

**RE-USE OF PUBLIC SECTOR INFORMATION ACT 2005**

**Principal Act**

<b>Act. No. 2005-60</b>	<i>Commencement</i>	8.12.2005
	<i>Assent</i>	4.12.2005
Amending enactments	Relevant current provisions	Commencement date
LN. 2015/106	ss. 2, 3(1)(f), 5(1)(a), (2)(c), (3)(b), (c), (4), (5), (6), (7), 7, 9(4), (5), (6), 11(1), (1A), 12(1), 14(1), (4A)-(4F), (5A), 15(2)-(11), 16, 18, 19, 20	18.7.2015

**Transposing:**  
 Directive 2003/98/EC  
 Directive 2013/37/EU

ARRANGEMENT OF SECTIONS

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AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR DIRECTIVE 2003/98/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 NOVEMBER 2003 ON THE RE-USE OF PUBLIC SECTOR INFORMATION.

## PART I

### GENERAL

#### **Title and commencement.**

1. This Act may be cited as the Re-use of Public Sector Information Act 2005 and comes into operation on the day of publication.

#### **Interpretation.**

2. In this Act—

“applicant” means any person who makes a request for re-use of a document to a public sector body;

“content” means information recorded in any form;

“document” means any content, including any part of such content, whether in writing or stored in electronic form or as a sound, visual or audio-visual recording, other than a computer program;

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

“government department” includes a body or authority exercising statutory functions on behalf of the Government of Gibraltar;

“machine-readable format” means a file format structured so that software applications can easily identify, recognize and extract specific data, including individual statements of fact, and their internal structure;

“open format” means a file format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents;

“public sector body” has the meaning ascribed to it by section 3;

“relevant intellectual property rights” means any of the following rights–

- (a) copyright (within the meaning of section 2 of the Intellectual Property (Copyright and Related Rights) Act 2005;
- (b) database right (within the meaning of section 190 of the Intellectual Property (Copyright and Related Rights) Act 2005;
- (c) publication right (within the meaning of section 34 of the Intellectual Property (Copyright and Related Rights) Act 2005; and
- (d) rights in performances (meaning the rights conferred by Part III of the Intellectual Property (Copyright and Related Rights) Act 2005.

“re-use” has the meaning ascribed to it by section 4;

“university” means any public sector body that provides post-secondary school or higher education leading to academic degrees;

“working day” means any day other than a Saturday or a Sunday, Christmas Day, Good Friday or any day which is a bank holiday in Gibraltar under the Banking and Financial Dealings Act or the Interpretation and General Clauses Act;

“writing” includes text which is–

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

**Public Sector Body.**

3.(1) For the purposes of this Act each of the following is a public sector body–

- (a) a Minister of the Government of Gibraltar;
- (b) a government department;
- (c) the Parliament;
- (d) the City Fire Brigade as constituted by the Fire Service Act;

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- (e) the Royal Gibraltar Police as constituted by the Police Act;
- (f) a corporation established or a group of individuals, having legal personality, appointed to act together for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and—
  - (i) financed wholly or mainly by another public sector body; or
  - (ii) subject to management supervision by another public sector body; or
  - (iii) more than half of the board of directors or members of which, or in the case of a group of individuals, more than half of those individuals, are appointed by another public sector body;
- (g) an association of or formed by one or more public sector bodies.

(2) Without prejudice to subsection (1), a public sector body includes any authority listed in Part 1 of the Schedule to the Public Services Ombudsman Act 1998.

## **Re-use of documents.**

4.(1) Subject to sub-section (2), re-use means the use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body's public task for which the document was produced.

(2) Re-use shall not include—

- (a) the transfer for use of a document within a public sector body for the purpose of carrying out its own public task; or
- (b) the transfer for use of a document from one public sector body to another for the purpose of either public sector body carrying out its public task.

## **Exclusions.**

5.(1) This Act does not apply to a document where—

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- (a) the activity of supplying the document is one which falls outside the public task of the public sector body provided that the scope of the public task is transparent and subject to review; or
  - (b) a third party owns relevant intellectual property rights in the document.
- (2) This Act does not apply to a document unless it—
- (a) has been identified by the public sector body as being available for re-use;
  - (b) has been provided to the applicant; or
  - (c) is otherwise accessible by means other than by making a request for it within the meaning of the Data Protection Act 2004, the Environment (Infrastructure for Spatial Information) Regulations 2010, the Freedom of Information Act 2015, or the Public Health (Freedom of Access to Information on the Environment) Rules 1992.
- (3) This Act does not apply to documents held by—
- (a) public service broadcasters and their subsidiaries, and other bodies and their subsidiaries for the purposes of the provision of programme services or the conduct of any activities which a public service broadcaster is required or empowered to provide or to engage in by or under any enactment or other public instrument;
  - (b) educational and research establishments, including organisations established for the transfer of research results, schools and universities (except university libraries); or
  - (c) cultural establishments other than libraries, museums and archives.
- (4) For the purposes of sub-section (3), “subsidiary” has the same meaning as in section 236 of the Companies Act 2014.
- (5) This Act does not apply in any situation in which access to a document is restricted under Gibraltar law, including where a person is under a legal obligation to prove an interest in order to gain access to documents.

