

2015 No. 1415

PUBLIC SECTOR INFORMATION

The Re-use of Public Sector Information Regulations 2015

Made - - - - 24th June 2015

Laid before Parliament 25th June 2015

Coming into force - - 18th July 2015

The Secretary of State is designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the re-use of public sector information.

The Secretary of State makes the following Regulations in exercise of the powers conferred by that section.

Citation and commencement

1. These Regulations may be cited as the Re-use of Public Sector Information Regulations 2015 and come into force on 18th July 2015.

Interpretation

2. In these Regulations—

“the 1998 Act” means the Data Protection Act 1998^(c);

“the 2000 Act” means the Freedom of Information Act 2000^(d);

“the 2002 Act” means the Freedom of Information (Scotland) Act 2002^(e);

“the 2004 Regulations” means the Environmental Information Regulations 2004^(f);

“the 2004 Scottish Regulations” means the Environmental Information (Scotland) Regulations 2004^(g);

“the 2009 Regulations” means the INSPIRE Regulations 2009^(h);

“the 2009 Scottish Regulations” means the INSPIRE (Scotland) Regulations 2009⁽ⁱ⁾;

“applicant” means a person who makes a request for re-use of a document to a public sector body;

(a) S.I. 2014/1362.

(b) 1972 c. 68.

(c) 1998 c. 29.

(d) 2000 c. 36.

(e) 2002 asp 13.

(f) S.I. 2004/3391.

(g) S.S.I. 2004/520.

(h) S.I. 2009/3157, as amended by S.I. 2012/1672.

(i) S.S.I. 2009/440, as amended by S.S.I. 2012/284.

“document” means any information recorded in any form, including any part of such information, whether in writing or stored in electronic form or as a sound, visual or audio-visual recording, other than a computer program;

“formal open standard” means a standard which has been laid down in written form, detailing specifications for the requirements of how to ensure software interoperability;

“government department” includes a Northern Ireland department and any other body or authority exercising statutory functions on behalf of the Crown;

“information access legislation” means the 1998 Act, the 2000 Act, the 2002 Act, the 2004 Regulations, the 2004 Scottish Regulations, the 2009 Regulations and the 2009 Scottish Regulations;

“machine-readable format” means a file format structured so that software applications can easily identify, recognise and extract specific data, including individual statements of fact, and their internal structure;

“open format” means a file format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents;

“public sector body” has the meaning given by regulation 3;

“relevant intellectual property rights” means any of the following rights—

- (a) copyright (within the meaning of section 1 of the Copyright, Designs and Patents Act 1988(a));
- (b) database right (within the meaning of regulation 13 of the Copyright and Rights in Databases Regulations 1997(b));
- (c) publication right (within the meaning of regulation 16 of the Copyright and Related Rights Regulations 1996(c));
- (d) rights in performances (meaning the rights conferred by Part 2 of the Copyright, Designs and Patents Act 1988(d));

“re-use” and cognate expressions have the meaning given in regulation 4;

“university” means any public sector body that provides post-secondary school higher education leading to academic degrees;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971(e) in any part of the United Kingdom;

“writing” includes text which is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

Public Sector Bodies

3.—(1) For the purposes of these Regulations each of the following is a public sector body—

- (a) a Minister of the Crown;
- (b) a government department;
- (c) the Corporate Officer of the House of Commons;
- (d) the Corporate Officer of the House of Lords;

(a) 1988 c. 48. Section 1 was amended by S.I. 2003/2498.

(b) S.I. 1997/3032.

(c) S.I. 1996/2967. Regulation 16 was amended by S.I. 2003/2498 and 2006/1028.

(d) 1988 c. 48.

(e) 1971 c. 80.

