

A Guide for Public Bodies on the Re-Use of Public Sector Information Regulations

Department of Public Expenditure and Reform
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1. The Re-Use of Public Sector Information Regulations

1.1. Introduction

This guide is intended for Government Departments and other public bodies covered by the Re-Use of Public Sector Information (PSI) Regulations (the bodies to whom the Regulations apply are set out at Regulation 2(1) of the PSI Regulations as amended). Whereas the PSI Regulations apply to public bodies in general, they contain more flexible provisions in respect of museums, archives, libraries, universities, cultural institutions and public bodies that are required to generate revenue to cover a substantial part of their costs.

1.2. Re-Use of Public Sector Information (PSI)

The European Communities (Re-Use of Public Sector Information) Regulations 2005 (as amended by SI 103/2008 and SI 525/2015) create a statutory framework for the re-use by businesses and citizens of existing information held by public sector bodies in new products and services. The 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, but they do not create any new rights of access to information.

The PSI Regulations provide for the release for re-use of information in a pre-existing format or language, and does not apply to information on which substantial work has to be done to prepare it for release for re-use.

The PSI Regulations do not circumscribe existing regimes in respect of copyright, intellectual property, protection of personal data or Freedom of Information, and do not permit the release of information in a manner that is otherwise prohibited by law.

1.3. Re-use

“Re-use”, in relation to a document held by a public sector body, means the use by an individual or legal entity of the document for commercial or non-commercial purposes other than the initial purpose within the public task for which the document was produced. It does not include the exchange of such document between public sector bodies solely for the purpose of performing their public tasks. The PSI Regulations do not prevent the exchange of information between public sector bodies free of charge for the exercise of public tasks even where, in any other case, a charge would be imposed in respect of the re-use concerned.

2. What must be in place

2.1. PSI Officer

While not required under the PSI Regulations, best practice indicates that all public bodies should assign responsibility to a staff member for matters arising under the PSI Regulations.

2.2. List of main documents available for re-use

According to the regulations, public sector bodies shall make available to the public a list of their main documents that are available for re-use (together with relevant metadata, if possible) (see list template in Appendix 1).

A public sector body shall -

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

2.3. PSI statement on website

Public bodies should include a page on their websites providing, at a minimum, the following information in relation to PSI:

- i. The name and email address of the staff member nominated to take responsibility for this area;
- ii. A statement of policy on release of information under PSI;
- iii. Details of any possible charges;
- iv. A list of the main documents available for re-use and a list of any other classes of information available for re-use (where possible, this list should also be published in open format and linked to the www.data.gov.ie website – see template in Appendix 1);
- v. Licencing conditions;
- vi. A link to the publication scheme prepared by the public body under section 8 of the Freedom of Information Act 2014.

3. Processing a PSI request

3.1. Procedures for making and responding to requests

An individual or a legal entity may make a request in a legible form to a public sector body to release documents for re-use. Every request shall clearly indicate that it is being made for the purpose of the re-use of public sector information. Every request made in a language other than Irish or English shall be accompanied by a translation of the request into Irish or English.

The Regulations provide that a public sector body shall, on receipt of a request in respect of a document held by it to which the PSI 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 the Regulations.

3.2. Timelines

The PSI Regulations provide that a public sector body shall generally respond to a PSI request within 20 working days from receipt of the request. Where, due to the extent or complexity of the request, processing will take longer than 20 working days from receipt of the request, the public sector body concerned shall advise the requester accordingly within three weeks after the initial request was received. In such circumstances the public sector body should respond in full to the request within 40 working days from receipt of the request.

The Regulations provide that where a public sector body allows the re-use of a document, then the body shall, consequent on a request from a requester, through electronic means where possible and appropriate,

- i. process the request and deliver the documents for re-use to the requester, or
 - ii. if necessary, finalise the offer of a licence to the requester,
- within the time periods outlined above.

Where processing the request and delivering the documents concerned to the requester will exceed, or is likely to exceed, 20 working days from receipt of the request, then the public sector body concerned shall advise the requester accordingly within 3 weeks after the initial request was received.

Where a public sector body refuses a request, it shall communicate the grounds of the refusal to the requester, in particular, and where appropriate, by reference to the relevant paragraphs of the PSI Regulations.

Where the refusal is based on the intellectual property rights of a third party, the public sector body concerned shall include in the communication a reference to the third party, where known, or alternatively to the licensor from which the public sector body has obtained the relevant material.

Any decision made on foot of a request under the PSI Regulations shall contain a reference to the means of redress available under the Regulations to the requester.

3.3. Format

Where a public sector body makes a document available for re-use it shall make the document available in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with its metadata, in compliance with formal open standards.

It should be noted that nothing in the Regulations requires a public sector body—

- i. to create or adapt any document in order to comply with a request,
- ii. to provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation, or
- iii. to continue the production or storage of a certain type of documents with a view to re-use.

3.4. Charging: General Principle

The Regulations do not prevent a public sector body from charging for the re-use of documents.

