



STATUTORY INSTRUMENTS.

S.I. No. 525 of 2015



EUROPEAN COMMUNITIES (RE-USE OF PUBLIC SECTOR
INFORMATION) (AMENDMENT) REGULATIONS 2015

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I, BRENDAN HOWLIN, Minister for Public Expenditure and Reform, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2013/37/EU of 26 June 2013¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Re-use of Public Sector Information) (Amendment) Regulations 2015.

Interpretation

2. (1) In these Regulations—

“Principal Regulations” means the European Communities (Re-Use of Public Sector Information) Regulations 2005 (S.I. No. 279 of 2005);

“Directive” means Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003², as amended by Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013¹.

(2) A word or expression that is used in these Regulations and that is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Amendment of Regulation 2 of Principal Regulations

3. Regulation 2 of the Principal Regulations is amended by—

(a) the substitution of the following for the definition of “Appeal Commissioner”:

“ ‘Appeal Commissioner’ means the person who, for the time being, holds the office of Information Commissioner under the Freedom of Information Act 2014 (No. 30 of 2014);”,

(b) the substitution of “a regional assembly” for “a regional authority” in the definition of “body governed by public law”,

(c) the substitution of the following for the definition of “Directive”:

¹OJ No. L. 175, 27.6.2013, p.1.

²OJ No. L. 345, 31.12.2003, p. 90.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 27th November, 2015.

“ ‘Directive’ means Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003², as amended by Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013;”

(d) the insertion of the following definitions:

“ ‘enactment’ has the same meaning as it has in the Interpretation Act 2005 (No. 23 of 2005);

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

(e) the deletion of the definition of “functions”,

(f) the substitution of the following for the definition of “local authority”:

“ ‘local authority’ means a local authority for the purposes of the Local Government Act 2001 (No. 37 of 2001) (as amended by the Local Government Reform Act 2014 (No. 1 of 2014));”

(g) the insertion of the following definition:

“ ‘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;”

(h) the insertion of the following definition:

“ ‘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;”

(i) the substitution of “regional assembly” for “regional authority” in the definition of “public sector body”,

(j) the deletion of the definition of “regional authority”,

(k) the insertion of the following definition:

“ ‘regional assembly’ means a body established in accordance with section 43 (as amended by the Local Government Reform Act 2014) of the Local Government Act 1991;”

(l) the deletion of “functions falling within the scope of ” in the definition of “re-use”, and

²OJ No. L. 345, 31.12.2003, p. 90.

(m) the insertion of the following definition:

“ ‘university’ means a public sector body that provides post-secondary-school higher education leading to academic degrees.”

Amendment of Regulation 3 of Principal Regulations

4. Regulation 3(1) of the Principal Regulations is amended—

(a) in subparagraph (a), by the insertion of the following after “common administrative practice”:

“, provided that the scope of the body’s public task is transparent and subject to review;”,

(b) by the substitution of the following for subparagraph (c):

“(c) documents, access to which could be excluded by virtue of-

(i) the Data Protection Acts 1988 and 2003,

(ii) the European Communities (Access to Information on the Environment) Regulations 2007 to 2014,

(iii) the Freedom of Information Act 2014, other than section 15(2) of that Act,

(iv) the European Communities (Establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)) Regulations 2010 (S.I. No. 382 of 2010), or

(v) any other enactment,

including on the grounds of the protection of national security, defence or public security, statistical confidentiality or commercial confidentiality (including business, professional or company secrets);”,

(c) by the insertion of the following subparagraphs after subparagraph (c):

“(ca) documents, access to which is restricted by virtue of the enactments referred to in subparagraph (c) or any other enactment, including where a person is obliged to prove a particular interest in order to obtain such access;

(cb) parts of documents containing only logos, crests and insignia;

(cc) (i) documents, access to which could be excluded or restricted by virtue of the enactments referred to in subparagraph (c) or any other enactment on the grounds of protection of personal data, and

- (ii) parts of documents that are accessible by virtue of the enactments referred to in subparagraph (c) or any other enactment and contain 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;”,
- (d) by the substitution of the following subparagraph for subparagraph (e):
 - “(e) documents held by educational and research establishments, including organisations established for the transfer of research results, schools and universities, other than university libraries;”, and
- (e) by the substitution of the following subparagraph for subparagraph (f):
 - “(f) documents held by cultural establishments, other than museums, libraries and archives;”.