- (e) the Northern Ireland Assembly Commission;
 - (f) Scottish Ministers;
 - (g) the Scottish Parliament;
 - (h) the Scottish Parliamentary Corporate Body;
 - (i) the National Assembly for Wales Commission;
 - (j) Welsh Ministers;
 - (k) a local authority;
 - (l) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004^(a) or a scheme to which section 4 of that Act applies;
 - (m) the Northern Ireland Fire and Rescue Service Board;
 - (n) a police and crime commissioner elected under section 1 of the Police Reform and Social Responsibility Act 2011^(b);
 - (o) a chief constable of a police force appointed under section 2 of that Act;
 - (p) The Mayor’s Office for Policing and Crime established under section 3 of that Act;
 - (q) the Commissioner of Police of the Metropolis appointed under section 4 of that Act;
 - (r) the Scottish Police Authority established under section 1 of the Police and Fire Reform (Scotland) Act 2012^(c);
 - (s) the Police Service of Scotland established under section 6 of that Act;
 - (t) the Northern Ireland Policing Board;
 - (u) an authority established under section 10 of the Local Government Act 1985^(d);
 - (v) a joint authority established by Part IV of that Act;
 - (w) any body established pursuant to an order under section 67 of that Act;
 - (x) the Broads Authority;
 - (y) any joint board the constituent members of which consist of any of the bodies specified in paragraphs (k) and (l), (n) to (s) and (u) to (x);
 - (z) a National Park authority established under section 63 of the Environment Act 1995^(e);
 - (aa) a corporation established or a group of individuals appointed to act together for the specific purposes of meeting needs in the general interest, not having an industrial or commercial character, and—
 - (i) financed wholly or mainly by another public sector body; or
 - (ii) subject to management supervision by another public sector body; or
 - (iii) more than half of the board of directors or members of which, or in the case of a group of individuals, more than half of those individuals, are appointed by another public sector body;
 - (bb) an association of or formed by one or more public sector bodies;
 - (cc) a community justice authority established under section 3 of the Management of Offenders etc. (Scotland) Act 2005^(f).
- (2) In the application of these Regulations to England, “local authority” means—
- (a) a county council, a district council, a London borough council, a parish council or the Council of the Isles of Scilly;

(a) 2004 c. 21. Sections 2 and 4 were amended by the Local Government and Public Involvement in Health Act 2007 (c. 28) and the Local Democracy, Economic Development and Construction Act 2009 (c. 20).

(b) 2011 c. 13.

(c) 2012 asp 8.

(d) 1985 c. 51. Section 10 was amended by the Environmental Protection Act 1990 (c. 43).

(e) 1995 c. 25.

(f) 2005 asp 14.

- (b) the Common Council of the City of London in its capacity as local authority or police authority;
- (c) the Greater London Authority or a functional body within the meaning of the Greater London Authority Act 1999(a).

(3) In the application of these Regulations to Wales, “local authority” means a county council, a county borough council or a community council.

(4) In the application of these Regulations to Scotland, “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(b) and also includes a joint board or joint committee within the meaning of that section.

(5) In the application of these Regulations to Northern Ireland, “local authority” means a district council within the meaning of the Local Government Act (Northern Ireland) 1972(c).

Re-use of documents

4.—(1) Subject to paragraph (2), re-use means the use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body’s public task for which the document was produced.

(2) Re-use shall not include—

- (a) the transfer for use of a document within a public sector body for the purpose of carrying out its own public task; or
- (b) the transfer for use of a document from one public sector body to another for the purpose of either public sector body carrying out its public task.

Exclusions

5.—(1) These Regulations do not apply to a document where—

- (a) the activity of supplying the document is one which falls outside the public task of the public sector body, provided that the scope of the public task of that body is transparent and subject to review; or
- (b) a third party owns relevant intellectual property rights in the document.

(2) These Regulations do not apply to a document unless it—

- (a) has been identified by the public sector body as being available for re-use;
- (b) has been provided to the applicant; or
- (c) is accessible by means other than by making a request for it within the meaning of the 1998 Act, the 2000 Act (or where appropriate the 2002 Act) or the 2004 Regulations (or where appropriate the 2004 Scottish Regulations).

(3) These Regulations do not apply to documents held by—

- (a) public service broadcasters and their subsidiaries, and other bodies and their subsidiaries for the purposes of the provision of programme services or the conduct of any activities which a public service broadcaster is required or empowered to provide or to engage in by or under any enactment or other public instrument;
- (b) educational and research establishments including organisations established for the transfer of research results, schools and universities (except university libraries); or
- (c) cultural establishments, other than libraries, museums and archives.

(4) For the purposes of paragraph (3), “public service broadcaster” has the meaning given by section 264(12) of the Communications Act 2003(d), “subsidiary” has the meaning given by

(a) 1999 c. 29.
(b) 1994 c. 39
(c) 1972 c. 9.
(d) 2003 c. 21.

section 1159 of the Companies Act 2006^(a) and “programme services” has the meaning given by section 405(1) of the Communications Act 2003.

