

Guidance on the implementation of the Re-use of Public Sector Information Regulations 2015

For the cultural sector

Practical Guidance on the implementation of the Re-use of Public Sector Information Regulations 2015 (SI 2015 No. 1415) which implement European Directive 2013/37/EU

Version control:
v1 – July 2015

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This Guidance is designed to help cultural sector bodies comply with requirements for the re-use of public sector information. To read the relevant legislation for free, go to www.legislation.gov.uk and search for 'public sector information regulations'.

If the 2015 Regulations or our interpretations of them change, we will publish updated information on our website www.nationalarchives.gov.uk where this Guidance is available for download.

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Guidance on the implementation of the Re-use of Public Sector Information Regulations 2015 for the cultural sector

Who should read this Guidance?

Staff of libraries (including university libraries), museums (including galleries), and archives who are responsible for:

- copyright and licensing
- data production and protection
- IT and web content
- access to and protection of information
- information/records
- communications and press
- finance and commercial development

Welcome

Welcome to the Guidance on the implementation of the [Re-use of Public Sector Information Regulations 2015](#) (SI 2015 No. 1415) (the '2015 Regulations'). The 2015 Regulations are in force from 18 July 2015.

A major change from the previous Regulations is that cultural sector bodies – libraries (including university libraries), museums and archives – are brought into scope.

This Guidance is written for cultural sector bodies and will explain the changes being introduced by [European Directive 2013/37/EU](#) (the 'Amending Directive') and how these are transposed in the 2015 Regulations.

As anticipated by the Amending Directive, the European Commission has also published [non-binding guidance for Member States](#) on best practices on standard licences, datasets and charging for the re-use of information.

Key aspects

| 2015 Regulations |
|--|
| Scope extends to include cultural sector: libraries (including university libraries), museums and archives |
| Cultural sector bodies not required to permit re-use, unless the information is already available for re-use (even by themselves) |
| Make information and metadata available through standard licences and machine-readable formats whenever possible |
| Facilitate cross-linguistic searches whenever possible |
| Cultural sector bodies (libraries, museums and archives) may charge to cover the cost of collection, production, reproduction, preservation and rights clearance, together with a reasonable return on investment |
| Licences must be standard and as non-restrictive as possible |
| No exclusive licences unless to provide a public service that could not otherwise be provided, or for digitising cultural resources |
| Information asset lists must be published |
| If a complaint cannot be resolved by a cultural sector body's internal process, it may be escalated to the Information Commissioner's Office which can make binding decisions on most issues, and it may be potentially escalated to the First-Tier Tribunal |

| Scope at a glance | | | |
|--|--|---|--|
| Bodies in scope | Bodies out of scope | Information in scope | Information out of scope |
| Libraries (including university libraries) Museums Galleries Archives | Public sector broadcasters | Information in any form – including print, visual, digital, electronic, and sound recordings – that is produced, held or disseminated within the cultural sector body's public task | Information produced, held or disseminated outside public task |
| Central government | Educational and research establishments | | Information that is not accessible |
| Local government | Cultural and performing arts establishments (other than libraries, museums and archives) | | Information restricted or excluded, for example under access legislation |
| Public corporations | Parts of higher education institutions not otherwise in scope | | Information whose copyright does not belong to the cultural sector body |
| Scottish Government and Parliament | Private utility companies | | Crests, logos, insignia |
| Welsh Government and Assembly | | | Personal data that must be protected |
| Northern Ireland Executive and Parliament | | | |
| Other bodies outlined in Regulation 3 (e.g. police forces) | | | |

What is public sector information?

Any information whatever its medium (form) – including print, visual, digital or electronic, and sound recordings – produced, held or disseminated by a cultural sector body is considered public sector information. This includes an enormous range: corporate information such as reports and financial data, codes of practices, raw data, public records, statistics, still and moving images, press releases, publication schemes, and so on.

There is no distinction between works of art, artefacts and other information in the 2015 Regulations.

If a cultural sector body holds the copyright for information it produces, holds or disseminates, then that information is in scope of the 2015 Regulations.

Information with third-party copyright is excluded from the 2015 Regulations.

Information produced, held or disseminated outside public task is excluded from the 2015 Regulations.

The 2015 Regulations have been developed from the [Amending Directive](#) which updated the [2005 Regulations](#) on re-use. While the Amending Directive refers to public sector information as **documents**, this Guidance uses the term 'information' to reflect the variety of public sector bodies (including cultural bodies) and the types of information they produce, hold or disseminate. It aligns to the government's focus on open data and information as understood in access legislation (such as the [Freedom of Information Act 2000](#) and the [Environmental Information Regulations 2004](#)).

What is re-use?

Re-use means using information for a purpose different to the one for which it was initially produced, held, collected or disseminated.

Key aspects for the cultural sector

Cultural sector public bodies are expected to make information available to other users for re-use. They will be required to do so for information produced, or held or disseminated as part of their public task and where that information has already been made available for re-use (including by itself).

Libraries, museums and archives hold a significant amount of information with third-party copyright, which is excluded from the 2015 Regulations.

Cultural sector bodies must be transparent about what information can be re-used, any charges for it, and the terms and conditions on which that re-use can take place.

Licences, terms and conditions must be non-discriminatory.

The complaints process will include binding decision-making body.

