Joint BBSRC & MRC response to the Home Office Consultation on the review of Section 24 of the Animals (Scientific Procedures) Act 1986

(Questions are listed as in the online form, through which responses will be submitted. The comments will go in the text boxes provided)

Q1: Do you believe we should retain Section 24 in its current form? Please provide comments to explain your answer.

Yes/No/don't know

Comments: We strongly support the commitment to greater openness and transparency, and section 24 in its current form is not consistent with this aim. The lack of clarity on who Section 24 applies to has been problematic in MRC's experience of responding to requests under FOIA for information that we hold in relation to the ASPA regulatory process. As an organisation subject to FOIA that employs people with functions under ASPA (eg licence holders, Named Animal Care and Welfare Officers) it has been difficult to establish clearly whether providing data, information or copies of documents related to the operation of ASPA in response to FOIA requests might put members of our staff at risk of prosecution under s24, thus potentially limiting options for transparency about animal research.

Option 2(a): Repeal S24 and amend ASPA creating a criminal offence of malicious disclosure of information about the use of animals in scientific research

Q2: To what extent do you believe, if at all, that this options meets the Government's primary objective of increasing openness and transparency about the use of animals in scientific research?

Very much so/to some extent/Not at all/Don't know

Comments: It is likely that more information would be subject to release into the public domain, thus increasing transparency. However, the publication of non-technical summaries, written so as to be readily understood by non-expert readers, as required under the current legislation, and making these readily accessible and searchable, is likely to do more to promote transparency. Much of the information in formal ASPA documents such as project licence applications is very detailed and technical and not readily understood by those who are not expert in the specific area of research (this applies as much to researchers working in different areas as it does to policy makers and the public). In general redaction of documents released under FOIA to remove material (both content and context) covered by exemptions can make them difficult to understand, even by experts in related areas. This difficulty is amplified when such documents are published or circulated without the explanatory information that often accompanies FOIA responses which aims to provide relevant background. Unless forms are restructured such that information that can be released is separate and can be read independently while minimising duplication, then releasing information under FOIA is not likely to achieve meaningful advances in transparency.

Q3: To what extent do you believe, if at all, that this options appropriately clarifies who and what is covered by the legislation?

Very much so/to some extent/not at all/Don't know

We assume that the intention would be to make the offence apply equally to everyone holding information related to the operation of ASPA, but it is not clear from the consultation document, nor is it clear whether it applies only to information provided or held in relation to the operation of ASPA or to all information about animals in scientific research. It is possible that very similar or identical information on proposed experiments may be in ASPA project licence applications and in grant applications to funding bodies, and may thus be held by different bodies, only some of which may be subject to FOIA, for different purposes as well as by the research organisation at which the proposed work would take place.

This option relies upon FOIA exemptions to protect intellectual property and other potentially sensitive information, which can be open to varied interpretation, especially those subject to a public interest test.

Q4: To what extent do you believe, if at all, that this option provides appropriate protection for sensitive information (e.g people and place details and intellectual property)

Very much so/to some extent/not at all/Don't know

Comments: This option does not seem to give enough clarity to adequately protect Intellectual Property, as the current FOIA exemptions do not refer to intellectual property specifically. We strongly support the need to protect a broad spectrum of intellectual property such as novel ideas and hypotheses, research plans and novel methodologies. As the consultation document points out, these are research scientists' most valued assets, and any concern that they might not be adequately protected would mean scientists would be reluctant to provide such information in licence applications, which would have a significant impact on the effectiveness of regulation. In our experience, exemptions 22, 36, 41 and 43 of FOIA (information intended for future publication, effective conduct of public affairs, information provided in confidence or commercial interests) are all applicable to protect intellectual property but may not adequately cover the full spectrum of information that might be included in a description of future research plans at the level of detail currently required in a licence application.

The exemption for personal information under FOIA allows some protection of information about people, but protection of information about places under FOIA largely relies on the health and safety exemption and requires that evidence of active or recent threats against a particular site can be demonstrated. Even when information on people or places is redacted the level of detail of information in ASPA licence applications may lead to a risk of identification of people and places when combined with other publicly available information.