(5) These Regulations do not apply in any situation in which a person is under a legal obligation to prove an interest in order to gain access to documents.

(6) These Regulations do not apply to parts of documents containing only logos, crests or insignia.

(7) These Regulations do not apply to—

(a) a document where access is excluded or restricted under information access legislation including on the grounds of protection of personal data, protection of national security, defence or public security, statistical confidentiality or commercial confidentiality (including business, professional or company secrets); or

(b) any part of a document which—

(i) is accessible under information access legislation; and

(ii) contains personal data the re-use of which would be incompatible with the law concerning the protection of individuals with regard to the processing of personal data.

Request for re-use

6. A person who wishes to make a request for re-use must ensure that the request—

(a) is in writing;

(b) states the name of the applicant and an address for correspondence;

(c) specifies the document requested; and

(d) states the purpose for which the document is to be re-used.

Permitting re-use

7.—(1) Subject to paragraph (2), a public sector body must permit re-use where it receives a request made in accordance with regulation 6.

(2) A public sector body which is a library (including a university library), museum or archive holding intellectual property rights in a document may permit re-use of that document.

(3) Where a public sector body permits re-use, it must do so in accordance with regulations 11 to 16.

Responding to a request for re-use

8.—(1) A public sector body must respond to a request for re-use promptly and in any event before the end of the twentieth working day beginning with the day after receipt.

(2) Where documents requested for re-use are extensive in quantity or the request raises complex issues the public sector body may extend the period for responding by such time as is reasonable in the circumstances.

(3) Where paragraph (2) applies, the public sector body must, before the end of the twentieth working day beginning with the day after receipt, notify the applicant in writing—

(a) that no decision on re-use has yet been reached; and

(b) of an estimated date by which it expects to respond to the request for re-use.

(4) In this regulation, responding to a request for re-use means—

(a) refusing the request for re-use;

(b) making the requested document available to the applicant for re-use; or

(a) 2006 c. 46.

- (c) where conditions are to be imposed on re-use under regulation 12, finalising the offer to the applicant of the conditions on which re-use will be permitted.

Notification of refusal

9.—(1) Subject to paragraph (2), where a public sector body refuses a request for re-use, it must notify the applicant in writing of the reasons for refusal.

(2) Where a public sector body refuses a request for re-use because these Regulations do not apply to the document by virtue of regulation 5(3) it shall not be obliged to comply with regulation 8(1) or paragraph (1) of this regulation.

(3) A notification under paragraph (1) must contain a reference to the means of redress available to the applicant.

(4) Subject to paragraphs (5) and (6), where a request for re-use is refused because these Regulations do not apply to the document by virtue of regulation 5(1)(b), the notification under paragraph (1) must identify, where known, the name of the person—

- (a) who owns the relevant intellectual property rights; or
- (b) from whom the public sector body obtained the document.

(5) The obligation in paragraph (4) does not apply where complying with it would contravene the 1998 Act.

(6) Paragraph (4) does not apply where the public sector body providing the notification under paragraph (1) is a library (including a university library), museum or archive.

Processing requests for re-use

10. Where possible and appropriate, a public sector body must ensure that the procedure for processing a request for re-use in accordance with these Regulations is capable of being carried out by electronic means.

Format of documents

11.—(1) A public sector body must make a document available to an applicant under regulation 8(4)(b) or (c)—

- (a) in the format and language in which it is held on the date of the request for re-use; and
- (b) where possible and appropriate, in open format and machine-readable format together with its metadata.

(2) The format and the metadata referred to in paragraph (1)(b) should, insofar as possible, comply with formal open standards.

(3) Where possible and appropriate, a public sector body must make a document available for re-use by electronic means.

(4) Nothing in these Regulations obliges a public sector body to do any of the following—

- (a) create or adapt a document or provide an extract from it in order to comply with a request for re-use where to do so would involve disproportionate effort;
- (b) continue to produce or store a certain type of document for the purposes of re-use by another person.

Conditions

12.—(1) A public sector body may impose conditions on re-use, where appropriate through a licence.

(2) Where conditions are imposed they must not unnecessarily restrict—

- (a) the way in which a document can be re-used; or
- (b) competition.

Non-discrimination

13.—(1) A condition imposed under regulation 12 must not discriminate between applicants who make a request for re-use for comparable purposes.

(2) If a public sector body which holds a document wishes to re-use the document for activities which fall outside the scope of its public task, the same conditions must apply to that re-use as would apply to re-use by any other applicant for comparable purposes.