Exceptions for the cultural sector

- permission to re-use is not always mandatory
- may charge above marginal cost for re-use
- may enter into exclusive arrangements (generally up to 10 years) with third parties if in the public interest or for digitising a cultural resource

What do the 2015 Regulations mean for different sectors?

Libraries (including university libraries), museums and archives

Many cultural sector bodies are already complying with the 2015 Regulations by making the information they produce, hold and disseminate available for re-use. Although giving permission to re-use is not mandatory, it is encouraged.

For some libraries, museums and archives with particular types and ages of collections, re-use may affect different proportions of their accessible holdings.

Cultural sector bodies need to be clear what their public task is, because this determines what information falls within scope of the 2015 Regulations. Collecting policies are key when defining public task; information relating to parts of collections not covered by the collecting policy will be held outside public task and therefore likely to be outside the scope of the 2015 Regulations.

Cultural sector bodies may charge re-users to cover the costs of collection, production, reproduction, dissemination, preservation and rights clearance of the information, plus a reasonable return on their investment.

Some exclusive licensing will be permitted, especially where the museum, archive or library is working with a partner on a digital access project or when they cannot otherwise provide a service in the public interest.

Cultural sector bodies retain the right to decline requests for re-use unless the information has already been made available for re-use, including by themselves. Such refusals of permission may not be discriminatory. They may also set terms and conditions on re-use, for example using a standard licence to permit re-use.

Note that these decisions may be challenged by the requester.

Other public sector bodies

For public sector information which is already available for re-use under the [Open Government Licence](#) or a standard licence, the 2015 Regulations will mean business as usual.

Two important points for public sector bodies are:

- accessible information must be made available for re-use (unless it is otherwise restricted or excluded)
- marginal cost pricing is the default model.

Public sector bodies, such as many information traders, that are 'required to generate revenue to cover a substantial part of their costs relating to the performance of their public task' will be able to charge for the cost of collection, production, reproduction and dissemination of public sector information, together with a reasonable return on investment.

Re-users of cultural sector information

The 2015 Regulations should make re-use of cultural sector information easier. In general, information that is accessible (because it has been published or been released under access legislation) should be available for re-use.

Any information that the cultural sector body has made available for re-use, even by itself, must be made available for others to re-use.

Context of the 2015 Regulations

The 2015 Regulations transpose Directive 2003/98/EC as amended by Directive 2013/37/EC on the re-use of public sector information, and establish the UK framework for the re-use of public sector information. The purpose is to make information easier to re-use, resulting in economic, social and civil benefits.

Cultural sector public bodies are required to be transparent about what information can be re-used, the pricing of it, and the terms and conditions on which that re-use can take place.

Principles and Objectives

The 2015 Regulations are based on the principles of fairness, transparency, non-discrimination and consistency of application.

The 2015 Regulations deliver the following:

- encouraging proactive publication of information that is easy to re-use
- encouraging re-use permission for all information produced, held or disseminated within public task unless re-use is otherwise restricted or excluded

- the easy identification of information that is available for re-use
- transparency of terms, conditions and licences
- clarity of any charges to be made for re-use (with explanation of the basis of the charge)
- use of standard licences that are as non-restrictive as possible for re-use, including through use of the [Open Government Licence](#) (OGL) for information for which no charge is made
- processing of requests for re-use in a timely, open and transparent manner
- enhancement of an accessible complaints process including a body to make binding decisions
- protection of personal data

Access and re-use

There is a distinction between access to, and re-use of, information.

Information is made accessible in various ways including:

- displaying or holding information (e.g., artefacts on display in a museum, records in an archive)
- publishing the information on websites of cultural sector bodies
- free leaflets, pamphlets and books
- priced publications (often through private sector publishers who publish information on behalf of the cultural sector body)
- in statutory registers or provided for a fee
- on mobile platforms and through social media
- through an access to information request
- through a re-use request
- through a publication scheme under the Freedom of Information Act

Re-use means using cultural sector information for a purpose other than the initial purpose for which it was produced, held or disseminated.

For cultural sector bodies re-use permission is mandatory if it has already allowed the information to be re-used for a similar purpose (including by itself).

Example: transfer of information from a museum to its commercial trading arm is considered re-use; therefore the information must be made available to all other re-users on the same terms and conditions (non-discrimination).

Example: transfer of local government archival information to a cultural sector archive (such as the local authority's archive) is **not** considered re-use, as receiving archival transfers is part of the archive's public task.

Information which is re-usable while it is in custody of a cultural sector body should remain re-usable under the 2015 Regulations, regardless of any transfer to an archive or other public sector body.

If information is not under an open licence, a request for re-use should be made to the cultural sector body that holds the information.

Restrictions on re-use

Common examples of restrictions and exclusions include third-party copyright exclusion and protection of personal data. However the cultural sector may have additional considerations for re-use of certain information.

Cultural sector bodies retain the right to decline a request or require terms and conditions of re-use if the end-use is deemed unsuitable.

In some cases, such as with collections of culturally sensitive information, re-use might be considered to be inappropriate and the cultural sector body can decline a request for re-use. Alternatively they may allow it for restricted uses such as non-commercial research re-use, but decline it for commercial re-use.

Cultural sector bodies should make clear when granting access to information if there are any restrictions on re-use.