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- (6) This Act does not apply to parts of documents containing only logos, crests or insignia.
- (7) This Act does not apply to—
  - (a) a document where access is excluded or restricted under Gibraltar law on the grounds of protection of personal data, protection of security, defence or public security, statistical confidentiality or commercial confidentiality (including business, professional or company secrets); or
  - (b) any part of a document which—
    - (i) is accessible under Gibraltar law; and
    - (ii) contains personal data the re-use of which would be incompatible with the law concerning the protection of individuals with regard to the processing of personal data.

## **Request for re-use.**

- 6.(1) A request for re-use shall—
  - (a) be in writing;
  - (b) state the name of the applicant and an address for correspondence;
  - (c) specify the document requested; and
  - (d) state the purpose for which the document is to be re-used.

## **Permitting re-use.**

- 7.(1) Subject to sub-section (2), a public sector body must permit re-use.
  - (2) A public sector body which is a library (including a university library), museum or archive holding intellectual property rights in a document may permit re-use.
  - (3) Where a public sector body permits re-use, it must do so in accordance with sections 11 to 16.

## **Responding to a request for re-use.**

8.(1) A public sector body shall respond to a request for re-use promptly and in any event before the end of the twentieth working day beginning with the day after receipt of the request.

(2) Where documents requested for re-use are extensive in quantity or the request raises complex issues the public sector body may extend the period for responding in subsection(1) by such time as is reasonable in the circumstances.

(3) Where sub-section (2) applies, the public sector body shall, before the end of the twentieth working day beginning with the day after receipt, notify the applicant in writing—

- (a) that no decision on re-use has yet been reached; and
- (b) of an estimated date by which it expects to respond to the request for re-use.

(4) In this section, responding to a request for re-use means—

- (a) refusing the request for re-use;
- (b) making the requested document available to the applicant for re-use; or
- (c) where conditions are to be imposed on re-use pursuant to section 12, finalising the offer to the applicant of the conditions on which re-use will be permitted.

#### **Notification of refusal.**

9.(1) Subject to sub-section (2), where a public sector body refuses a request for re-use, it shall notify the applicant in writing of the reason for refusal.

(2) Where a public sector body refuses a request for re-use because this Act does not apply to the document by virtue of section 5(3) it shall not be obliged to comply with section 8(1) or subsection (1) of this section.

(3) The notification referred to in sub-section (1) shall contain a reference to the means of redress available to the applicant.

(4) Subject to paragraphs (5) and (6), where a request for re-use is refused because this Act does not apply to the document by virtue of section 5(1)(b), the notification referred to in sub-section (1) must identify, where known, the name of the person—



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- (a) who owns the relevant intellectual property rights; or
- (b) from whom the public sector body obtained the document.

(5) Nothing in sub-section (4) authorises the identification of the name of a person where this would contravene the Data Protection Act 2004.

(6) Sub-section (4) does not apply where the public sector body providing the notification under sub-section (1) is a library (including a university library), museum or archive.

## **Processing requests for re-use.**

10. Where possible and appropriate, a public sector body shall ensure that the procedure for processing a request for re-use in accordance with this Act is capable of being carried out by electronic means.

## **Format of documents.**

11.(1) A public sector body must make a document available to an applicant pursuant to section 8(4)(b) or 8(4)(c) –

- (a) in the format and language in which it is held on the date of response to the request for re-use; and
- (b) where possible and appropriate, in open format and machine-readable format together with its metadata.

(1A) The format and the metadata referred to in paragraph (1)(b) should, insofar as possible, comply with formal open standards.

(2) Where possible and appropriate, a public sector body shall make a document available for re-use by electronic means.

(3) Nothing in this Act shall oblige a public sector body to do any of the following–

- (a) create or adapt a document in order to comply with a request for re-use;
- (b) provide an extract from a document where to do so would involve disproportionate effort;
- (c) continue to produce a certain type of document for the purposes of re-use by another person.

**Conditions.**

12.(1) A public sector body may impose conditions on re-use, where appropriate through a licence.

(2) Where conditions are imposed they shall not unnecessarily restrict—

- (a) the way in which a document can be re-used; or
- (b) competition.

**Non-discrimination.**

13.(1) Any conditions imposed under section 12(1) shall not discriminate between applicants who make a request for re-use for comparable purposes.