Prohibition of exclusive arrangements

14.—(1) Subject to paragraphs (2) and (6), a public sector body may not enter into an exclusive arrangement with any person.

(2) A public sector body may, where necessary for the provision of a service in the public interest, enter into an exclusive arrangement.

(3) The validity of the reason for granting an exclusive arrangement under paragraph (2) must be reviewed at least once every three years.

(4) Any exclusive arrangement permitted under paragraph (2) and entered into on or after 31st December 2003 must be published by the public sector body.

(5) Paragraphs (2) to (4) do not apply to the digitisation of cultural resources.

(6) A public sector body may enter into an exclusive arrangement in relation to the digitisation of cultural resources.

(7) The period of exclusivity of an arrangement under paragraph (6) should not normally exceed 10 years.

(8) Where the period of exclusivity referred to in paragraph (7) exceeds 10 years, the duration of the period of exclusivity must be reviewed during the 11th year and, if applicable, every 7 years thereafter.

(9) Any exclusive arrangement permitted under paragraph (6) must be published by the public sector body.

(10) As part of any exclusive arrangement permitted under paragraph (6), the public sector body concerned must be provided free of charge with a copy of the digitised cultural resources.

(11) The copy must be available for re-use at the end of the period of exclusivity.

(12) Any exclusive arrangement existing on 17th July 2013 and to which neither paragraph (2) nor paragraph (6) applies must be terminated at the earlier of—

- (a) the date on which it comes to an end in accordance with its terms; or
- (b) 18th July 2043.

(13) In this regulation, “exclusive arrangement” means a contract or other arrangement granting an exclusive right to re-use a document.

Charging

15.—(1) A public sector body may charge for permitting re-use.

(2) Subject to paragraph (3), any charge for re-use must be limited to the marginal costs incurred in respect of the reproduction, provision and dissemination of documents.

(3) Paragraph (2) shall not apply to the following—

- (a) a public sector body that is required to generate revenue to cover a substantial part of its costs relating to the performance of its public task;
- (b) documents for which the public sector body making the charge is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction or dissemination; or
- (c) libraries (including university libraries), museums and archives.

(4) The requirement referred to in paragraph (3)(b) means a requirement defined—

- (a) by law or by other binding rules; or
- (b) in the absence of such rules, in accordance with common administrative practice.

(5) In any case where paragraph (3)(a) or (b) applies, the public sector body must calculate the total charge in relation to a document in accordance with paragraph (6).

(6) The total charge shall not exceed the sum of—

- (a) direct costs;
- (b) a reasonable apportionment of indirect and overhead costs attributable to chargeable activity; and
- (c) a reasonable return on investment.

(7) In any case where paragraph (3)(c) applies, the total income of the public sector body from supplying and permitting re-use of documents over the appropriate accounting period must not exceed the aggregate of the amounts calculated in accordance with paragraph (8) for each document.

(8) For each document, the amount is the sum of—

- (a) direct costs;
- (b) a reasonable apportionment of indirect and overhead costs attributable to chargeable activity; and
- (c) a reasonable return on investment.

(9) Any 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 from time to time.

(10) A public sector body must not charge an applicant for—

- (a) direct costs; or
- (b) indirect and overhead costs,

if the same applicant has been charged in respect of those same costs by that public sector body for access to the same document under information access legislation.

(11) In this regulation—

“apportionment”, in relation to indirect and overhead costs, means the allocation of such costs to each activity of the body in connection with which the costs are incurred;

“chargeable activity”, in relation to a document and a public sector body, means—

- (a) in the case of a body referred to in paragraph (3)(a) or (b), the body’s collection, production, reproduction and dissemination of the document; and
- (b) in the case of a body referred to in paragraph 3(c), the body’s collection, production, reproduction, dissemination, preservation and rights clearance of the document;

“direct costs”, in relation to a document and a public sector body, means costs which are incurred by the body only as a consequence of it undertaking chargeable activity;

“indirect and overhead costs”, in relation to a document and a public sector body, means costs which are not direct costs and which are incurred by the body in connection with—

- (a) chargeable activity; and
- (b) any other of the body’s activities.

Information to be published by a public sector body

16.—(1) Where a public sector body charges for re-use it shall, so far as is reasonably practicable, determine standard charges.