Re-use: Regulations 4 and 5

Release information in existing format, preferably electronically

Consider permitting re-use of information

Consider making information available for re-use in response to a Freedom of Information Act (FOIA) request

Resources:

From The National Archives:

- [How to manage your information](#)
- [Re-using public sector information](#)
- [Links between access and re-use](#)

University libraries

Although the Amending Directive does not define 'university library' it is taken to mean a library attached to a higher education body. It is not merely a physical building as many are now also digital repositories. Therefore, 'university library' refers not only the library itself, but can also refer to the parts of a university with library collections management functions, and to the information service that controls and disseminates information from within the higher education parent body.

There will be overlaps for many university libraries with archival and museum information, for example where:

- archives and museums are part of a library
- 'special collections' in a library hold archives
- archives and museums hold rare books

When such overlaps occur, university museums and archives should follow guidance for other public sector bodies.

Information produced, held or disseminated by a university library must not be reclassified as non-library information in order to avoid compliance with the 2015 Regulations.

Research in cultural sector bodies

Cultural sector bodies that carry out research functions must take care when identifying what information can be re-used.

The 2015 Regulations bring cultural sector bodies into scope, but continue to exclude research establishments. This exclusion is designed to prevent re-use requests for ongoing, raw research data which might be exploited and which in turn could undermine the research.

Cultural or other public sector bodies that carry out research activities, and the resulting research information, are in scope.

Research work of cultural sector bodies is generally in scope.

Example: A public museum carries out research work, but is not a research establishment itself. As a public sector body, it is definitely within scope, and its research work is also within scope. The type of research is not relevant.

The museum decides to release its research results under an open licence, as the work aligns to its public task. It also decides to release the raw data supporting the research after it is completed, but via a licence and on a case-by-case basis for re-use requests.

If the museum is paid to conduct research on a contract basis by a non-public sector body, then that research would fall outside scope.

As part of carrying out research, cultural and other public sector bodies frequently share their information with partner institutions. In such cases, the information sharing is not considered to be re-use under the 2015 Regulations if the sharing is part of either body's public task.

The Freedom of Information Act has a specific exemption in Section 22A (Research (prejudice based qualified exemption)) for information obtained in the course of, or derived from, a programme of research. The exemption has a wide scope that includes information not necessarily intended for publication itself. A cultural or other public sector body may use more than one exemption to protect sensitive information or premature release.

Resources:

[Information Commissioner's Office – Guide to Freedom of Information](#)

[Ministry of Justice – Section 22 Research exemption guidance](#)

[The Intellectual Property Office – Exceptions to copyright: Copyright material held by public bodies](#)

[The Intellectual Property Office – Exceptions to copyright: libraries, archives and museums](#)

[The Intellectual Property Office – How to apply for a licence to use an orphan work](#)

From The National Archives:

[– How to manage your information](#)

[– Overview of Crown copyright for governmental departments](#)

[– Re-using public sector information](#)

Jurisdiction

The Amending Directive applies only to EU member states. It does not permit discrimination against re-users based on their location. The 2015 Regulations which implement the Amending Directive apply in the UK. Other member states have transposed the Amending Directive into their own legal systems.

Links with other UK legislation

The 2015 Regulations link to other legislation, and seek to balance re-use of cultural and other public sector information with protection of copyright and personal information.

Access to cultural sector information is provided for under different regimes which are collectively referred to in this Guidance as 'access legislation'. The 2015 Regulations provide a framework for re-use of information once access has been obtained.

If information is obtained under access legislation, the 2015 Regulations presume the re-usability of the information unless it is otherwise excluded or restricted (for example by third-party copyright).

However, permission may still have to be sought for re-use unless information is provided under an open licence.

Freedom of Information Act

In 2012, the government amended the Freedom of Information Act 2000 (FOIA) to create a 'right to data' comprising new duties for certain public authorities to provide datasets of factual management information in a re-usable form and with a licence permitting re-use, in response to requests, and to continue to publish them. These provisions were inserted into sections 11A, 11B and 19 of FOIA by the Protection of Freedoms Act 2012.

The new rights to re-use under the 2015 Regulations have been consolidated with the FOIA provisions where a dataset is within the scope of the Regulations. For datasets or public authorities out of scope of the 2015 Regulations, there is no change. The access and means of communication requirements of FOIA, including sections 1, 11, 11A and 19, remain the same.

The 2015 Regulations amend sections 11A and 19 of FOIA regarding release of datasets or portions of datasets for re-use. These changes mean that where a dataset is covered by the 2015 Regulations, then it is the 2015 Regulations and not FOIA which will govern the re-use of such dataset information and their entry on a publication scheme. This is an important change for the large number of public authorities which are also public sector bodies. Re-use of their datasets that are relevant copyright works will be dealt with under the 2015 Regulations, not FOIA.

Resources:

[Environmental Information Regulations 2004](#) and [Environmental Information \(Scotland\) Regulations 2004](#) (as amended)
[EC Guidance on recommended standard licences, datasets and charging for re-use](#)
[Freedom of Information Act 2000](#) and [Freedom of Information \(Scotland\) 2002](#) (as amended)
[Information Commissioner's Office – Guide to EIR](#) and [– Guide to FOI](#)
[Local Government Act 2010](#) and [Local Government Access to Information Act 1985](#)
[Openness of Local Government Bodies Regulations 2014](#)
[Protection of Freedoms Act 2012](#)

Data Protection Act

The 2015 Regulations do not reduce the protections of the [Data Protection Act 1998](#) (DPA). They do not apply to any personal data that is not available under access legislation, nor to personal data that may be accessible but cannot be re-used due to data protection.

