
STATUTORY INSTRUMENTS

2005 No. 1515

PUBLIC SECTOR INFORMATION

The Re-use of Public Sector Information Regulations 2005

<i>Made</i>	- - - -	<i>7th June 2005</i>
<i>Laid before Parliament</i>		<i>10th June 2005</i>
<i>Coming into force</i>	- -	<i>1st July 2005</i>

The Minister for the Cabinet Office, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ for the regulation of the re-use of public sector information, in exercise of the powers conferred by that section enabling him on that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Re-use of Public Sector Information Regulations 2005 and shall come into force on 1st July 2005.

Interpretation

2. In these Regulations—

“the 1998 Act” means the Data Protection Act 1998⁽³⁾;

“the 2000 Act” means the Freedom of Information Act 2000⁽⁴⁾;

“the 2002 Act” means the Freedom of Information (Scotland) Act 2002⁽⁵⁾;

“the 2004 Regulations” means the Environmental Information Regulations 2004⁽⁶⁾;

“the 2004 Scottish Regulations” means the Environmental Information (Scotland) Regulations 2004⁽⁷⁾;

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

“content” means information recorded in any form;

(1) S.I. 2004/3328
(2) 1972 c. 68
(3) 1998 c. 29
(4) 2000 c. 36
(5) 2002 asp13
(6) S.I. 2004/3391
(7) S.S.I. 2004/520

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

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

“information access legislation” means any legislation governing access to information including the 1998 Act, the 2000 Act, the 2002 Act, the 2004 Regulations and the 2004 Scottish Regulations;

“public sector body” has the meaning ascribed to it 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⁽⁸⁾);
- (b) database right (within the meaning of regulation 13 of the Copyright and Rights in Database Regulations 1997⁽⁹⁾);
- (c) publication right (within the meaning of regulation 16 of the Copyright and Related Rights Regulations 1996⁽¹⁰⁾); and
- (d) rights in performances (meaning the rights conferred by Part 2 of the Copyright, Designs and Patents Act 1988);

“re-use” and cognate expressions have the meaning ascribed to them in regulation 4;

“working day” means any day other than a Saturday or a Sunday, Christmas Day, Good Friday or any day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽¹¹⁾ 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 Body

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 House of Commons;
- (d) the House of Lords;
- (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;
- (j) a local authority;

(8) 1988 c. 48
(9) S.I. 1997/3032
(10) S.I. 1996/2967
(11) 1971 c. 80

- (k) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004(12) or a scheme to which section 4 of that Act applies;
 - (l) the Fire Authority for Northern Ireland;
 - (m) a police authority established under section 3 of the Police Act 1996(13);
 - (n) a police authority established under section 2 of the Police (Scotland) Act 1967(14);
 - (o) the Northern Ireland Policing Board;
 - (p) an authority established under section 10 of the Local Government Act 1985(15);
 - (q) a joint authority established by Part IV of that Act;
 - (r) any body established pursuant to an order under section 67 of that Act;
 - (s) the Broads Authority;
 - (t) any joint board the constituent members of which consist of any of the bodies specified in paragraphs (j), (k), (m), (n), (p), (q), (r) and (s);
 - (u) a National Park authority established by an Order under section 63 of the Environment Act 1995(16);
 - (v) the Receiver for the Metropolitan Police District;
 - (w) 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;
 - (x) an association of or formed by one or more public sector bodies.
- (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;
 - (b) the Common Council of the City of London in its capacity as local authority or police authority; and
 - (c) the Greater London Authority or a functional body within the meaning of the Greater London Authority Act 1999(17).
- (3) In the application of these Regulations to Wales, “local authority” means a county council, county borough council or community council.
- (4) In the application of these Regulations to Scotland, “local authority” has the same meaning as in section 235(1) of the Local Government (Scotland) Act 1973(18) 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(19).

(12) 2004 c. 21
(13) 1996 c. 16
(14) 1967 c. 77
(15) 1985 c. 51
(16) 1995 c. 25
(17) 1999 c. 29
(18) 1973 c. 65
(19) 1972 c. 9

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; 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 otherwise 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, such as schools, universities, archives, libraries, and research facilities including organisations established for the transfer of research results; or
- (c) cultural establishments, such as museums, libraries, archives, orchestras, and opera, ballet and theatre establishments.

(4) For the purposes of paragraph (3), “public service broadcaster” has the same meaning as in section 264(12) of the Communications Act 2003⁽²⁰⁾, “subsidiary” has the same meaning as in section 258 of the Companies Act 1985⁽²¹⁾ and “programme services” has the same meaning as in 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.

