

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

## **For public sector bodies**

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

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This Guidance is designed to help public 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](http://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](http://www.nationalarchives.gov.uk) where this Guidance is available for download.

## Contents

Welcome.....	4
Key changes.....	4
Comparison of key aspects .....	5
Scope at a glance .....	6
What is public sector information?.....	7
What do the Regulations mean for different parts of the public sector? .....	7
Public sector bodies.....	7
Libraries, museums and archives .....	8
Re-users of public sector information.....	8
Context of the 2015 Regulations.....	9
Principles and Objectives.....	9
Access and re-use.....	9
Jurisdiction .....	10
Links with other UK legislation .....	11
Copyright .....	12
Open data.....	14
Scope of the 2015 Regulations.....	15
Bodies in scope.....	15
Bodies out of scope.....	15
Information in scope .....	16
Information out of scope .....	17
Public task.....	17
Public sector obligations.....	18
Information asset lists .....	18
Permitting re-use.....	19
Responding to a request for re-use.....	19
Requests to re-use readily available information.....	20
Requests to re-use previously unreleased information .....	20
Processing requests for re-use.....	20
Notification of refusal to allow re-use .....	21
Non-discrimination.....	21
Non-restrictive conditions for re-use .....	21
Licensing re-use .....	22
Different licence types.....	22
Open Government Licence.....	22
Non-commercial Government Licence .....	22
Charged licence.....	23
Exclusive arrangements prohibited.....	23
Charging for re-use.....	24
Complaints process .....	26
Initial complaints process .....	26
Complaints to the ICO.....	27
Transitional arrangements.....	28

# Guidance on the implementation of the Re-use of Public Sector Information Regulations 2015 for public sector bodies

## Who should read this Guidance?

Staff of public sector bodies defined in the Regulations – including central, regional, devolved and local government and agencies – 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.

This Guidance is written for public 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 changes

- cultural sector now in scope: libraries (including university libraries), museums and archives
- obligation to allow re-use of most public sector information – optional for cultural bodies unless the information is already available for re-use, even by themselves
- marginal cost pricing is the default (with certain exceptions)
- standard licensing required; licences should be as non-restrictive as possible
- redress (complaints) arrangements with an authority that can issue binding decisions and potential to appeal to a First Tier-Tribunal

## Comparison of key aspects

2005 Regulations	2015 Regulations
Regulations apply to public sector bodies, including local government	Scope extends to include cultural sector: libraries (including university libraries), museums and archives
Only accessible information is re-usable	Information produced, held or disseminated within a public sector body's public task must be re-usable (unless restricted or excluded)
Make information available	Make information and metadata available through standard licences and machine-readable formats whenever possible  Facilitate cross-linguistic searches whenever possible
No obligation to allow re-use	Obligation to allow re-use of information unless restricted or excluded, or from a cultural sector body (which may decline permission to re-use)
Standard licences encouraged	Encourages standard, non-restrictive licences
Permits charging for re-use	Charging at marginal cost is the default  For public bodies outside the cultural sector, this is subject to certain exceptions (e.g., many information traders) which permit charging to cover the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment  The marginal cost default does not apply to bodies in the cultural sector (libraries, museums and archives) which may charge to cover the cost of collection, production, reproduction, preservation and rights clearance together with a reasonable return on investment
Prohibits exclusive licences	Same, unless to provide a public service that could not otherwise be provided, or for digitising cultural resources
Complaints process established	If a complaint cannot be resolved by a public sector body's internal system, it may be escalated to the Information Commissioner's Office which can make binding decisions on most issues, and potentially to the First-Tier Tribunal for Information Rights

## Scope at a glance

Bodies in scope	Bodies out of scope	Information in scope	Information out of scope
Central government	Public sector broadcasters	Information in any form – including print, visual, digital, electronic, and sound recordings – that is produced, held or disseminated within the public sector body's public task	Information produced, held or disseminated outside public task
Local government	Educational and research establishments		Information that is not accessible
Public corporations	Cultural and performing arts establishments (other than libraries, museums and archives)		Information restricted or excluded, for example under access legislation
Libraries (including university libraries) Museums Archives	Private utility companies		Information whose copyright does not belong to the public sector body
Scottish Government and Parliament	Parts of higher education institutions not otherwise in scope		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 (content) whatever its medium (form) – including print, digital or electronic, and sound recordings – produced, held or disseminated by a public sector body is considered public sector information. This includes an enormous range: corporate information such as reports and financial data, codes of practices, public records, statistics, still and moving images, press releases, publication schemes, and so on.