Personal data may be accessible (for example, in a public register or by a request under access legislation) but that does not automatically make it re-usable. Any subsequent use or re-use of any personal data must be lawful under the DPA, which controls how personal information is used.

The cultural sector body is responsible for complying with the DPA when making information available for re-use. After permission to re-use has been given, the re-user is responsible for complying with the DPA.

Resources:

From the Information Commissioner:

[– Data Protection Principles](#)
[– Data protection and privacy and electronic communications](#)
[– Guide to Data Protection](#) for organisations
[The National Archives – Data Protection Act](#) for archives, including a code of practice

Examples:

[The National Archives - Privacy Policy and Information Charter](#)
[Cabinet Office – Personal Information Charter](#) (includes Twitter policy)

Public Records Act

The National Archives has published guidance on complying with the provisions of the Public Records Act.

Resource:

[The National Archives – Public Records Act](#)

Copyright

Copyright and re-use

Copyright protects material such as literary works, artistic works, software and databases, and stops others from using such material without permission.

The relaxation of copyright assertion when possible by cultural sector bodies facilitates re-use.

However, cultural sector bodies may not infringe on the copyright of others, including copyright in information they hold or disseminate but which belongs to someone else.

**The 2015 Regulations do not change copyright law,
or its protections or exceptions.**

Cultural sector bodies may not infringe others' copyright.

**They may not give permission to re-use information for which they do not hold
copyright.**

Copyright in re-used information does not grant copyright in the original information, even if that information is in the public domain or otherwise out of copyright. This principle applies to all re-use, even if it has been granted under an open licence.

Example: if you publish a new digital edition of Shakespeare's collected works, you hold only copyright for the typographical arrangement of your edition (covering aspects such as format, editorial notes and design) but you do not hold and cannot claim copyright in the underlying literary work.

Local authority libraries, museums and archives in particular may produce, hold or disseminate information that is under the copyright of their parent authorities (as well as holding third-party copyright information). These bodies should work together to establish the appropriate copyright status and any re-use licensing terms for re-use of their information. Where archives provide an archive service for a number of local authorities it will be particularly important to manage this aspect.

Cultural sector bodies should be very clear in any contractual relationships where copyright belongs.

Crown copyright

There are several cultural sector bodies that also hold [Crown copyright](#) materials and information in their collections, including the Imperial War Museum, the Government Art Collection, and other bodies with [delegations of authority](#) to licence copyright on behalf of the Crown.

For most Crown copyright information, the [Open Government Licence](#) is compulsory as it liberalises re-use of public sector information.

The National Archives itself is a Crown body as well as a cultural sector body. It administers Crown copyright and database rights through the Controller of Her Majesty's Stationery Office (the 'Controller') and the Office of the Queen's Printer for Scotland (OQPS).

Note that the Crown does not share copyright with external or other public sector bodies. Crown copyright will take precedent over other copyright so other bodies may be asked to assign their copyright to the Crown.

Third-party copyright

Re-use permission can be given by a cultural sector body only for information for which it holds the associated copyright. Large portions of cultural public sector libraries, museums and archive collections will include third-party copyright which is out of scope of the 2015 Regulations.

Copyright in re-used information does not grant copyright in the original, even if that information is in the public domain.

In cases where the copyright owner is unknown, copyright protection still applies and the cultural sector body cannot give permission to re-use.

Resources:

Legislation:

[Copyright, Design and Patents Act 1988](#)

[Copyright and Rights in Databases Regulations 1997](#)

Intellectual Property Office:

[Copyright](#) (links to a variety of resources)

[Copyright material held by public bodies](#)

[Exceptions to copyright: Libraries, museums and archives](#)

[Overview of intellectual property](#)

[Suite of guidance on orphan works](#)

The National Archives:

[Copyright](#)

[Copyright and publishing](#)

[Copyright and re-use statements](#)

[Copyright guidance](#)

[Duration of copyright](#) (Crown and non-Crown)

[How copyright applies](#)

[Overview of Crown copyright for governmental departments](#)

[Re-use and copyright](#)

Open data

Under Regulation 11, cultural sector bodies should make information and related metadata available through standard licences and, where appropriate and possible, through open and machine-readable formats using formal open standards.

Cultural and other public sector bodies may re-use open data they have published, or which has been published by another body, for activities inside and outside their own public task.

A machine-readable format is structured so that software applications can easily identify, recognise and extract specific data from it. The format should be standardised through an open process and approved by the Open Standards Board. This ensures interoperability with other programs and licences, such as the environmental framework in [INSPIRE](#).

Cultural sector bodies may hold information that may be unsuitable to be released as open data, for example if it includes personal or sensitive information. In such cases, publishing statistical summaries or metadata about the information in open format would be an alternative and promote re-use. This may be sourced in part from catalogues and other collections management data.

Resources:

[5 star open data step diagram](#)

[Department of Justice – Code of Practice \(Datasets\)](#)

[GOV.UK – Open Data](#)

[Government Service Design Manual](#)

[INSPIRE Regulations 2009](#)

[INSPIRE Amendment Regulations 2012](#)

[INSPIRE \(Scotland\) Regulations 2009](#)

[INSPIRE \(Scotland\) Amendment Regulations 2012](#)

[Open Data Institute](#) and [Open Data Certificates](#)

[OpenGLAM](#)

[Scottish Government Open Data Strategy](#)

[Standards Hub](#) (includes Open Standards Board)

[The National Archives – Open Government Licence](#)

[The National Archives – Copyright and publishing](#)

www.data.gov.uk

For cultural sector bodies new to open data principles, a [non-governmental explanation of open data licensing](#) has been produced by the Open Educational Resources Intellectual Property Rights Support Project.