Request for re-use

6.—(1) A request for re-use shall—

- (a) be in writing;
- (b) state the name of the applicant and an address for correspondence;

⁽²⁰⁾ 2003 c. 21

⁽²¹⁾ 1985 c. 6

- (c) specify the document requested; and
- (d) state the purpose for which the document is to be re-used.

Permitting re-use

7.—(1) A public sector body may permit re-use.

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

Responding to a request for re-use

8.—(1) A public sector body shall 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 in paragraph (1) by such time as is reasonable in the circumstances.

(3) Where paragraph (2) applies, the public sector body shall, 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
- (c) where conditions are to be imposed on re-use pursuant to 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 shall notify the applicant in writing of the reason 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) The notification referred to in paragraph (1) shall contain a reference to the means of redress available to the applicant.

(4) 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 referred to in 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.

Processing requests for re-use

10. Where possible and appropriate, a public sector body shall 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 may make a document available to an applicant pursuant to regulation 8(4)(b) or 8(4)(c) in the format and language in which it exists on the date of response to the request for re-use.

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

(3) Nothing in these Regulations shall oblige a public sector body to do any of the following—

- (a) create or adapt a document in order to comply with a request for re-use;
- (b) provide an extract from a document where to do so would involve disproportionate effort;
- (c) continue to produce 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.

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

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

Non-discrimination

13.—(1) Any conditions imposed under regulation 12(1) shall 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 shall 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 paragraph (2), a public sector body shall not enter into an exclusive arrangement with any person including an applicant.

(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 the exclusive arrangement under paragraph (2) shall 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 shall be published by the public sector body.

(5) Any exclusive arrangement which exists on the date of entry into force of these Regulations and to which paragraph (2) does not apply shall be terminated at the earlier of—

- (a) the date on which it comes to an end in accordance with its terms; or
- (b) 31st December 2008.

(6) 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 allowing re-use.

- (2) The total income from any charge shall not exceed the sum of—
 - (a) the cost of collection, production, reproduction and dissemination of documents; and
 - (b) a reasonable return on investment.
- (3) Any charges for re-use shall, so far as is reasonably practicable, be calculated—
 - (a) in accordance with the accounting principles applicable to the public sector body from time to time; and
 - (b) on the basis of a reasonable estimate of the demand for documents over the appropriate accounting period.
- (4) A public sector body shall not charge an applicant for costs incurred in respect of activities mentioned under paragraph (2)(a) in respect of a request for re-use, if the same applicant had been charged in respect of those same activities by that public sector body for access to the same document under information access legislation.
- (5) Where a public sector body charges for re-use, so far as is reasonably practicable, it shall establish standard charges.
- (6) A public sector body shall specify in writing the basis on which a standard charge has been calculated if requested to do so by an applicant.
- (7) Where a standard charge for re-use has not been established, the public sector body shall specify in writing the factors that will be taken into account in calculating the charge if requested to do so by an applicant.

Information to be published by a public sector body

- 16.**—(1) A public sector body shall ensure that the following information is made available to the public—
- (a) any applicable conditions for re-use;
 - (b) any standard charges for re-use established under regulation 15(5);
 - (c) a list of main documents available for re-use; and
 - (d) details of the means of redress available to an applicant relating to any decision or practice affecting him under these Regulations.
- (2) A public sector body shall, where possible and appropriate, make the information specified in paragraph (1) available to the public by electronic means.
- (3) In relation to paragraph (1)(c), so far as is reasonably practicable, a public sector body shall ensure that potential applicants are able to search the list of documents by electronic means.

Internal complaints procedure

- 17.**—(1) A public sector body shall establish an internal complaints procedure for determining complaints relating to its actions under these Regulations.
- (2) Where a person believes that a public sector body has failed to comply with any requirement of these Regulations, he may complain in writing to the public sector body in accordance with its internal complaints procedure.
- (3) A public sector body shall 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) shall be in writing and give reasons for the determination.

Complaints to the Office of Public Sector Information

18.—(1) Where a person has exhausted the procedure established under regulation 17(1) in respect of any complaint made under regulation 17(2) or where the public sector body has failed to deal with a complaint made under regulation 17(2) within a reasonable time, the person may refer that complaint to the Office of Public Sector Information.

(2) Any complaint referred to the Office of Public Sector Information shall—

- (a) be in writing;
- (b) state the nature of the complaint; and
- (c) include a copy of the written notification under regulation 17(3) where one exists.