(2) Where a public sector body establishes standard charges it shall, so far as is reasonably practicable, establish—

- (a) any applicable conditions for re-use;
- (b) the actual amount of any charges; and

- (c) the basis on which such charges have been calculated.
- (3) Where paragraph (2) applies, the public sector body must ensure that the information specified in that paragraph is made available to the public.
- (4) Where a standard charge for re-use has not been established, a public sector body—
 - (a) must indicate at the outset which factors have been taken into account in the calculation of a charge for re-use; and
 - (b) if requested to do so by an applicant, must specify in writing the way in which any such charge has been calculated in relation to a specific request for re-use.
- (5) Where regulation 15(3)(b) applies, a public sector body must, so far as is reasonably practicable, predetermine the requirement by which it must generate the revenue specified in that regulation.
- (6) A public sector body must, where possible and appropriate, make the information referred to in paragraphs (2) and (5) available by electronic means.
- (7) A public sector body must ensure that the following information is made available to the public—
 - (a) a list of its main documents available for re-use with relevant metadata; and
 - (b) details of the means of redress available under these Regulations.
- (8) In relation to paragraph (7)(a) a public sector body must ensure that—
 - (a) where possible and appropriate, the list of its main documents is available in machine-readable format;
 - (b) where possible and appropriate, potential applicants are able to search the list of documents and relevant metadata by electronic means; and
 - (c) where possible, a public sector body must facilitate the cross-linguistic search for documents.

Internal complaints procedure

- 17.—**(1) A public sector body must establish an internal complaints procedure for determining complaints relating to its compliance with these Regulations.
- (2) A person who believes that a public sector body has failed to comply with any requirement of these Regulations may complain in writing to the public sector body in accordance with its internal complaints procedure.
- (3) A public sector body must determine any complaint made under paragraph (2) within a reasonable time and thereafter notify the person of its determination without delay.
- (4) Notification under paragraph (3) must be in writing and give reasons for the determination.

Enforcement and appeals provisions: general

- 18.—**(1) Except where regulation 19 applies, the relevant enforcement and appeals provisions of the 2000 Act apply for the purposes of these Regulations as they apply for the purposes of the 2000 Act, but with the modifications in paragraph (3) of this regulation.
- (2) In this regulation, “the relevant enforcement and appeals provisions of the 2000 Act” means the following sections of the 2000 Act—
 - (a) section 50 (application for decision by Commissioner);
 - (b) section 51 (information notices);
 - (c) section 52 (enforcement notices);
 - (d) section 54 (failure to comply with notice);
 - (e) section 56 (no action against public authority);
 - (f) section 57 (appeal against notices served under Part IV);

(g) section 58 (determination of appeals).

(3) The relevant enforcement and appeals provisions of the 2000 Act apply as mentioned in paragraph (1) as if—

- (a) for any reference to “public authority”, “an authority” or “the authority”, there were substituted a reference to “public sector body”, “a body” or “the body” respectively;
- (b) in section 50—
 - (i) in subsection (1)—
 - (aa) for “information” there were substituted “re-use”;
 - (bb) for “Part I” there were substituted “the Re-use of Public Sector Information Regulations 2015”;
 - (ii) in subsection (2)(a), the words “in conformity with the code of practice under section 45” were omitted;
 - (iii) paragraph (a) of subsection (4) and the “or” at the end of that paragraph were omitted;
 - (iv) in subsection (4)(b), for the words “sections 11 and 17” there were substituted “the Re-use of Public Sector Information Regulations 2015”;
 - (v) subsection (7) were omitted;
- (c) in section 51—
 - (i) in subsection (1)—
 - (aa) in paragraph (b)(i), for “Part I, or” there were substituted “the Re-use of Public Sector Information Regulations 2015,”;
 - (bb) paragraph (b)(ii) were omitted;
 - (cc) in the closing words, for the words from “application” to the end there were substituted “application, or to compliance with those Regulations, as is so specified”;
 - (ii) in subsection (2)(b)(i), for the words “either of the purposes” there were substituted “the purpose”;
- (d) in section 52—
 - (i) in subsections (1) and (2), for “Part I” there were substituted “the Re-use of Public Sector Information Regulations 2005”;
 - (ii) subsection (5) were omitted;
- (e) in section 56(1), for “by or under this Act” there were substituted “by the Re-use of Public Sector Information Regulations 2015”;
- (f) in section 57, subsection (3) were omitted.