Scope of the 2015 Regulations

Bodies in scope

Most public sector bodies are in scope of the 2015 Regulations, which bring libraries, university libraries, museums and archives into scope.

Cultural sector bodies range from large national galleries and museums to local archives and public libraries to libraries that are part of universities. The National Archives is itself in scope.

Resources:

From the Cabinet Office:

- [Categories of Public Bodies](#)
- [Openness and Accountability](#)
- [Public Bodies 2014](#)

[Office of National Statistics – Classification of Public Sector Bodies](#) (updated regularly)

From The National Archives:

- [How to identify a public records body: determination and change of status](#)
- [List of Crown bodies](#)
- [Scope flowchart](#)

Bodies out of scope

Regulation 5(3) excludes the following types of bodies:

- public sector broadcasters and their subsidiaries and other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit, for example the BBC
- educational and research establishments including organisations established for the transfer of research results (such as research councils), schools and universities (except for university libraries which are in scope)
- cultural and performing arts establishments such as orchestras, operas, ballets and theatres (other than libraries, museums and archives which are in scope)

The 2015 Regulations also do not apply where a person must prove an interest in order to gain access to information.

Information in scope

The 2015 Regulations define information by relating it to 'content' which is information in any form – including print, visual, digital, electronic, and sound recordings. Examples of public sector information in scope include:

- primary and secondary legislation
- official records of the Proceedings of the UK and Scottish Parliaments, the Northern Ireland Assembly and the National Assembly for Wales
- codes of practice
- geospatial data produced by organisations such as Ordnance Survey and the UK Hydrographic Office
- meteorological data produced by the Met Office
- consultation and policy documents
- statistics produced by the Office for National Statistics
- financial and performance data
- annual reports published by government departments, agencies and local authorities
- statutory registers such as those for birth, death and marriage, and land titles
- patent information collected and produced by the Intellectual Property Office
- health and safety guidance and reports published by the Health and Safety Executive
- forms issued by local and central government such as tax forms
- press notices
- still and moving images
- technical reports
- local planning information
- publication schemes (required under FOIA legislation)
- information produced, held or disseminated by libraries, museums and archives (where they hold the copyright)

The 2015 Regulations apply only to information produced, held or disseminated within a cultural sector body's public task and for which they hold copyright.

Information produced, held or disseminated by a cultural sector body must not be reclassified as outside its public task in order to avoid compliance with the Amending Directive or the 2015 Regulations.

If the information is a dataset that is defined as a 'relevant copyright work' under the Freedom of Information Act (FOIA), and the 2015 Regulations do not apply, then the re-use provisions in FOIA still apply and permission to re-use may be given.

Example: if a cultural sector body is excluded from the 2015 Regulations, but is a FOIA 'authority', then the right to re-use datasets comes from FOIA.

Information out of scope

Some information is excluded regardless of the body that produces, holds or disseminates it. This is set out in Regulation 5 and includes:

- information that falls outside the scope of the public task of the cultural sector body
- information in which the relevant copyright is owned or controlled by a different person or organisation that is not in scope (third-party copyright)
- parts of documents containing only logos, crests or insignia
- information that contains personal data that must be protected
- information exempt from release under access legislation, including where a person or company has to show a particular interest to access it

An exception to this is where section 21 of the [Freedom of Information Act 2000](#) or section 25 of the [Freedom of Information \(Scotland\) Act 2002](#) applies. These sections cover information which is 'reasonably accessible' to the requester. For example, information published on a cultural sector body's website would be exempt from an access request by virtue of being already reasonably accessible. This information would normally be available for re-use

Information is out of scope if it is transferred within a cultural or other public sector body, or to another cultural or other public sector body, in order for either body to carry out its public task.

If a cultural sector body shares research information with a research partner institution, that sharing is not considered re-use and is therefore out of scope.

Public task

Public sector bodies should ensure that the scope of their public task is transparent and subject to review, and publish a description of what their public task is.

Information within public task is that which a cultural sector body must produce, hold, collect or disseminate to fulfil its core role and functions, whether statutory or established through common administrative practice.

Cultural sector bodies must define and publish what their public task is.

Cultural sector bodies may not define information they produce, hold or disseminate as outside their public task in order to avoid the 2015 Regulations.

Archives and museums often have a collection policy, whether published or unpublished. Collection information and items held by a cultural sector body which are outside its collection policy may also be outside public task.

Resources:

From The National Archives:

- [General information on public task](#)
- [Guide to drawing up a statement of public task](#)
- [Public task principles](#)

Examples:

- [Environment Agency - Public Task Statement](#)
- [Ordnance Survey - Public Task](#)
- [The National Archives - Public task](#)

Cultural sector obligations

Information asset lists

Cultural sector bodies must already publish their publication schemes under sections 19-20 of the Freedom of Information Act. Under the 2015 Regulations, they must also publish asset lists of their cultural public sector information. Information asset lists include both published and unpublished information.

An information asset is information that a cultural sector body produces, holds or disseminates that is of interest or value to itself and potentially to re-users. It includes information within the public task.

