licences (see Box 6.2).

6.6 Commercial services

6.6.1 Some public sector services are discretionary, i.e. no statute underpins them. Services of this kind are often supplied into competitive markets, though sometimes the public sector supplier has a monopoly or other natural advantage.

6.6.2 Charges for these services shall be set at a commercial rate. The rate shall deliver a commercial return on the use of the public resources deployed in supplying the service. So the financial target shall be in line with market practice, using a risk weighted rate of return on capital relevant to the sector concerned. The rate of return used in pricing calculations for sales into commercial markets shall be:

- for sales into commercial markets, in line with competitors' assessment of their business risk, rising to higher rates for more risky activities; or
- where a public sector body supplies another, or operates in a market without competitors, the standard rate for the cost of capital (see Annex 6.1).

6.6.3 If a publicly provided commercial service does not deliver its target rate of return, outstanding deficits should be recovered, e.g. by adjusting charges. Any objective short of achieving the target rate of return calls for Ministerial agreement and shall be approved by DoF. But discretionary services should never undermine the supplier organisation's public duties, including its financial objective(s).

6.6.4 It is important for public suppliers of commercial services to respect competition law. Otherwise public services using resources acquired with public funds might disturb or distort the fair operation of the market, especially where the public sector provider might be in a dominant position: see Annex 6.3.

6.7 Disclosure

6.7.1 It is important that the Assembly is fully informed about use of charges. Each year the Annual Report of the charging organisation should give:

- the amounts charged;
- full costs and unit costs;
- total income received;
- the nature and extent of any subsidies and/or overcharging; and
- the financial objectives and how far they have been met.

6.7.2 To keep the Assembly properly informed, Estimates should display details of expected income from charges. The *Northern Ireland Estimates Manual* explains how the controls work.

6.7.3 The *Government Financial Reporting Manual (FReM)* sets out the information public sector organisations should publish in their accounts. It should include analysis of income.

6.8 Taking stock

6.8.1 As with any other use of public resources, it is important to monitor performance so that the undertaking can be adjusted as necessary to stay on track. It is good practice to review the service routinely at least once a year, to check, and if appropriate revise, the charging level. At intervals, a more fundamental review is usually appropriate, e.g. on a

timetable compatible with the dynamics of the service. Box 6.4 suggests some issues to examine.

Box 6.4: Reviewing a public service for which a charge is made

- Is it still right for a public sector body to use public resources to supply the service?
- Are there any related services for which there might be a case for charging?
- Does the business structure still make sense?
- Are the assets used for the service adequate?
- How can efficiency and effectiveness be improved so that charges can be lower or offer better value?
- Is the financial objective right?
- For a statutory (or other public sector) service, if full costs are not recovered, why not?
- For a commercial service, does the target rate of return still reflect market rates?
- Is it still appropriate to net off against costs any agreed charges above cost?
- Is there scope to secure economies of scale by developing a shared service?
- What developments might change the business climate?
- Do any discretionary services remain a good fit for the business model and wider objectives?
- Should any underused assets be redeployed, used to make a commercial return, or sold?
- Would another business model (e.g. licensing, contracting out, privatising) be better?

Annex 6.1	How to calculate charges
Annex 6.2	Charging for information
Annex 6.3	Competition law

A6.1

Annex 6.1 How to calculate charges

This Annex discusses how to calculate the cost of public services for which a fee is charged.

Introducing a new or updated charge bearing service

A6.1.1 Public sector organisations planning to set up or update a service for which a fee may be charged shall ensure early engagement with DoF. Advice should be sought at the earliest opportunity if there are any variations on the standard model. Proposed variations may be agreed in certain instances, considering each on its merits. Each will need to be justified in the public interest and on value for money grounds.

A6.1.2 Practical issues which organisations will need to consider when setting up or refreshing a charge bearing service include: the definition of the service and its rationale; the proposed financial objective (for instance, full cost recovery; 70% of full cost plus a 30% public subsidy); how the service is to be delivered and which organisation is to deliver it; whether the provider should retain any income from charges; the proposed charging structure (for instance, a single service or several sub-services). Organisations will also need to refer to the checklist in Box 4.8 of factors to consider when planning policies and projects.

Measuring the full cost of a service

A6.1.3 With agreed exceptions, fees for services should generally be charged at cost, sometimes with an explicit additional element to match the returns of commercial competitors. So to set fees for public services it is essential to calculate the cost of providing them accurately.

A6.1.4 The main features to be taken into account in measuring the annual cost of a service are set out in Box A6.1A. Not everything in the list will apply to every service and the list may not be exhaustive. It is important that the calculation is comprehensive, including all relevant overheads and non-cash items.

A6.1.5 So far as possible the calculation should use actual costs, where they are known. For services just starting, there may be no alternative to using best estimates, geared to estimated consumption patterns.

A6.1.6 Start-up costs which are capitalised in the accounts and the cost of fixed capital items are scored in the accounts in full. These costs should be attributed to the cost of the service as the depreciated value each year.