Q5: Would this option change any processes – directly or indirectly – associated with operating under ASPA, compared to the current regime (for example, a change in the way a licence application is constructed). If yes, please provide comments

Yes/no/don't know

Licence application forms must be restructured to clearly identify information that is confidential, while minimising duplication and ensuring appropriate guidance is consistently applied. Only the research team and the institution are in a position to define accurately what information in a licence application constitutes valuable

intellectual property, both at the time of submission and as the research progresses. This will also change over time as the work proceeds and findings are published. The redaction of documents for release under FOIA would represent a time-consuming and expensive process without such restructuring, and researchers may reduce significantly the amount of information they provide, because of uncertainty about whether IP might not be adequately protected, which is likely to be detrimental to efficient and effective regulation and possibly also animal welfare.

It is also possible that the lack of protection might change the way records are written and kept at organisations undertaking animal research.

Option 2b: As option 2a. The amended legislative framework would additionally include a statutory prohibition on disclosure of information relating only to people, places and intellectual property.

Q6: To what extent do you believe, if at all, that this options meets the Government's primary objective of increasing openness and transparency about the use of animals in scientific research?

Very much so/to some extent/not at all/Don't know

See comments under Q2.

Q7: To what extent do you believe, if at all, that this options appropriately clarifies who and what is covered by the legislation?

Very much so/to some extent/not at all/Don't know

The statutory prohibition clarifies what is covered, provided there is a clear definition of what constitutes intellectual property. Regarding who is covered, it is not clear whether this would apply to everyone holding information in connection with the operation of ASPA or only to Home Office officials.

Q8: To what extent do you believe, if at all, that this option provides appropriate protection for sensitive information (e.g. people and place details and intellectual property)

Very much so/to some extent/not at all/Don't know

Comments: Provided an appropriate definition of intellectual property, covering novel ideas and hypotheses and experimental plans, is included, and the research teams can identify sensitive information, including that which constitutes intellectual property, this option would provide reasonable protection against release of information without permission regardless of the motivation behind the release. This is therefore our preferred option. However, if a statutory bar applies to institutions other than the Home Office it is important that it does not restrict the ability of the researchers themselves to publish or share with others their own intellectual property which they have provided in licence applications or other ASPA related documentation.

Q9: Do you agree that the additional statutory prohibition on disclosure is necessary to protect certain types of sensitive information?

Very much so/to some extent/not at all/Don't know

Comments: Protection of intellectual property is assured under this option, provided a suitably broad definition of intellectual property is used and measures are in place to ensure that research teams and institutions are the ones to identify what information constitutes their intellectual property.

Q10: Would this option change any processes – directly or indirectly – associated with operating under ASPA, compared to the current regime (for example, a change in the way a licence application is constructed). If yes, please provide comments.

Yes/No/Don't know

Comments: While relying less on the operation of FOIA exemptions than option 2a, this option would still require a means for research teams and their institutions to identify which information in licence applications and other documentation constitutes intellectual property at the application stage. Otherwise it could lead to a significant additional administrative burden on both ASRU staff and researchers when responding to FOIA requests. See response to Q5.

Option 3: Repeal Section 24

Q11: To what extent do you believe, if at all, that this options meets the Government's primary objective of increasing openness and transparency about the use of animals in scientific research?

Very much so/to some extent/Not at all/Don't know

Comments: This option would potentially lead to the release of significant amounts of information, but given the highly detailed and technical nature of the documents this may not lead to genuine transparency for the public.

Q12: To what extent do you believe, if at all, that this options appropriately clarifies who and what is covered by the legislation?

Very much so/to some extent/not at all/Don't know

Comments: The FOIA would apply, and the coverage of this appears to be well understood, although the practical operation of the recent change introduced under the Intellectual Property Act is yet to be clarified.

Q13: To what extent do you believe, if at all, that this option provides appropriate protection for sensitive information (e.g people and place details and intellectual property)

Very much so/to some extent/not at all/Don't know

Comments: There is some protection provided by exemptions available under FOIA, but the ability to protect the full range of intellectual property and information about individuals is limited. It depends on Home Office staff being able to reliably identify what information should be protected, and also on how the exemptions are applied, and the extent to which challenges to exemptions are defended in the tribunal system to establish case law.