An information asset list is simply a register of these information assets, usually categorised using a standard classification method.

Cultural sector bodies may already have information asset lists in the form of catalogues, guides to holdings and collections databases.

| Information asset lists: Regulation 16 |
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| <p>Publish a detailed list of main information within public task including:</p> <ul style="list-style-type: none">• what is available for re-use (published and unpublished) with relevant metadata• how the information can be obtained• any terms or conditions for re-use (e.g., through a licence) |

Resources:

From The National Archives:

- [Asset Lists](#)
- [Information Assets and Business Requirements](#)
- [Information Asset Register](#) (model IAR)

Examples:

[Department for Transport – Information Asset Register](#)
[Home Office Information – Asset Register](#)

Permitting re-use

Cultural sector bodies are not required to permit re-use of their public sector information. Regulations 11 to 16 describe the requirements and exclusions for permitted re-use. However refusals to give permission to re-use may not be discriminatory, and such decisions may be challenged.

Where re-use is permitted for more than one party, including by the cultural sector body itself, it must be on the same terms and conditions (non-discriminatory).

Terms and conditions may vary for different types of re-use, but they must not discriminate among different types of re-users (e.g., commercial, non-commercial, educational, charity).

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| Permitting re-use: Regulations 7, 11-16 |
| Cultural sector bodies are not required to allow the re-use of the information they produce, hold or disseminate within their public task |
| They must allow re-use of information if it has already been made available for re-use, including by itself |
| Be open, transparent and fair in processing requests for re-use |

Resource:

[The National Archives – Template form for requesting re-use of public sector information](#)

Responding to a request for re-use

Response means one of the following in writing (print or email):

- indicating if the information is already available and re-usable
- explaining to the requester where they can obtain the information
- supplying the information to the requester, if it has not already been supplied (including under access legislation)
- notifying the requester if it will take longer than 20 working days to reply
- explaining if there is any charge for information
- offering terms and conditions for re-use, often in the form of a licence
- declining to give permission to re-use and the grounds for the decision
- explaining the complaints process in case the requester wants to appeal a refusal

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| Responding to a request for re-use: Regulations 6 and 8 |
| Respond within 20 working days, including finalising any licence offer |
| Any extension past 20 days must be reasonable |
| The cultural sector body must tell the requester their expected timeframe and reasons for the delay |
| Any licences offered should be standard wherever possible and appropriate |
| Protection of personal data still applies |

Resource:

[The National Archives – Template form for requesting re-use](#)

Requests to re-use readily available information

Information produced, held or disseminated by a cultural sector body within its public task may already be accessible and available for re-use, for example on its website, or in www.data.gov.uk, www.local.gov.uk or www.gov.uk (or on-site in the case of some cultural sector bodies).

Where information is already available, including by publishing it or identifying it as being available for re-use (e.g., on an information asset list), a request for re-use must be answered within 20 working days.

Information made available for re-use under an [Open Government Licence](#) (OGL) does not require a request to re-use, but the re-user must meet licence conditions.

Requests to re-use previously unreleased information

Permission to re-use previously unreleased information is subject to access issues being resolved. Requests for access and re-use may be made simultaneously so that the 20 working day response times are concurrent.

If a request for access (for example under a FOIA request) and re-use is combined, cultural sector bodies may begin preparing their re-use response ahead of access being given, so they can respond quickly once access has been resolved.

Processing requests for re-use

Cultural sector bodies must respond to requests for re-use within 20 days.

If more time is needed, for example for a high-volume or complex request, then a response must still be made within 20 days but it may explain why more time is needed to fulfil the request, and indicate a reasonable timeline.

Cultural sector bodies are not required to:

- create or adapt information to comply with a request for re-use. The emphasis is on the re-use of existing information, rather than creating new or changing existing information
- provide extracts of information where this would require disproportionate effort
- continue producing, storing or disseminating information purely for re-use by others. This means that once information is no longer useful or needed to meet the policy and public task aims of a cultural sector body, it may stop producing it. The cultural sector body should alert re-users if such a decision is made

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| Processing a request for re-use: Regulations 10 and 11 |
| Respond to a request within 20 days, including telling a requester if you need more time to fulfil their request |
| Make information available in existing format |

Notification of refusal to allow re-use

Regulation 9 outlines the required refusal process:

- response must be in writing
- reasons for refusal must be given
- the cultural sector body should explain the complaints processes open to the requester, both internal and external
- in cases where refusal is based on copyright being owned by a third party, the owner of the relevant copyright should be identified, where known. The same principle applies where the copyright in the information is held jointly by the cultural sector body and a third party. If the copyright owner is not known, this should be stated
- where the owner of the third-party copyright is not known, then the name of the person from whom the information was obtained should be provided, where known and lawful under the [Data Protection Act 1998](#). If that person is not known, this should be stated

Regulation 17 provides for a complaints process if a cultural sector body refuses permission to re-use.

Non-discrimination

Regulation 13 states that cultural sector bodies must not discriminate in the conditions applied among requesters who re-use information for similar purposes. The emphasis is on the type of re-use, rather than the re-user.

Example: a private sector company and a charity must be treated in the same way for re-use requests, whether the re-use is for commercial gain or not.

The only exception to this is where a particular user or groups of users have a statutory right to re-use information.