Amendment of Regulation 5 of Principal Regulations

5. Regulation 5 of the Principal Regulations is amended—

- (a) by the substitution of the following for paragraph (2):
 - “(2) Subject to paragraph (2A), a public sector body shall, on receipt of a request under paragraph (1) in respect of a document held by it to which these Regulations apply, allow the re-use of the document for commercial or non-commercial purposes in accordance with the conditions and time limits provided for by these Regulations.”,
- (b) by the insertion of the following paragraph after paragraph (2):
 - “(2A) Where a request under paragraph (1) in respect of a document to which these Regulations apply is made to a library, university library, museum or archive that holds intellectual property rights in the document, the library, university library, museum or archive shall, if it approves the request, allow the re-use of the document for commercial or non-commercial purposes in accordance with the conditions and time limits provided for by these Regulations.”,
- (c) in paragraph (3)(a)—
 - (i) by the substitution of “allows the re-use of a document” for “decides to make a document available for re-use”, and
 - (ii) by the insertion of “, through electronic means where possible and appropriate” after “a requester”,
- (d) in paragraph (4)—

- (i) in subparagraph (a), by the substitution of “subparagraphs (a) to (cc) of Regulation 3(1), or paragraph (2) or (2A)” for “subparagraph (a), (b) or (c) of Regulation 3(1) or paragraph (2)”,
- (ii) in subparagraph (b), by the substitution of “Subject to subparagraph (ba), where the refusal” for “Where the refusal”,
- (iii) by the insertion of the following subparagraph:
 - “(ba) Subparagraph (b) shall not apply to libraries, university libraries, museums or archives.”, and
- (iv) by the substitution of the following subparagraph for subparagraph (c):
 - “(c) Any decision made on foot of a request under paragraph (1) shall contain a reference to the means of redress available under these Regulations to the requester.”,
- (e) by the insertion of the following paragraph:
 - “(4A) Paragraphs (3) and (4) shall not apply to a public sector body referred to in paragraphs (d), (e) or (f) of Regulation 3(1).”, and
- (f) in paragraph (5)—
 - (i) in subparagraph (a), by the substitution of “and, where possible and appropriate, in open and machine-readable format together with its metadata, in compliance with formal open standards” for “including through electronic means, where possible and appropriate”, and
 - (ii) in subparagraph (b)(iii), by the insertion of “or storage” after “production”.

Amendment of Regulation 6 of Principal Regulations

6. Regulation 6 of the Principal Regulations is amended—

- (a) by the substitution of the following for paragraph (1)(b):
 - “(b) Subject to paragraph (1A), where charges are made for the re-use of documents, the charges shall be limited to the marginal cost incurred by the public sector body for the reproduction, provision and dissemination of the documents.”,
- (b) by the deletion of paragraph (1)(c),
- (c) by the insertion of the following paragraphs:
 - “(1A) (a) Paragraph (1)(b) shall not apply—

- (i) where the public sector body concerned is required to generate revenue to cover a substantial part of its costs relating to the performance of its public tasks,
 - (ii) where the public sector body concerned is required to generate sufficient revenue to cover a substantial part of the costs relating to the collection, production, reproduction and dissemination of the documents, or
 - (iii) in respect of libraries, university libraries, museums and archives.
- (b) The requirements referred to in paragraph (1A)(a)(ii) shall be—
- (i) defined by law or other binding rules or, in the absence of such rules, in accordance with common administrative practice,
 - (ii) pre-established, and
 - (iii) where possible and appropriate, published by electronic means.
- (1B) In the cases referred to in paragraph (1A)(a)(i) and (ii)—
- (a) the public sector bodies concerned shall calculate charges for the re-use of documents according to objective, transparent and verifiable criteria laid down by the Minister from time to time,
 - (b) the total income of the public sector bodies concerned from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment, and
 - (c) the charges should be calculated in line with the accounting principles applicable to the public sector bodies concerned.
- (1C) In the case referred to in paragraph (1A)(a)(iii)—
- (a) the total income from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance in respect of those documents, together with a reasonable return on investment, and

- (b) charges for the re-use of documents shall be calculated in line with the accounting principles applicable to the public sector bodies involved.”

Amendment of Regulation 7 of Principal Regulations

7. Regulation 7 of the Principal Regulations is amended—

- (a) by the substitution of the following for paragraph (1):

“(1) Where a public sector body makes a standard charge for re-use of a document, it shall establish and publish, through electronic means where possible and appropriate—

- (a) any applicable conditions,
- (b) the amount of the charge, and
- (c) the calculation basis for the charge.”, and

- (b) by the substitution of the following for paragraph (2):

“(2) Where a public sector body makes a charge other than a standard charge for re-use of a document, it shall—

- (a) indicate at the time the request for re-use is made what factors are taken into account in the calculation of the charge, and
- (b) if requested to do so, indicate the way in which the charge is calculated in relation to the request for re-use.”

Amendment of Regulation 8 of Principal Regulations

8. Regulation 8 of the Principal Regulations is amended by—

- (a) the substitution of the following for paragraph (1):

“(1) A public sector body may—

- (a) allow re-use without conditions, or
- (b) impose conditions on re-use, where appropriate through a licence, provided that such conditions shall not—
 - (i) unnecessarily restrict possibilities for re-use, or
 - (ii) be used to restrict competition.”, and

- (b) the substitution of the following for paragraph (3):

“(3) A public sector body shall, where possible and appropriate, use the standard licence for the re-use of documents published from time to time by the Minister.”.