Q14: Would this option change any processes – directly or indirectly – associated with operating under ASPA, compared to the current regime (for example, a change in the way a licence application is constructed). If yes, please provide comments.

Yes/No/Don't know

Comments: This would create significant difficulties for licence applicants unless the level of detail required in project licences was substantially reduced and the applications were constructed so as to make it clear which information should be kept confidential.

This option is likely to create a significantly greater administrative burden for ASRU in responding to FOIA requests; redaction of exempted information can be very time consuming if it is scattered throughout a document, and detailed consultation with the research team is required to identify what information should be protected.

Impact Assessment:

Q15: Are there any additional costs or benefits that have not been identified in the impact assessment but should be taken into consideration? If yes, please state what they are, your reasoning for including them and any information which would help to quantify the impact, where possible.

Yes/No/Don't know

The costs of responding to FOIA requests seem to be significantly underestimated, based on our experience. Redaction of long and complicated documents like a project licence application can take many hours of work, and require access to significant amounts of expert legal advice on operation of exemptions under the act. Officials will need to consult with the whole research team in order to identify what information constitutes valuable intellectual property, what can be released, and what may already have been published. Taking the research team away from working on a project is likely to cause delay and increase costs for the research organisation, especially as FOIA requests have to be dealt with in a short time and cannot be planned for.

No allowance has been made for the costs of legal advice and representation when decisions to withhold information by applying exemptions are challenged through the tribunal system. Such challenges are likely given this will be a new area of application of the FOIA. These costs can amount to tens of thousands of pounds. If ASRU were to choose not to defend against such challenges it would result in a significant loss of confidence in the scientific community which could put at risk a significant sector of the UK life sciences economy.

Q16: To what extent do you agree or disagree with the risks and assumptions made in the impact assessment?

Strongly agree/Agree/Disagree/Strongly disagree/Don't know

Q17: Can you provide any further information which may help to quantify the scale or direction of the costs or benefits, as identified in the impact assessment, as a result of these proposals?

The direct costs of FOIA compliance are addressed in the response to Q15.

There is a significant risk of a loss of confidence of the commercial research sector in the security of their valuable information, and a perception of an increase in regulatory burden. This could have a large cost to the UK economy as it would be a disincentive for bioscience companies to invest in research and development in the UK, and even drive current UK based work overseas. This economic cost is difficult to quantify. If research is driven to countries with less stringent regulation of animal research this could also have animal welfare costs.

Further questions

Q18: With regards to options 2a and 2b, in what instances do you believe disclosure of information about the use of animals in scientific research is malicious? Please provide comments to explain your answer, using clear examples where possible.

Where there is intention to disrupt, or encourage others to disrupt, licenced animal research or to side-step designated regulatory procedures of HO, police or parliament and take direct action against institutions or people working under an ASPA licence. e.g. An animal rights campaigner releases a name or place when highlighting an alleged breach of regulations under ASPA with the aim of encouraging disruptive protest activity or bringing the institution into disrepute.

Where there is intention to gain commercial advantage or cause commercial disadvantage by release of IP.

Q19: What do you believe should be covered by the term 'intellectual property'?

"Intellectual property" should include the breadth of material described in the consultation document, i.e. novel ideas, protocols, procedures, experiments (including data), inventions and material that may become subject to copyright or patentable.

Q20: Do you consider that S24 of ASPA, being a statutory bar and an absolute exemption, provides greater protection for intellectual property than other qualifying FOIA exemptions?

Yes

Q21: Are there any other views or comments that you would like to add in relation to the review of s24 that were not covered by the other questions in this consultation

Of the four options presented in the document our preferred option is 2b.

We contributed to the development of, and support, the response to the consultation provided by the UK Biosciences Coalition, of which we are members.

Q22: Which of the following best describes the organisation of professional interest that you represent?

Other (Research Funding Organisation).

Medical Research Council and Biotechnology and Biological Sciences Research Council.