A6.1.7 Start-up costs which cannot be capitalised in the accounts are scored as they are incurred. Such costs may be recovered through fees and charges by spreading them over the first few years of service provision. It is also good practice to set fees to recover costs which cannot be capitalised in the accounts and which have been incurred to improve efficiency and effectiveness so that charges are lower or offer better value. This needs explicit DoF agreement and may require statutory backing.

A6.1.8 For services which are charged at different rates, the same procedure should be used to set the different rates. That is, the cost of any premium service should be objectively justifiable by its additional cost (e.g. where faster shipping is offered); or conversely any discount should be justifiable by saving to the supplier (e.g. using the internet rather than over the counter). Note, however, that sometimes the legislation permits differential pricing unrelated to the relative underlying costs – though even then there should be good policy reason for the difference.

Box A6.1A: Elements to cost in measuring fees

- accommodation, including capital charges for freehold properties;
- fixtures and fittings;
- maintenance, including cleaning;
- utilities;
- office equipment, including IT systems;
- postage, printing, telecommunications;
- total employment costs of those providing the service, including training;
- overheads, e.g. (shares of) payroll, audit, top management costs, legal services, etc;
- raw materials and stocks;
- research and development;
- depreciation of start-up and one-off capital items;
- taxes: VAT, rates, stamp duty, etc;
- capital charges;
- notional or actual insurance premiums;
- fees to sub-contractors;
- distribution costs, including transport;
- advertising;
- bad debts;
- compliance and monitoring costs; and
- provisions.

but not

- externalities imposed on society (e.g. costs from pollution and crime);
- costs of policy work (other than policy on the executive delivery of the service);
- enforcement costs;
- replacement costs of items notionally insured; and
- start-up costs (those which are capitalised in the accounts) and one-off capital items.

Financial objectives

A6.1.9 The standard approach to setting charges for public services (including services supplied by one public sector organisation to another) is full cost recovery. It normally means recovering the standard cost of capital, currently 3.5% in real terms. Some exceptions are noted in Section 6.4.

A6.1.10 One other exception is commercial services, i.e. those services which compete or may compete with private sector suppliers of similar services. These should aim to recover full costs including a real rate of return in line with the rates achieved by comparable businesses facing a similar level of risk. The normal range of rates is 5-10% but rates as high as 15% may be appropriate for the very highest risk businesses.

A6.1.11 Great care should be taken in pricing commercial services where public sector suppliers have a natural dominant position. The market prices of competitors will often be a good guide to the appropriate rate of return if there is genuine competition in the market. Where there are limited numbers of buyers and sellers in a market, it may be better to take other factors into account as well. These might include past performance, the degree of risk in the underlying activity and issues bearing on future performance.

Accidental surpluses and deficits

A6.1.12 Despite every effort to measure and forecast costs, surpluses and deficits are bound to arise from time to time. Causes may include variations in demand, in year cost changes, and so on. It is good practice to consider mid-year adjustment to fee levels if this is feasible.

A6.1.13 It is also good practice to set fees to recover accumulated past deficits. This may require statutory backing through the use of the Fees and Charges (Northern Ireland) Order 1988 No 929 (N.I.8) (see Paragraph 6.3.3).

A6.1.14 Where significant surpluses have arisen, these should usually be refunded to the payees at the earliest opportunity.

A6.2

Annex 6.2 Charging for information

This annex discusses how public sector organisations should charge for the use and re-use of information, including data, text, images or sound recordings. Much information about public services is available for free. However, when charging for information, it is generally at full cost although there are exceptions.

A6.2.1 The policy is that much information about public services should be made available either free or at low cost, in the public interest. Most public organisations freely post information about their activities and services on the internet. There should be no additional charge for material made available to meet the needs of particular groups of people e.g. Braille or other language versions. More extensive paper or digital versions of information may carry a charge to cover the costs of production.

A6.2.2 Information products have an unusual combination of properties: typically, high cost of production combined with low cost of reproduction. So information products are frequently licensed for the use of many customers simultaneously rather than being sold or otherwise transferred. This can make for complex charging arrangements to recover costs accurately.

A6.2.3 It is good practice to make available sufficient recent legislation, public policy announcements, consultation documents and supporting material to understand the business of each public sector organisation.

A6.2.4 Anything originating in Crown bodies, including many public sector organisations, has the protection of Crown copyright. Most Crown copyright information is made available at no charge under Open Government Licence terms.

A6.2.5 Public sector organisations should maintain information asset registers as part of their asset management strategy.

Rights to access

A6.2.6 The terms on which information is made available should be made clear at the point of sale or licensing. There is a clear public interest in maximising access to much public sector material, and this should be borne in mind when deciding what charges should be levied. For this reason many publications can be re-used by others free of charge. However, public sector organisations should take account of copyright issues, using legal advice as necessary.