If a public sector body holds the copyright for information it produces, holds or disseminates within its public task, 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 a public sector body's 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 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 do the Regulations mean for different parts of the public sector?

### Public sector bodies

For public sector bodies that already make their information available for re-use under an open licence such as the [Open Government Licence](#), the 2015 Regulations will largely mean business as usual.

Accessible information which is produced, held or disseminated by the public sector body must be made available for re-use (unless it is otherwise restricted or excluded).

The default is to set charges at marginal cost. In some cases, for example for online or digital information, this cost may be nil.

There are certain exceptions to the marginal cost default (e.g., many information traders). In such cases, public sector bodies may charge re-users to cover the costs of collection, production, reproduction and dissemination of information, together with a reasonable return on their investment.

Public sector bodies need to be clear what their public task is, because this determines what information falls within scope of the 2015 Regulations.

The 2015 Regulations continue to give public sector bodies a means to express their transparency, fairness, and non-discrimination.

## **Libraries, museums and archives**

Many cultural sector bodies are already complying with the 2015 Regulations through their best-practice approach to the information they produce, hold or disseminate. Essentially this means making their information re-usable.

They will be able to 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.

They also retain the right to decline requests for re-use (although such decisions may be challenged).

## **Re-users of public sector information**

For re-users, the 2015 Regulations should make re-use easier. In general, information that is accessible, either because it has been published or because it has been released under access legislation, should be available for re-use under a standard licence.

For most re-use, charges will be at marginal cost. In some cases, this cost may be nil.



## 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.

## 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
- mandatory re-use permission for all information produced, held or disseminated within public task unless re-use is otherwise restricted or excluded (with some exceptions for the cultural sector)
- the easy identification of public sector information that is available for re-use
- transparency of terms, conditions and licences
- the availability of public sector information for re-use at marginal cost as the default
- 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, including through 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
- retains protection of personal data

## Access and re-use

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

Information is made accessible in various ways including:

- publishing the information on websites of public sector bodies
- free leaflets, pamphlets and books
- priced publications (often through private sector publishers who publish information on behalf of the public 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
- displaying or holding information (e.g., artefacts on display in a museum, records in an archive)
- through a publication scheme under the Freedom of Information Act

**Re-use means the use of public sector information for a purpose different from the initial purpose for which it was produced, held or disseminated.**

**Public sector body information within public task is presumed to be re-usable once access is obtained, unless the information is otherwise restricted or excluded.**

Common examples of restrictions and exclusions include third-party copyright exclusion and protection of personal data. All public sector bodies should make clear when granting access to information if there are any restrictions on re-use.

Access issues must be resolved by the public sector body holding the information before any re-use can be made.

Information which is re-usable while it is in the custody of a public sector body such as a local authority 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 public sector body that holds the information.

<b>Re-use: Regulations 4 and 5</b>
Release information in existing format, preferably electronically
Permit re-use of information (unless restricted or excluded)
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](#)

## **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 have links with other legislation, and seek to balance re-use of public sector information with protection of copyright and personal information.

Access to public 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)

[Freedom of Information Act 2000](#) and [Freedom of Information \(Scotland\) 2002](#) (as amended)

[EC Guidance on recommended standard licences, datasets and charging for re-use](#)

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

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

[Local Government Act 2010](#)

[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 public 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's Office:

- [Data Protection Principles](#)
- [Guide to Data Protection](#) for organisations
- [Data protection and privacy and electronic communications](#)
- [Privacy Notices Code of Practice](#)

[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. It prevents people from:

- copying it
- distributing copies of it, whether free of charge or for sale
- renting or lending copies of it
- performing, showing or playing it in public
- making an adaptation of it
- putting it on the internet

The relaxation of copyright assertion by public sector bodies facilitates re-use.

Public 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.**

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.

Public sector bodies should be very clear in any contractual and licensing relationships where copyright belongs.

### Crown copyright

Most information produced, held or disseminated by [Crown bodies](#) (most of central government) is covered by [Crown copyright](#). Most Crown copyright information is available under the [Open Government Licence](#), which liberalises re-use of public sector information.

The National Archives administers Crown copyright and database rights on behalf of the Controller of Her Majesty's Stationery Office (the 'Controller') and the Office of the Queen's Printer for Scotland (OQPS).

In some cases the Controller and the OQPS delegate Crown copyright licensing responsibility to government departments, notably information traders, provided they can demonstrate their observance of fair trading principles.