Enforcement and appeals provisions: regulation 15(5) charging exceptions

19.—(1) This regulation applies where (and only to the extent that) a complaint under regulation 17 alleges that a public sector body has either—

- (a) failed to comply with regulation 15(5); or
- (b) applied regulation 15(5) in a case where regulation 15(3)(a) or (b) does not apply.

(2) The relevant enforcement and appeals provisions of the 2000 Act apply for the purposes of this Regulation as they apply for the purposes of the 2000 Act, but with the modifications in paragraph (4) of this regulation.

(3) In this regulation, “the relevant enforcement and appeals provisions of the 2000 Act” means the following sections of the 2000 Act—

- (a) section 50 (application for decision by Commissioner);
- (b) section 56 (no action against public authority);

(c) section 57 (appeal against notices served under Part IV);

(d) section 58 (determination of appeals).

(4) The relevant enforcement and appeals provisions of the 2000 Act apply as mentioned in paragraph (2) as if—

(a) for any reference to “public authority”, “an authority” or “the authority”, there were substituted a reference to “public sector body”, “a body” or “the body” respectively;

(b) for any reference to “decision” or “decision notice” (including in the heading of section 50 but excluding any reference in text treated as inserted by this regulation), there were substituted a reference to “recommendation” or “recommendation notice”, as the case may be;

(c) in section 50—

(i) in subsection (1)—

(aa) for “information” there were substituted “re-use”;

(bb) for “Part I” there were substituted “the Re-use of Public Sector Information Regulations 2015”;

(ii) in subsection (2)(a), the words “in conformity with the code of practice under section 45” were omitted;

(iii) for subsections (4) to (7), there were substituted the following —

“(4) Where a recommendation notice has been served, the public sector body shall—

(a) decide what action, if any, it will take as a result of the recommendation and the date by which any such action will be taken; and

(b) notify the Commissioner and the complainant of its decision and the reasons for it.

(5) Action referred to in subsection (4) may include (but is not limited to)—

(a) reaffirming, varying or substituting any response by the public sector body to the complainant’s request for re-use; or

(b) taking no further steps.

(6) The public sector body must comply with subsection (4) promptly and in any event not later than the twentieth working day following the date of receipt by the public sector body of the recommendation.

(7) In this section “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”;

(d) in section 56(1)—

(i) for “by or under this Act” there were substituted “by the Re-use of Public Sector Information Regulations 2015”;

(ii) subsection (2) were omitted;

(e) in section 57—

(i) in the heading, after “served” there were inserted “and decisions notified”;

(ii) subsection (1) were omitted;

(iii) in subsection (2), for “information notice or an enforcement notice” there were substituted “recommendation notice”;

(iv) for subsection (3), there were substituted the following —

“(3) Where a public sector body has provided notification of its decision under section 50(4), the complainant may appeal to the First-tier Tribunal against the decision.

(4) Where a public sector body has failed to provide a notification or its reasons under section 50(4) within the period referred to in section 50(6), the complainant may, without further delay, appeal to the First-tier Tribunal in respect of any matter complained of under section 50(1).”;

(f) in section 58—

(i) in subsection (1), for “57” there were substituted “57(2)”;

(ii) for subsection (2) there were substituted—

“(2) If on an appeal under section 57(3) the Tribunal considers that the decision is not in accordance with the law, the Tribunal shall allow the appeal; and in any other case the Tribunal shall dismiss the appeal.

(3) If on an appeal under section 57(4) the Tribunal considers that the request for re-use made by the complainant to the public sector body was not dealt with in accordance with regulation 15(5) of the Re-use of Public Sector Information Regulations 2015 or that the body applied that regulation in a case where regulation 15(3) (a) or (b) did not apply, the Tribunal shall allow the appeal; and in any other case the Tribunal shall dismiss the appeal.

(4) On an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”.

Information sharing

20.—(1) The Information Commissioner^(a) must notify the Scottish Information Commissioner^(b) on receipt of an appeal brought under regulations 18 or 19 that relates to a Scottish Public Authority designated as such by or under the 2002 Act, and must provide an opportunity for the Scottish Information Commissioner to provide information relating to the appeal.

(2) The Information Commissioner may disclose to the Scottish Information Commissioner any information obtained under or for the purposes of these Regulations which is considered to be necessary in order to carry out any of the functions conferred by or under them.