(3) Where a body specified in paragraph (4) is the subject of a complaint under regulation 17(2) and a person has exhausted the procedure established under regulation 17(1) in respect of that complaint, or where the specified body has failed to deal with a complaint made under regulation 17(2) within a reasonable time, the person may refer that complaint to the Advisory Panel on Public Sector Information.

(4) The bodies specified for the purpose of paragraph (3) are:

- (a) the Office of Public Sector Information;
- (b) Her Majesty's Stationery Office; and
- (c) the Office of the Queen's Printer for Scotland.

(5) Where paragraph (3) applies a person shall comply with paragraph (2) as if the reference to the Office of Public Sector Information were a reference to the Advisory Panel on Public Sector Information.

Consideration of complaints by the Office of Public Sector Information

19.—(1) The Office of Public Sector Information shall publish its procedures for considering complaints referred to it under regulation 18(1).

(2) The Office of Public Sector Information shall consider any complaint referred to it in under regulation 18(1) in accordance with its published procedures.

(3) The Office of Public Sector Information shall notify the person and the relevant public sector body of its recommendation.

(4) Notification under paragraph (3) shall be in writing and give reasons for the recommendation.

Requests for review by the Advisory Panel on Public Sector Information

20.—(1) Where the person or the public sector body is dissatisfied with any recommendation made under regulation 19(3) he may request for it to be reviewed by the Advisory Panel on Public Sector Information.

(2) Any request for a review made to the Advisory Panel on Public Sector Information shall—

- (a) be in writing;
- (b) state the reason for the request for the review; and
- (c) include a copy of the written notification under regulations 17(3) or 19(3) or both where it or they exist.

Consideration of complaints and reviews by the Advisory Panel on Public Sector Information

21.—(1) The Advisory Panel on Public Sector Information shall publish its procedures for considering complaints referred to it under regulation 18(3) and for conducting reviews under regulation 20(1).

(2) The Advisory Panel on Public Sector Information shall deal with any complaint referred to it under regulation 18(3) and any request for a review under regulation 20(1), in accordance with its published procedures.

(3) The Advisory Panel on Public Sector Information shall notify the person, the relevant public sector body and the Office of Public Sector Information of its recommendation.

(4) Notification under paragraph (3) shall be in writing and give reasons for the recommendation.

7th June 2005

John Hutton
Minister for the Cabinet Office Cabinet Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2003/98/EC of the European Parliament and of the Council on the re-use of public sector information (the Directive)(O.J. No. L 345, 31.12.2003, p.90).

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 that a public sector body has a discretion as to whether to permit re-use of a document in response to a request. Where a public sector body permits re-use it must act in accordance with regulations 11 to 16.

Regulation 8 sets out how a public sector body should respond, and the timescales for responding, 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 process and other means of redress.

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 format 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, 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 must 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. Regulation 14 also makes transitional provisions to cover exclusive arrangements in existence on the coming into force of the Regulations.

Regulation 15 sets out the basis on which a public sector body may charge an applicant for allowing re-use.

Regulation 16 provides that a public sector body must publish information on conditions for re-use, standard charges, main documents available for re-use and means of redress; and, so far as possible, all such information should be made available, and in the case of the list of available documents, searchable, by electronic means.

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

Regulation 18 sets out the arrangements for the referral by a person of a complaint made under regulation 17 to the Office of Public Sector Information where he has exhausted the public sector body’s complaints procedure or where the public sector body has failed to deal with the complaint

within a reasonable time. Where the public sector body in question is the Office of Public Sector Information, Her Majesty's Stationery Office or the Office of the Queen's Printer for Scotland, the person may refer this complaint directly to the Advisory Panel on Public Sector Information.

Regulation 19 requires the Office of Public Sector Information to publish its procedures for considering complaints referred to it under regulation 18 and the arrangements for notifying the person and the relevant public sector body in writing of any recommendation it makes.

Regulation 20 provides for the Advisory Panel on Public Sector Information to review any recommendation made by the Office of Public Sector Information under regulation 19. Regulation 20 also provides for the form that a request for review must take.

Regulation 21 requires the Advisory Panel on Public Sector Information to publish its procedures for considering complaints referred to it under regulation 18 and for conducting reviews under regulation 20 and the arrangements for notifying the person, the relevant public sector body and the Office of Public Sector Information of any recommendation it makes.

A full regulatory impact assessment has been prepared for these Regulations together with a transposition note setting out how the main elements of the Directive are transposed into UK law. Copies of these have been made available to Parliament and are annexed to the Explanatory Memorandum, laid before Parliament alongside this instrument. Copies are also available on request from the Office of Public Sector Information, Admiralty Arch, North Side, The Mall, London SW1A 2WH.