When a cultural sector body decides to use information beyond the purpose for which it was originally produced, held or disseminated, it must apply the same terms to itself, or to any associated body such as a trading arm, as to any other re-user.

Cultural sector bodies should make an appropriate cost-reflective charge regardless of whether the information is provided to an external re-user or for their own re-use.

Non-restrictive conditions for re-use

Regulation 12 allows cultural sector bodies to set conditions on re-use of information, where appropriate through a licence.

It may also set other conditions, for example requiring a disclaimer that the re-use may not be construed as approval by the cultural sector body that is permitting the re-use.

Conditions may not restrict competition or discriminate among re-users.

Licensing re-use

Licences should be as open and non-restrictive as possible.

The [Open Government Licence](#) is an example of a non-restrictive licence. It is the default for most Crown bodies, and preferred for all public sector bodies in cases where information is supplied for re-use and for which no charge is made.

If a cultural sector body makes some information available under an open licence (such as the OGL) but licenses other information under a different licence, it should clearly indicate what information comes under which licence.

Libraries, museums and archives are permitted to have exclusive licences in certain circumstances, such as where there is no alternative to provide a public task service, or to continue a digitisation programme.

Where a cultural sector body has a deposit agreement for information held within its public task that allows it to sub-licence that information, the terms and conditions of the sub-licence must comply with the 2015 Regulations.

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| Licensing re-use: Regulations 12 – 14 |
| Licences are not required |
| Use a standard licence which is as non-restrictive as possible |
| Apply fairly and openly to all requesters - must not be anti-competitive or discriminatory |
| Exclusive licences for providing information in the public interest must be reviewed at least once every three years and must be published if entered into after 31 December 2003 |
| Exclusive licences for digitising cultural resources normally must not be longer than 10 years and must be reviewed in the 11 th year and every seven years after that |
| All exclusive licences must terminate by 18 July 2043 |
| Indicate any third-party copyright information not covered by the licence |
| Protection of personal data still applies |

Resources:

[The National Archives – Re-use and licensing](#)
[UK Government Licensing Framework](#)

Different licence types

Open Government Licence

The [Open Government Licence](#) (OGL) is the default for central government departments and agencies, and the preferred licence for all other public and cultural sector bodies, for use in cases where information is supplied for re-use and no charge is made.

Non-Crown bodies may also use the OGL.

Personal data cannot be re-used under the OGL.

Non-commercial Government Licence

The [Non-Commercial Government Licence](#) is an acceptable alternative when the OGL is not suitable. Crown bodies may use this only if approved by The National Archives.

Charged licence

The National Archives has produced the [Charged licence](#) which is recommended for use by cultural sector bodies that have a valid reason under the 2015 Regulations to charge for the re-use of the information they produce, hold or disseminate.

Exclusive licences

Exclusive licences are usually prohibited for any public sector body because they prevent others from re-using information and inhibit competition. However the Amending Directive recognises some circumstances where a cultural sector body may need to enter into an exclusive arrangement, for example to provide a public task service not otherwise possible, or for digitising cultural resources.

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| Exclusive arrangements: Regulation 14 |
| <p>Exclusive arrangements are permitted when a public task service cannot be provided otherwise</p> <p>These arrangements must be reviewed at least once every three years to ensure the reason(s) for exclusivity remain valid</p> <p>Details of any such arrangement entered into on or after 31/12/2003 must be published</p> |
| <p>Exclusive arrangements are permitted to digitise cultural resources</p> <p>These arrangements should not exceed 10 years. If it does exceed 10 years, the duration must be reviewed in the 11th year and every 7 years after, if applicable</p> <p style="text-align: center;">Details of any such arrangement must be published</p> <p>The cultural sector body must have access to the information during the term of the agreement, and it must receive one free copy of a digitised resource at the end of the agreement</p> |
| <p>Any other exclusive arrangements existing on 17 July 2013 must be terminated no later than 18 July 2043</p> |

Charging for re-use

Regulation 15 on Charging, like the 2015 Regulations of which it forms part, only applies to information which a cultural sector body produces, holds or disseminates within its public task.

Marginal cost is the default when charging for re-use of such public sector information. There are certain exceptions to this default:

- (a) bodies required to generate revenue to recover a substantial part of the costs incurred in fulfilling their public task
- (b) information for which a public sector body is required to generate sufficient revenue in order to cover costs associated with production, collection, reproduction and dissemination
- (c) the cultural sector – libraries (including university libraries), museums and archives

For (a) and (b), the total income for the accounting period must not exceed the cost of collection, production, reproduction and dissemination of the information, together with a reasonable return on investment.

For cultural sector bodies, the total income for the accounting period must not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance of the information, together with a reasonable return on investment.

The 2015 Regulations do not define a reasonable return on investment (ROI) and the rate of return on capital employed in service provision to be applied will depend on whether that service provision competes with private sector provision of similar services.

Normally the standard cost of capital, currently 3.5% in real terms, will apply. However, in cases where provision competes with private sector provision of similar services, the rate should be in line with the rates achieved by comparable businesses facing a similar level of risk.