(3) The Scottish Information Commissioner may disclose to the Information Commissioner any information obtained under or for the purposes of the 2002 Act, the 2004 Regulations or these Regulations which is considered to be necessary in order to carry out any of the functions conferred by or under these Regulations.

Amendments to the Freedom of Information Act 2000

21.—(1) The 2000 Act is amended as follows.

(2) In section 11A^(c) (release of datasets for re-use), after subsection (1) insert—

“(1A) But if the whole of the relevant copyright work is a document to which the Re-use of Public Sector Information Regulations 2015 apply, this section does not apply to the relevant copyright work.

(1B) If part of the relevant copyright work is a document to which those Regulations apply—

(a) this section does not apply to that part, but

(b) this section does apply to the part to which the Regulations do not apply (and references in the following provisions of this section to the relevant copyright work are to be read as references to that part).”.

(3) In section 19^(d) (publication schemes)—

(a) in subsection (2A)^(c), before “where” insert “subject to subsections (2AA) and (2AB).”;

(b) after subsection (2A), insert—

(a) Provision regarding the Information Commissioner is made in section 18 of the 2000 Act.

(b) The Scottish Information Commissioner is appointed under section 42 of the 2002 Act.

(c) Section 11A was inserted by the Protection of Freedoms Act 2012 (c.9), sections 102(1) and (3).

(d) Section 19 was amended by the Protection of Freedoms Act 2012, sections 102(1) and (4)(a) and (b).

“(2AA) If the whole of the relevant copyright work is a document to which the Re-use of Public Sector Information Regulations 2015 apply, subsections (2A)(c) and (2B) to (2F) do not apply to the relevant copyright work.

(2AB) If part of the relevant copyright work is a document to which those Regulations apply—

- (a) subsections (2A)(c) and (2B) to (2F) do not apply to that part, but
- (b) those provisions do apply to the part to which the Regulations do not apply (and references in the following provisions of this section to the relevant copyright work are to be read as references to that part).”.

Revocation, transitional and saving provisions

22.—(1) In this regulation—

“the 2005 Regulations” means the Re-use of Public Sector Information Regulations 2005(a);

“the coming into force date” means the day on which these Regulations come into force.

(2) Subject to paragraphs (3) to (7), the 2005 Regulations are revoked.

(3) Subject to paragraphs (4) to (7) the 2005 Regulations shall continue to have effect in respect of any request for re-use received prior to the coming into force date and in respect of which a decision was not made by a public sector body prior to that date.

(4) During the period of three months beginning with the coming into force date, the 2005 Regulations shall continue to have effect in respect of any complaint or request for a review which was made prior to that date and which was—

- (a) a complaint referred to the Office of Public Sector Information under regulation 18(1) of those Regulations;
- (b) a complaint referred to the Advisory Panel on Public Sector Information under regulation 18(3) of those Regulations; or
- (c) a request for a review referred to the Advisory Panel on Public Sector Information under regulation 20(1) of those Regulations.

(5) Paragraphs (5) and (6) apply to a matter relating to the 2005 Regulations which was the subject of a complaint or request for a review under those Regulations made prior to the coming into force date and in respect of which a recommendation has not been made under those Regulations.

(6) Subject to paragraph (6), after the end of the period referred to in paragraph (3), a matter to which this paragraph applies shall be dealt with in accordance with regulation 18 or 19 of these Regulations (as the case may be) as if it were a matter relating to these Regulations.

(7) Sections 52, 54, 56, 57 and 58 of the 2000 Act do not apply to a matter to which this paragraph applies.

(8) Despite the amendments made by regulation 21, sections 11A and 19 of the 2000 Act shall continue to have effect for all purposes on and after the coming into force date, as they had effect immediately before that date, in respect of any—

- (a) information falling within section 11A(1) of that Act which was requested before the coming into force date; or
- (b) publication scheme published before the coming into force date.

(a) S.I. 2005/1515, amended by S.S.I 2006/389 and S.R. (NI) No. 133.

24th June 2015

Dominic Raab
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 (the 2013 Directive) (O.J. No. L175/1, 27.6.2013), which amends Directive 2003/98/EC on the re-use of public sector information (the 2003 Directive). The 2003 Directive was implemented by the Re-use of Public Sector Information Regulations 2005 (the 2005 Regulations), which are revoked, subject to savings, by these Regulations.

Regulations 2, 3 and 4 contain definitions of expressions in these Regulations, including a definition of “public sector body” in regulation 3 and “re-use” in regulation 4.