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

#### Resources:

[Copyright, Design and Patents Act](#) and [Copyright and Rights in Databases Regulations](#)  
[Intellectual Property Office – Copyright](#) (links to a variety of resources) and [– Exceptions to copyright: Copyright material held by public bodies](#)

From The National Archives:

- [Copyright and publishing](#)
- [Copyright and re-use statements](#)
- [Copyright guidance](#)
- [How copyright applies](#)
- [Information Fair Trader Scheme](#)
- [Open Government Licence](#)
- [Overview of Crown copyright for governmental departments](#)

## Open data

Under Regulation 11, public 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.

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](#).

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.

Some public sector bodies may hold information that may be unsuitable to be released as open data, for example if it includes personal or commercially-sensitive information. In such cases, publishing statistical summaries or metadata about the information in open format would be an alternative and promote re-use.

### Resources:

[5 star open data step diagram](#)

[Cabinet Office – Open Standards for Government](#)

[Cabinet Office - Improving the transparency and efficiency of government and its services](#)

[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](#)

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

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

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

[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](http://www.data.gov.uk)

For public 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 within the scope of the 2015 Regulations, which also bring the cultural sector (libraries, including university libraries, museums and archives) into scope.

Examples of public sector bodies are: agencies, government departments, local government, and devolved institutions including the [Scottish Parliament](#), the [National Assembly for Wales Commission](#), and the [Northern Ireland Assembly Commission](#).

If a public sector body carries out research activities (but is not a research establishment) it and the resulting research information are in scope.

#### Resources:

[Cabinet Office – Categories of Public Bodies](#)

[Cabinet Office – Openness and Accountability](#)

[Cabinet Office – Public Bodies 2014](#)

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

[The National Archives – Determination and change of status](#)

[The National Archives – List of Crown bodies](#)

[The National Archives – Scope flowchart](#)

### Bodies out of scope

Regulation 5(3) excludes the following types of public sector 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 the 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 Freedom of Information Act legislation)
- information held by libraries, museums and archives where they hold the copyright

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

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 should be given.

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

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

<b>Public sector information</b>
Information produced, held or disseminated within public task must be re-usable (unless restricted or excluded )
Do not reclassify information as outside public task to avoid compliance



## Information out of scope

Some public sector body 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 public 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 public 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 public sector body or to another public sector body in order for either body to carry out its public task.

If a public 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 public sector body must produce, hold, collect or disseminate to fulfil its core role and functions.

If the 2015 Regulations do not apply, then permission to re-use datasets may still be possible if the public sector body is an 'authority' under the Freedom of Information Act.

**The 2015 Regulations do not apply to information outside the scope of the public task of the public sector body.**

**Public sector bodies may not define information as outside their public task in order to avoid compliance with the 2015 Regulations.**

### 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](#)

## Public sector obligations

### Information asset lists

Public 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 an [information asset list](#). Asset lists include both published and unpublished information.

An information asset is information that a public 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.

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

**Resources:**

From The National Archives:

[– Assets List](#)

[– 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

Permission to re-use public sector information is mandatory in most cases. Regulations 11 to 16 describe the requirements and exclusions for permitted re-use.

Where re-use is permitted for more than one party, including by the public 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., whether commercial, non-commercial, educational or charity).

<b>Permitting re-use: Regulations 7, 11-16</b>
Public sector bodies must allow the re-use of the information they produce, hold or disseminate within their public task (unless it is restricted or excluded)
Be open, transparent and fair in processing requests for re-use
No exclusive licences (with exceptions for certain cases)

### 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 where a requester 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 (including an open 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

<b>Responding to a request for re-use: Regulation 8</b>
20 working days to respond, including finalising any licence offer
Any extension past 20 days must be reasonable
The public sector body must tell the requester their expected timeframe and reasons for the delay
Licences should be standard wherever possible and appropriate
Protection of personal data still applies

## Requests to re-use readily available information

Information produced, held or disseminated by a public sector body within its public task may already be available, for example on its website, or in [www.data.gov.uk](http://www.data.gov.uk), [www.local.gov.uk](http://www.local.gov.uk) or [www.gov.uk](http://www.gov.uk)

If a requester can show that it already has access to the information, then re-use generally should be permitted.

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 the [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 and re-use is combined, public sector bodies may begin preparing their re-use response ahead of access being granted, so they can respond quickly once access has been resolved.