Charges may be challenged.

| Charging: Regulations 15 and 16 |
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| <p>Marginal cost is the default for public sector bodies</p> <p>Limited to recovering the marginal cost of reproduction, provision and dissemination of information</p> |
| <p>Public sector bodies required to generate revenue are not subject to the marginal cost default when charging for supplying information for re-use</p> <p>For these bodies, charges are limited to recovering the cost of collection, production, reproduction or dissemination of information, plus a reasonable return on investment</p> <p>For a cultural sector body, charges are limited to recovering the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with a reasonable return on investment</p> |
| <p style="text-align: center;">Where a standard charge is established, provide information on:</p> <ul style="list-style-type: none"> • any conditions for re-use • what the charges are and what each charge is for • basis on which charges are calculated <p style="text-align: center;">Where a standard charge has not been established, provide information on:</p> <ul style="list-style-type: none"> • the factors taken into account in the calculation of the charge for re-use in question • if requested, set out in writing the way in which the charge is calculated in relation to the specific request for re-use |
| <p>All re-users must be charged the same cost-reflective rate for the same type of re-use (e.g., commercial publishing), regardless of what type of re-user they are (e.g., commercial, educational or charity)</p> |
| <p>For public sector bodies permitted to charge (including cultural sector bodies), the charge for information supplied in response to a request for re-use must not exceed the sum of:</p> <ol style="list-style-type: none"> A. the direct costs B. a reasonable apportionment of indirect and overhead costs, and C. a reasonable return on investment |
| <p>No charging if costs already recovered to supply information for re-use (e.g., through registration fees)</p> |
| <p>No double-charging for access to information under access legislation, and for re-use of the same information</p> |

Complaints process

Complaints can be made about whether a cultural sector body is complying with any aspect of the 2015 Regulations, for example on issues of charging or what information falls within public task, subject to the exclusions below.

The complaints process does not apply to the re-use of information produced, held or disseminated outside a cultural sector body's public task. It also does not apply to information for which the cultural sector body does not hold the copyright.

The complaints process will only apply to issues of re-use, and will not consider complaints about access, which are dealt with under access legislation.

Initial complaints process

The cultural sector body must first try to resolve the complaint through its internal complaints process.

Complaints must:

- be in writing (email is acceptable)
- state the nature of the complaint – what sections of the 2015 Regulations are at issue and how
- what the complainant would like the cultural sector body to do in order to resolve the complaint
- provide the complainant's full contact details

| Initial complaints process: Regulation 17 |
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| Cultural sector bodies must attempt to resolve the complaint using their internal complaint process |
| Respond within 20 working days |
| If the 20 day timeframe cannot be met, contact the complainant to explain why |
| Response to the complaint must be in writing |
| Response to the complaint must give reasons for the decision and set out options if the re-user wishes to escalate (appeal) |

Complaints to the ICO

If the cultural sector body's internal complaints process could not resolve the complaint, the complainant can escalate it to the [Information Commissioner's Office](#) (ICO), for example if it relates to the following:

- marginal cost pricing
- non-charging re-use complaints (e.g., refusal of permission to re-use)

The ICO has guidance on their role in the complaints process and the procedures that cultural sector bodies and complainants must follow when a complaint is escalated. The process is summarised below.

After reviewing the complaint, the ICO will issue a binding decision via a decision notice. Either the complainant or the cultural sector body may appeal this decision to the General Regulatory Chamber of the First-tier Tribunal, information rights jurisdiction (the First-tier Tribunal).

The ICO will notify the Scottish Information Commissioner (SIC) if the complaint relates to a Scottish cultural sector body and the ICO and the SIC may share relevant information.

There are exceptions to this process where the ICO will make a recommendation instead of a binding decision. If a complaint alleges that a cultural sector body has not followed the required calculation method when charging above marginal cost, or has incorrectly applied the provisions which allow bodies with a requirement to generate revenue to cover a substantial part of their costs to charge above marginal cost, the recommendation will be sent back to the cultural sector body for it to consider and then make its final decision.

A cultural sector body must:

- decide what action it will take on the recommendation, including complying, changing its response, or no action
- by what date it will carry out the action
- notify the ICO and the complainant of its response in writing within 20 days

If the complainant is dissatisfied with the cultural sector body's confirmed or changed re-use decision, or the cultural sector body does not comply with any of the above points, the complainant may appeal to the First-tier Tribunal.

The First-tier Tribunal will hear the appeal and then make a ruling.

| Escalation of complaints: Regulations 18-22 |
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| Cultural sector bodies must comply with an ICO decision unless they decide to appeal |
| If the cultural sector body is subject to an ICO recommendation, reply within 20 days |
| Cultural sector bodies must comply with the decision of the First-tier Tribunal, subject to their right to appeal to the Upper Tribunal and higher courts |

Resources:

[Courts and Tribunals Judiciary](#)

[Information Commissioner's Office](#) (covering England, Wales and Northern Ireland)

[Scottish Information Commissioner](#)

[General Regulatory Chamber](#) (First-tier Tribunal is a part of this)

[General Regulatory Chamber – forms and guidance](#)

[General Regulatory Chamber – guidance for policy makers](#) (public sector bodies)

Transitional arrangements

Under Regulation 22, the previous [2005 Regulations](#) will apply to any complaints about re-use still in process during the three months after 18 July 2015 (the in-force date of the 2015 Regulations), up to and including 17 October 2015.

If the complaint concerns a 'dataset' (see [Links to other Legislation/Freedom of Information Act](#)) that was requested prior to the 2015 Regulations coming into force, then the relevant FOIA provisions will continue to apply. If the complaint concerns a dataset that was requested after the 2015 Regulations came into force, then the 2015 Regulations will apply where the dataset is held by a public sector body.