A6.2.7 Most public sector organisations choose, as a matter of policy, to make available on the internet copies of information disclosed in response to requests under the Freedom of Information Act 2000 and Environment Information Regulations 2004. Public sector bodies should also note the provisions of the amendments (introduced by the Protection of Freedoms Act 2012) to sections 11-11B and 19 of the Freedom of Information Act 2000 in respect of relevant datasets, where there are statutory duties relating to the format and

supply of requested datasets and to their listing in publication schemes, and to charges under a specified licence.

Information carrying charges

A6.2.8 A number of public sector organisations supply information for which charges are made. These include:

- services commissioned in response to particular requests;
- services where there are statutory powers to charge;
- information sold or licensed by trading funds (although they must comply with the rules set out by the re-use regulations – see below);
- publications processing publicly gathered data for the convenience of the public, through editing, reclassification or other analysis; and
- retrieval software, e.g. published as a key to using compiled data.

A6.2.9 Public sector organisations can charge for supplying some information which recipients intend to process, e.g., for publication in another format. Licences supplied in this way may take a number of forms, including royalties on each additional copy sold in the case of the most commercial applications. The norm is:

- **Raw data:** license and charge at marginal cost.
- **Value added data** and information supplied by trading funds: charge at full cost including an appropriate rate of return where this is permitted under the re-use regulations (see paragraph A6.2.10).

The Re-use of Public Sector Information Regulations 2015

A6.2.10 The Re-use of Public Sector Information Regulations 2015 set out the circumstances where public sector bodies may charge above marginal cost for licensing the re-use of information. Where it is intended to charge for the re-use of information within the scope of the regulations, it is important to comply with those regulations, paying attention to the clauses that cover requirements to generate revenue.

A6.2.11 Trading funds, for example, may charge for information where the customer intends to duplicate or process (re-use) such material for profit. In such cases, Crown bodies need to apply for a delegation of authority from the Keeper of Public Records to license the information.

A6.2.12 The regulations set out that “charges for re-use must, so far as is reasonably practicable, be calculated in accordance with the accounting principles applicable to the public sector body”. See Annex 6.3 for further detail on marginal cost pricing.

A6.3

Annex 6.3 Competition law

Public sector organisations need to take care if they provide services which compete with private sector suppliers of similar services, or may do so. It is important that they respect the requirements of competition law.

A6.3.1 UK competition law is founded on the Competition Act 1998 which prohibits business agreements that prevent, restrict or distort competition in trade in the UK. They also disallow market abuse on the part of any business in a dominant position² in a market.

A6.3.2 In particular, the following kinds of unfair competition are not allowed:

- very high prices that may exploit market power;
- very low prices that may exclude competitors;
- differential prices (or other terms and conditions of service) for the same product to different customers (except for objective reasons such as differences in quality or quantity) that distort competition; or
- refusing to supply competitors without objective justification such as poor customer credit worthiness.

Pricing in competitive markets

A6.3.3 Services should be costed in line with the normal rules for full cost recovery. Charges should be set to achieve the appropriate financial objective, normally at least recovering full costs.

A6.3.4 Some public sector organisations both supply data for use in providing public services and sell services using their data in competition with commercial firms. Such organisations need to take particular care not to abuse their competitive position in the market, especially if it is dominant. This could happen if a dominant supplier organisation allocated its costs in such a way that an efficient competitor could not operate profitably.

A6.3.5 There can be circumstances which merit departing from the normal principle of full cost recovery. The justification is normally to achieve greater efficiency and sensitivity in responding to patterns of demand or cost, e.g.:

- if the service cannot be expanded, but customers are willing to pay more, there may be a case for increasing the price;
- if there is excess capacity and customers are not willing to pay the current charge, there may be a case for reducing the charge or reducing output; or
- incentive charging, i.e. charging below cost to encourage demand, or above cost to discourage it.

² A business is deemed to be in a dominant position if it can generally behave independently of competitive pressures in its field.

A6.3.6 If a public sector organisation decides not to recover full costs for a while, it should take care that:

- its prices are not reduced in such a way as to stifle competition (a rapid cut in prices could be unfair to private sector competitors);
- its products and services are not charged at less than their average variable costs or short run marginal costs (though this does not preclude charging at less than break even for a short period, e.g. to match competition);
- the charging strategy is compatible with full cost recovery over the medium term. This may mean ceasing to offer a service which has become unviable against the competition;
- any cross subsidies between services should not drive prices below average variable cost or short run marginal cost; and
- if, exceptionally, a supplier charges below full cost because it has surplus capacity, there must be broader benefits and prices should not fall below average variable or short run marginal cost.

Delivering financial objectives

A6.3.7 Public sector organisations should normally plan to achieve their financial objectives. If necessary this may mean adjusting prices or managing the cost structure of the supply to deliver adequate efficiency. In particular, if a public sector supplier forecasts a deficit, it should take remedial action promptly.

A6.3.8 If a public sector supplier moves away from full cost charging, there may be a case for reviewing its financial objective. Normally any such change needs the agreement of both the responsible Minister and DoF.

Taking things further

A6.3.9 More generally, it is good practice for bodies supplying goods or services into competitive markets to seek legal advice on the application of competition law at an early stage.