Insertion of new Regulation 8A in Principal Regulations

9. The Principal Regulations are amended by the insertion of the following new Regulation:

“Practical arrangements to facilitate searches

8A. (1) A public sector body shall make available to the public a list of its main documents available for re-use together with relevant metadata.”

(2) In relation to paragraph (1), a public sector body shall—

- (a) where possible and appropriate, ensure that the list of its main documents is available in machine-readable format,
- (b) where possible and appropriate, ensure that potential requesters are able to search the list of documents and relevant metadata by electronic means, and
- (c) where possible, facilitate the cross-linguistic search for documents.”

Amendment of Regulation 9 of Principal Regulations

10. Regulation 9 of the Principal Regulations is amended—

(a) by the insertion of the following paragraph:

“(2A) (a) Paragraph (2) shall not apply to digitisation of cultural resources.

(b) Notwithstanding subparagraph (a), where a grant of exclusive rights relates to digitisation of cultural resources, the period of exclusivity shall—

(i) in general not exceed 10 years, and

(ii) where it exceeds 10 years, be subject to review during the eleventh year and, if applicable, every 7 years thereafter.

(c) Arrangements granting exclusive rights referred to in paragraph (2) shall be transparent and made public.

(d) Where a public sector body enters into an arrangement referred to in subparagraph (b), a party managing or carrying out the digitisation shall provide the public sector body with a copy of the digitised cultural resources free of charge, and such copy shall be available for re-use at the end of the period of exclusivity.”, and

(b) by the insertion of the following paragraph:

“(5) Without prejudice to paragraph (4), exclusive arrangements existing on 17 July 2013, other than those referred to in paragraphs (2) or (2A), shall be terminated at the end of the contract or in any event not later than 18 July 2043.”

Amendment of Regulation 10 of Principal Regulations

11. Regulation 10 of the Principal Regulations is amended—

(a) in paragraph (2), by the substitution of “the Appeal Commissioner” for “the Minister”, and

(b) in paragraph (3)(b)—

(i) by the deletion of “the Minister or, where the Minister leaves the matter to be decided by an Appeal Commissioner,”, and

(ii) by the insertion of “not later than” before “the expiration of an additional period”.

Amendment of Regulation 11 of Principal Regulations

12. Regulation 11 of the Principal Regulations is amended by—

(a) the deletion of paragraphs (1), (2) and (3),

(b) the substitution of the following for paragraph (4)(a):

“(a) The Appeal Commissioner may delegate his or her functions as Appeal Commissioner in respect of an appeal under these Regulations to a member of his or her staff.”, and

(c) the deletion of—

(i) paragraph (4)(c),

(ii) paragraph (5)(a), and

(iii) paragraph (6)(b).

Amendment of Regulation 16 of Principal Regulations

13. Regulation 16 of the Principal Regulations is amended—

(a) by the substitution of “the Freedom of Information Act 2014” for “the Freedom of Information Acts 1997 and 2003” in each place where it occurs, and

(b) in paragraph (1)(b), by the substitution of “that Act” for “those Acts”.



Given under my Official Seal,
24 November 2015.

BRENDAN HOWLIN,
Minister for Public Expenditure and Reform.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations transpose Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 (the 2013 Directive) which amends Directive 2003/98/EC on the re-use of public sector information (the 2003 Directive). The 2003 Directive was transposed in Ireland by the European Communities (Re-Use of Public Sector Information) Regulations 2005 (S.I. No. 279 of 2005), which these Regulations amend.

The 2003 and 2013 Directives set out an EU statutory framework for the re-use by businesses and citizens of existing information held by public sector bodies in new products and services. These Regulations affect how information can be re-used, once it has been legitimately accessed, by placing obligations on the public sector to the benefits of re-users with the aim of boosting economic activity. However, they do not create any new rights of access to information or override or modify data protection rules in any way.

These Regulations amend the regime in the 2005 Regulations by giving effect to the following amendments contained in the 2013 Directive:

- The general principle underlying the 2003 Directive is changed to ensure that accessible documents are re-usable for commercial and non-commercial purposes;
- The fees chargeable by public sector bodies for re-use of documents are capped at marginal cost, with important exceptions;
- The means of redress available to a re-user must now include the possibility of review by an impartial body capable of making binding decisions;
- The scope of the regime is extended to documents held by museums, libraries and archives; with important differences around charging and permissions;
- There are new transparency requirements for situations in which charges are made.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.81



Wt. (B31652). 285. 11/15. Essentra. Gr 30-15.