

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

For re-users

Version control:
v1 – July 2015

The National Archives

© Crown copyright 2015



You may use and re-use this information (not including logos) free of charge in any format or medium, under the terms of the [Open Government Licence v3.0](#).

This Guidance was produced by:

Information Policy
The National Archives
Bessant Drive
Kew TW9 4DU
psi@nationalarchives.gsi.gov.uk

This Guidance is designed to help you 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.

Contents

Welcome.....	4
Key changes	4
What is public sector information?	5
What is re-use?	5
Scope at a glance	6
Comparison of key aspects	7
What do the 2015 Regulations mean for different parts of the public sector?	8
Re-users of public sector information.....	8
Libraries, museums and archives	8
Public sector bodies.....	8
Context of the 2015 Regulations.....	9
Access and re-use.....	9
Jurisdiction	10
Links with other UK legislation	10
Copyright.....	12
Copyright and re-use.....	12
Crown copyright.....	12
Open data.....	13
Scope of the 2015 Regulations.....	14
Bodies in scope.....	14
Bodies out of scope.....	14
Information in scope	15
Information out of scope	16
Public task.....	16
Public sector obligations.....	17
Information asset lists	17
Permitting re-use.....	17
Responding to a request for re-use.....	17
Making a request for re-use	18
Requests to re-use readily available information.....	18
Requests to re-use previously unreleased information	19
Public sector body processing of requests for re-use.....	19
Notification of refusal to allow re-use	19
Non-discrimination.....	20
Conditions for re-use	20
Licensing re-use	21
Types of licences	21
Exclusive arrangements.....	21
Charging for re-use.....	22
Complaints process	24
Initial complaints process	24
Complaints to the ICO.....	24
Transitional arrangements.....	25

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

Who should read this Guidance?

Current and potential re-users of public sector information, such as:

- commercial and non-commercial re-users
- academic and education sectors
- app developers
- third sector
- civil society
- community-based organisations
- public sector bodies that re-use information from other public sector bodies
- researchers

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 explains 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 for most public sector bodies to allow re-use – 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

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 for which a public sector body does not hold the 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 is re-use?

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

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)			

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 by 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 access is 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

What do the 2015 Regulations mean for different parts of the public sector?

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 or non-restrictive licence.

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

Libraries, museums and archives

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

Restricted exclusive licensing will be permitted in two circumstances: where a museum, archive or library is digitising cultural resources, or where a public sector body cannot otherwise provide information.

They also retain the right to decline requests for re-use unless this is discriminatory (and such decisions may be challenged).

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 within public task which is produced, held or disseminated by a public sector body must be made available for re-use (unless it is restricted or excluded).

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 default is for public sector bodies to set charges at marginal cost.

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.

Public sector bodies will also need to produce information asset lists so re-users know what is available for re-use.

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

Context of the 2015 Regulations

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

Access and re-use

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

Information is made accessible in a variety of 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

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

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

Public sector body information 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 exclusions and protection of personal data. Cultural sector bodies are permitted to decline requests for re-use (unless the information has already been made available for re-use, including by itself).

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, you must make a request for re-use to the public sector body that holds the information.

To facilitate re-use, public sector bodies must:
Release information in existing format, preferably electronically
Use a standard licence that is as non-restrictive as possible
Permit re-use of information within its public task (unless restricted or excluded)
Consider allowing re-use of information made available under an FOI request
Cultural sector bodies should consider permitting re-use of information within public task

Resources:

- [Information Commissioner’s Office – How to access information from a public body](#)
- [The National Archives – Re-using public sector information](#)

Jurisdiction

The Amending Directive applies only to EU member states. It does not permit discrimination among re-users based on their location. The 2015 Regulations 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 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)

[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 – Access information from a public sector body 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, you are responsible for complying with the DPA.

Resources:

[Eight data protection principles](#)

[Information Commissioner – Accessing personal data](#) (for the public)

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

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

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

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 given 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.

Large portions of public sector libraries, museums and archive collections will include information with third-party copyright. 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.

Crown copyright

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

If Crown copyright information is not under an Open Government Licence, and no re-use licence or conditions are apparent, you can seek permission to re-use through The National Archives at psi@nationalarchives.gov.uk

The National Archives 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).

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 1988](#)

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

[Intellectual Property Office – Copyright](#) (links to a variety of resources)

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

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

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

[The National Archives – Copyright and re-use statements](#)

[The National Archives – Copyright guidance](#)

Open data

Under Regulation 11, public sector bodies should publish information and related metadata available through standard licences and in [machine-readable formats](#) using [formal open standards](#) whenever possible.

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 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, they may publish statistical summaries or metadata about the information in open format as an alternative and to 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](#)

[INSPIRE Regulations 2009](#)

[INSPIRE Amendment Regulations 2012](#)

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

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

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

[Scottish Government Open Data Strategy](#)

[Standards Hub – How we select standards](#)

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

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. The National Archives itself is in 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](#).

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 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 (but not 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 FOIA 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 out of scope

Some public sector body information is excluded regardless of the body that produces, holds or disseminates it. These are set out in Regulation 5 and include:

- 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 which 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

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.

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 they produce, hold or disseminate as outside their public task in order to avoid the 2015 Regulations.

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.

Resources:

[The National Archives – General information on public task](#)

[The National Archives – Public task principles](#)

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. Information 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.

Resources:

[The National Archives – Asset Lists](#)

Permitting re-use

Most public sector bodies must permit re-use of the information they produce, hold or disseminate within their public task (unless it is restricted or excluded). 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., commercial, educational, charity).