Regulation 5 provides that these Regulations do not apply to certain documents.

Regulation 6 provides for the form that a request for re-use must take.

Regulation 7 provides for a general duty on public sector bodies to permit re-use. Certain types of public sector body have a discretion as to whether to permit re-use. When permitting re-use, all public sector bodies must act in accordance with regulations 11 to 16.

Regulation 8 sets out how, and within what timescales, a public sector body should respond to a request for re-use.

Regulation 9 provides that where a public sector body refuses a request for re-use it must notify the applicant, give reasons for the refusal and inform the applicant of its internal complaints procedure and other means of redress. An exception is provided for certain public sector bodies to the duty contained in regulation 9(4) in respect of any notification of a refusal of a request for re-use.

Regulation 10 provides that, where possible and appropriate, a public sector body must ensure that the processing of requests for re-use can be carried out by electronic means.

Regulation 11 provides for the form and language in which a document may be provided to an applicant.

Regulation 12 allows a public sector body to impose conditions on re-use, through a licence where appropriate, but only where those conditions do not unnecessarily restrict the way in which a document can be re-used or restrict competition.

Regulation 13 requires that a public sector body may not impose discriminatory conditions on applicants who request re-use of a document for comparable purposes, and that where a public sector body re-uses a document itself for an activity outside of its public task, it must apply the same conditions to itself as to any other applicant for re-use for a comparable purpose.

Regulation 14 prohibits a public sector body entering into an exclusive arrangement for re-use except where it is necessary for the provision of a service in the public interest. It also makes provision in relation to the digitisation of cultural resources, including the length of time for any period of exclusivity and publication of the arrangement.

Regulation 15 sets out the basis on which a public sector body may charge an applicant for permitting re-use. Paragraph (2) provides that any charge for re-use shall be limited to the marginal costs incurred in the reproduction, provision and dissemination of a document.

Paragraphs (3) and (4) disapply the requirement in paragraph (2) in respect of three specified exceptions. Article 6(2) of the 2003 Directive as amended requires public sector bodies to calculate the total charges in respect of the first two specified exceptions in accordance with objective, transparent and verifiable criteria. Paragraphs (5) and (6) set out those criteria in relation to those first two specified exceptions (in paragraphs (3)(a) and (b)). Paragraphs (7) and (8) make provision in respect of charging in relation to the third specified exception (in paragraph (3)(c)). Paragraphs (9) and (10) make provision in respect of charges generally.

Regulation 16 provides that a public sector body must, so far as is reasonably practicable, establish standard charges for re-use. It also makes provision in respect of the information which must be published by public sector bodies.

Regulation 17 requires a public sector body to establish an internal complaints procedure to determine complaints arising under these Regulations.

Regulation 18 provides enforcement and appeals procedures by applying, with modification, certain provisions under Parts IV and V of the Freedom of Information Act 2000 (“the 2000 Act”). Once the public sector body’s internal complaints procedures have been exhausted, a complainant may complain to the Information Commissioner, who can make a decision in respect of the complaint. Thereafter the complainant or the public sector body may, in specified circumstances, appeal to the First-tier Tribunal.

Regulation 19 applies different enforcement and appeals procedures where a person intends to complain about those types of charges which are exempt from the limitation on marginal costs but which must be calculated in accordance with the criteria set out in paragraphs (5) and (6) of regulation 15.

Regulation 20 makes provision for information sharing between the Information Commissioner and the Scottish information Commissioner.

Regulation 21 amends section 11A of the Freedom of Information Act 2000, which contains provision in respect of re-use where a person has made a request for information under that Act in respect of information that is, or forms part of, certain datasets. The amendments made to the 2000 Act have the effect that the re-use of those datasets (or parts of datasets) will be governed by these Regulations, and not by sections 11A and 11B of the 2000 Act. Regulation 23 also amends section 19 of the 2000 Act, so that where a dataset is published in accordance with a publication scheme, the duty to make it available for re-use under section 19(2A)(c), and the related provisions in subsections (2B) to (2F), do not apply. Instead, the re-use of such datasets will be governed by these Regulations.

Regulation 22 makes various revocation, transitional and saving provisions.

A full impact assessment has been prepared for these Regulations together with a transposition note setting out how the main elements of the 2013 Directive are transposed into UK law. The impact assessment is available at <https://www.gov.uk/government/publications/amending-directive-on-re-use-of-public-sector-information> and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

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