
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

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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.