They must be open, transparent and fair in processing requests for re-use.

Generally, exclusive licences are not permitted but there are limited exceptions, such as when information cannot otherwise be made available, and for cultural sector bodies that are digitising cultural resources.

Responding to a request for re-use

Response by a public sector body means one of the following in writing (print or email):

- indicating if the information is already available and re-usable, for example under an open licence
- explaining where re-users can obtain the information
- supplying the information to the requester, if it has not already been supplied (including under access legislation)
- 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

Public sector bodies must respond to requests within 20 working days, including finalising any licence offer.

Any extension past 20 days must be reasonable, and the public sector body must tell the requester their expected timeframe and reasons for the delay.

Data protection still applies to information made available for re-use.

Making a request for re-use

If public sector information is not provided under an Open Government Licence, you need to request re-use from the public sector body that produces, holds or disseminates the information. They should have information on how to make a request on their website.

Make your request:

- in writing (paper, email, or via online form where provided)
- clear and specific about what information you want to re-use
- describe how you intend to re-use the information
- reasonable in volume and complexity

Information may be supplied to you in the form the public sector body originally produced, held or disseminated it (e.g., in paper or film rather than machine-readable digital format). Public sector bodies are not required to reformat the information to suit a request.

The standard reply timeframe for re-use requests is 20 working days. For high-volume or complex requests, the public sector body may take longer although they must tell you if this is the case.

You may be required to have a licence agreement with the public sector body, but the terms and conditions should be as non-restrictive as possible.

Resource:

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

Requests to re-use readily available information

Information produced, held or disseminated by a public sector body within its public task may already be accessible, for example on its website, or in www.data.gov.uk, www.local.gov.uk or www.gov.uk

If you can show that you already have access to the information, then re-use should generally be permitted.

Information made available for re-use under an [Open Government Licence](#) (OGL) does not require a request to re-use, but licence conditions must be met. Where information is already available, including by a public sector body publishing it or identifying it as being available for re-use (e.g., on an information asset list), the public sector body must reply to your request for re-use within 20 working days.

Requests to re-use previously unreleased information

Permission to re-use previously unreleased information is subject to access issues being resolved. You may make a re-use request at the same time as an access request so that the 20 working day response times are concurrent.

The 2015 Regulations require public sector bodies to respond to a request for re-use within 20 working days unless there are special circumstances such as a very complex or high-volume request. They must inform you if processing your request will take longer than 20 working days.

While most public sector bodies are required to make their information re-usable (unless restricted or excluded), cultural sector bodies may refuse to give permission to re-use (although they may be challenged).

Public sector body processing of requests for re-use

Where public sector bodies are required to make their information available, they are allowed to provide it in its existing format. However, public sector bodies are being encouraged to make their information and metadata available in open format, machine-readable, and under a standard licence that is as non-restrictive as possible.

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

Notification of refusal to allow re-use

Public sector bodies are expected to make most of their information re-usable. However, some information may be restricted or excluded, or deemed unsuitable for re-use and requests may be declined.

Public sector bodies must follow Regulation 9 if they refuse a re-use request:

- response must be in writing
- reasons for refusal must be given
- the public sector body should explain the internal and external complaints processes open to the requester
- in cases where refusal is based on copyright or other relevant intellectual property rights being owned by a third party, the owner of the relevant intellectual property rights should be identified, where known (data protection principles still apply). 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 re-user.

Example: a private sector company and a charity should be treated in the same way and be offered the same terms and conditions to re-use 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 such as a trading arm) 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.

Conditions for re-use

Regulation 12 allows public sector bodies to set conditions on re-use of information, where appropriate through a licence, but they must be as non-restrictive as possible. For example it may require acknowledgement of source and indication of whether or not the information has been modified by the re-user.

Conditions for re-use may not restrict competition among re-users.

Licensing re-use

All 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.

Data protection still applies to information licensed for re-use.

Types of licences

Open Government Licence and the Non-commercial 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.

Personal data cannot be re-used under the OGL.

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](#) that 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.

Exclusive arrangements

Regulation 14 prohibits public sector bodies from exclusive arrangements for re-use because it prevents others from re-using information and inhibits competition.

There are two important exceptions: first, when a public service cannot be provided without an exclusive licence, and second, for enabling or continuing the digitisation of cultural resources.

The terms and duration of any exclusive licences are restricted. Details of arrangements must be published by the public sector body.

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.

Charging: Regulations 15 and 16
Marginal cost is the default for public sector bodies
Limited to recovering the marginal cost of reproduction, provision and dissemination of information
<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>Where a standard charge is established, public sector bodies must 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>Where a standard charge has not been established, they must 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
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>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
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

You can complain 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.

Initial complaints process

The public sector body must first try to resolve your 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 you would like the public sector body to do in order to resolve your complaint
- provide your full contact details

Complaints to the ICO

If the public sector body's internal complaints process could not resolve your complaint, you 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 you and public sector bodies 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 you 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 you and the ICO of its response in writing within 20 days

If you are 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, you may appeal to the First-tier Tribunal.

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

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](#)

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 your complaint concerns a 'dataset' (see [Links to other Legislation/Freedom of Information Act](#)) that you requested prior to the 2015 Regulations coming into force, then the relevant FOIA provisions will continue to apply.

If your complaint concerns a dataset that you requested after the 2015 Regulations came into force, then the 2015 Regulations will apply where the dataset is held by a public sector body.