However, in general, where charges are made for the re-use of documents, the charges shall be limited to the marginal costs incurred by the public sector body for the reproduction, provision and dissemination of the documents.

Nothing in the Regulations prevents -

- i. the exchange of information between public sector bodies free of charge for the exercise of public tasks even where, in any other case, a charge would be imposed in respect of the re-use concerned, or
- ii. the adoption of a differential charging policy for commercial and non-commercial re-use.

If documents which are, or may be, made available by a public sector body under the Regulations are re-used by such public sector body or another public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.

3.5. Charging: Exceptions

Certain public sector bodies that are required to generate revenue to cover their costs are permitted to diverge from the marginal cost rule in certain circumstances. In these circumstances, where it is proposed to impose a charge over and above the marginal cost of supplying the information, the public sector body involved must have regard to the charging criteria set down by the Minister for Public Expenditure and Reform from time to time, most recently in Circular 16/2015.

4. Exclusions

4.1. Exclusions under FOI Act and other legislation

Under the PSI Regulations, re-use is not required to be granted in respect of 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,

(Grounds for exclusion under the above include the protection of national security, defence or public security, statistical confidentiality or commercial confidentiality (including business, professional or company secrets), or where a person is obliged to prove a particular interest in order to obtain such access, or on the grounds of protection of personal data, or on the grounds of the law concerning the protection of individuals with regard to the processing of personal data.)

Nothing in the PSI Regulations—

- i. affects any right or function under the Data Protection Acts 1988 and 2003,
- ii. permits the release of information by a public sector body in a manner that is prohibited by law, or
- iii. requires the release of information that is legally privileged.

It should be noted that the obligations imposed by the PSI Regulations apply only in so far as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

4.2. Types of documents excluded

The PSI Regulations do not apply to—

- i. documents, the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned as provided for by law, or otherwise in accordance with common administrative practice, provided that the scope of the body's public task is transparent and subject to review;
- ii. documents in respect of which third parties hold intellectual property rights;
- iii. parts of documents containing only logos, crests and insignia;
- iv. documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;

- v. documents held by educational and research establishments including organisations established for the transfer of research results, schools and universities, other than university libraries; or
- vi. documents held by cultural establishments, other than museums, libraries and archives.

4.3. Does not apply to requests between public bodies

“Re-use” does not include the exchange of such document between public sector bodies solely for the purpose of performing their public tasks. Therefore, nothing in the PSI Regulations shall be read so as to prevent the exchange of information between public sector bodies free of charge for the exercise of public tasks even where, in any other case, a charge would be imposed in respect of the re-use concerned.

5. Right of Re-Use

5.1. Licensing

The Regulations provide that a public sector body may –

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

Any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use.

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.

5.2. Granting of exclusive rights

Contracts or other arrangements between a public sector body and a third party in respect of any document shall not grant exclusive rights to re-use the document, unless such a grant is necessary for the provision of a service in the public interest.

In deciding if—

- i. a grant of an exclusive right to re-use a document would be necessary for the provision of a service in the public interest, or
- ii. on any review of such a grant, its continuation would be necessary for the provision of a service in the public interest,

account may be taken of circumstances where, upon such a review, no commercial publisher would publish information that is related to the document concerned without such a grant or its continuation.

Any grant of exclusive rights to re-use a document shall -

- i. be subject to regular review at intervals of not more than 3 years and
- ii. cease to be a grant of exclusive rights where it is found not to be necessary for the provision of a service in the public interest.

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.

Where a public sector body enters into an arrangement relating to digitisation of cultural resources, 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.

Any public sector body which on or after 1 July 2005 grants exclusive rights to re-use any document shall ensure that the contract or other arrangement concerned is transparent and made public.

Any contract or other arrangement—

- i. entered into before 1 July 2005 between a public sector body and a third party that grants exclusive rights to re-use a document, and
- ii. that is not necessary for the provision of a service in the public interest,

shall be terminated on the date the contract or other arrangement ends, or shall cease to have effect after 31 December 2008, whichever first occurs.

Exclusive arrangements existing on 17 July 2013, other than those referred to in above, shall be terminated at the end of the contract or in any event not later than 18 July 2043.

6. Appeals

6.1. Appeal of decisions of Public Bodies under the PSI Regulations

The PSI Regulations provide a statutory appeals mechanism (vested in the Office of the Information Commissioner) whereby a requester may appeal against:

- i. a decision of a public body to refuse to allow re-use of a document,
- ii. a decision of a public body to refuse to grant an exclusive right to re-use a document,
- iii. the imposition of a fee for re-use of a document,
- iv. the amount of a fee imposed, or
- v. any conditions to re-use imposed by a public body.

Any appeal must be sent to the Information Commissioner in a legible form within four weeks after the notification of the decision by the public body to the requester.

The Information Commissioner may grant an extension to the appeal period where he / she is of the opinion that there are reasonable grounds to allow such an extension.

The Information Commissioner shall, having heard an appeal, decide whether to affirm, vary or annul the decision of the public body.

A decision of the Information Commissioner may be appealed on a point of law to the High Court.