## Processing requests for re-use

There is no obligation for public sector bodies 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 public sector body, it may stop producing it. The public sector body should alert re-users if such a decision is made

<b>Processing a request for re-use: Regulations 10 and 11</b>
Respond to a request within 20 working days
Make information available in existing format

## Notification of refusal to allow re-use

Regulation 9 outlines the required process for refusing a request for re-use:

- response must be in writing
- reasons for refusal must be given
- the public sector body should explain the complaints processes to the requester
- 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 (data protection still applies). The same principle applies where the copyright in the information is held jointly by the public sector body and a third party
- 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 it is not known, this should be stated

## Non-discrimination

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

Example: a private sector company and a charity should be treated in the same way for re-use of information, 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.

If a public sector body decides to use information itself, beyond the purpose for which the information was originally produced, held or disseminated, it must apply the same terms and conditions of re-use to itself (and to any associated body) as it would to any other re-user.

Public 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 public sector bodies to set conditions on re-use of information, often through a licence. For example it may require acknowledgement of source and indication of whether or not the information has been modified by the re-user.

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 no charge is made.

Licensing re-use: Regulations 12 – 14
Licences are not required
Exclusive licences prohibited unless a public service (information) cannot be provided without one. 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
Use a standard licence or as non-restrictive a licence as possible
Must not be anti-competitive and must not discriminate among re-users
Cannot infringe third-party copyright
Protection of personal data still applies

### Resources:

[The National Archives – Re-use and licensing](#)

[UK Government Licensing Framework](#)

[Open Government Licence](#)

## 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 sector bodies, 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 public 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.

Crown bodies may use this only if approved by The National Archives.

## Exclusive arrangements prohibited

Public sector bodies may not enter into exclusive arrangements (e.g., licences) for re-use because they prevent others from re-using information and inhibit competition.

There are two important exceptions: first, if there are no alternatives to providing a public task service, and second, for digitising cultural resources.

<b>Exclusive arrangements prohibited: Regulation 14</b>
Exclusive arrangements are permitted when a public task service cannot be provided otherwise
These arrangements must be reviewed at least once every three years to ensure the reason(s) for exclusivity remain valid
Details of any such arrangement entered into on or after 31/12/2003 must be published
Exclusive arrangements are permitted to digitise cultural resources
These arrangements should not exceed 10 years. If it does exceed 10 years, the duration must be reviewed in the 11 <sup>th</sup> year and every 7 years after, if applicable
Details of any such arrangement must be published
The public 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
Any other exclusive arrangements existing on 17 July 2013 must be terminated no later than 18 July 2043

## Charging for re-use

Regulation 15 on Charging, like the 2015 Regulations of which it forms part, only applies to information which a public 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.

In the case of (c), 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.



<b>Charging: Regulations 15 and 16</b>
Marginal cost is the default
Limited to recovering the marginal cost of reproduction, provision and dissemination of information
Public sector bodies required to generate revenue are not subject to the marginal cost default when charging for supplying information for re-use
For these bodies, charges are limited to recovering the cost of collection, production, reproduction or dissemination of information, plus a reasonable return on investment
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
Where a standard charge is established, provide information on:
<ul style="list-style-type: none"> <li>• any conditions for re-use</li> <li>• what the charges are and what each charge is for</li> <li>• basis on which charges are calculated</li> </ul>
Where a standard charge has not been established, provide information on:
<ul style="list-style-type: none"> <li>• the factors taken into account in the calculation of the charge for re-use in question</li> <li>• if requested, set out in writing the way in which the charge is calculated in relation to the specific request for re-use</li> </ul>
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)
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:
<ul style="list-style-type: none"> <li>A. the direct costs</li> <li>B. a reasonable apportionment of indirect and overhead costs, and</li> <li>C. a reasonable return on investment</li> </ul>
No charging if costs already recovered to supply information for re-use (e.g., through registration fees)
No double-charging for access to information under access legislation, and for re-use of the same information

## Complaints process

Complaints can be made about whether a public 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 public sector body's public task. It also does not apply to information for which the public 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.**

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 public sector body to do in order to resolve the complaint
- provide the complainant's full contact details

## Initial complaints process

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

<b>Initial complaints process: Regulation 17</b>
Public 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 public 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 public 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 public 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 public 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 public sector body has not followed the required calculation method when charging above marginal cost, or has incorrectly applied the provisions which allow public sector 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 public sector body for it to consider and then make its final decision.

A public 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 public sector body's confirmed or changed re-use decision, or the public 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.

Complaints: Regulations 18-22
Public sector bodies must comply with an ICO decision unless they decide to appeal
If the public sector body is subject to an ICO recommendation, it must reply within 20 days
Public 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 24, 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.