(2) If a public sector body which holds a document wishes to re-use the document for activities which fall outside the scope of its public task, the same conditions shall apply to that re-use as would apply to re-use by any other applicant for comparable purposes.

**Prohibition of exclusive arrangements.**

14.(1) Subject to sub-section (2) and (4B), a public sector body shall not enter into an exclusive arrangement with any person including an applicant.

(2) A public sector body may, where necessary for the provision of a service in the public interest, enter into an exclusive arrangement.

(3) The validity of the reason for granting the exclusive arrangement under sub-section (2) shall be reviewed at least once every three years.

(4) Any exclusive arrangement permitted under sub-section (2) and entered into on or after 1 July 2005 shall be published by the public sector body.

(4A) Sub-sections (2) to (4) do not apply to the digitisation of cultural resources.

(4B) A public sector body may enter into an exclusive arrangement in relation to the digitisation of cultural resources.

(4C) The period of exclusivity of an arrangement under sub-section (4B) should in general not exceed 10 years.

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(4D) Where the period of exclusivity of an arrangement under sub-section (4B) exceeds 10 years, the duration of the period of exclusivity must be reviewed during the 11<sup>th</sup> year and, if applicable, every 7 years thereafter.

(4E) Any exclusive arrangement permitted under sub-section (4D) must be transparent and published by the public sector body.

(4F) As part of any exclusive arrangement permitted under sub-section (4B), the public sector body concerned must be provided free of charge with a copy of the digitised cultural resource and the copy must be available for re-use at the end of the period of exclusivity.

(5) Any exclusive arrangement which exists on the date of entry into force of this Act and to which sub-section (2) does not apply shall be terminated at the earlier of—

- (a) the date on which it comes to an end in accordance with its terms; or
- (b) 31 December 2008.

(5A) Any exclusive arrangement which exists on 17 July 2013 to which sub-section (4B) applies must be terminated at the earlier of—

- (a) the date on which it comes to an end in accordance with its terms; or
- (b) 18 July 2043.

(6) In this section, “exclusive arrangement” means a contract or other arrangement granting an exclusive right to re-use a document.

## **Charging.**

15.(1) A public sector body may charge for allowing re-use.

(2) Subject to sub-section (3), any charge for re-use must be limited to the marginal cost incurred in respect of the reproduction, provision and dissemination of documents.

(3) Sub-section (2) shall not apply to the following—

- (a) a public sector body that is required to generate revenue to cover a substantial part of its costs relating to the performance of its public task;

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- (b) documents for which the public sector body making the charge is required to generate sufficient revenue to cover a substantial part of the costs relating to the collection, production, reproduction or dissemination; or
  - (c) libraries (including university libraries), museums and archives.
- (4) The requirements referred to in sub-section (3)(b) means a requirement defined–
- (a) by law or by other binding rules; or
  - (b) in the absence of such rules, in accordance with common administrative practice.
- (5) In any case where sub-section (3)(a) or (b) applies, the public sector body must calculate the total charge in relation to a document in accordance with sub-section (6).
- (6) The total charge shall not exceed the sum of–
- (a) direct costs;
  - (b) a reasonable apportionment of indirect and overhead costs attributable to chargeable activity; and
  - (c) a reasonable return on investment.
- (7) In any case where sub-section (3)(c) applies, the total income of the public sector body from supplying and permitting re-use of documents over the appropriate accounting period shall not exceed the aggregate of the amounts calculated in accordance with sub-section (8) for each document.
- (8) For each document, the amount is the sum of–
- (a) direct costs;
  - (b) a reasonable apportionment of indirect and overhead costs attributable to chargeable activity; and
  - (c) a reasonable return on investment.
- (9) Any charges for re-use must, so far as is reasonably practicable, be calculated in accordance with the accounting principles applicable to the public sector body from time to time.

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(10) A public sector body may not charge an applicant for–

- (a) direct costs; or
- (b) indirect and overhead costs,

if the same applicant has been charged in respect of those same costs by that public sector body for access to the same document under the Data Protection Act 2004, the Environment (Infrastructure for Spatial Information) Regulations 2010, the Freedom of Information Act 2015 or the Public Health (Freedom of Access to Information on the Environment) Rules 1992.

(11) In this regulation–

“apportionment”, in relation to indirect and overhead costs, means the allocation of such costs to each activity of the body in connection with which the costs are incurred;

“chargeable activity”, in relation to a document and a public sector body, means–

- (a) in the case of a body referred to in sub-section (3)(a) or (b), the body’s collection, production, reproduction and dissemination of the document; and
- (b) in the case of a body referred to in paragraph (3)(c), the body’s collection, production, reproduction, dissemination, preservation and rights clearance of the document;

“direct costs” in relation to a document and a public sector body, means costs which are incurred by the body as a consequence of chargeable activity;

“indirect and overhead costs”, in relation to a document and a public sector body, means costs which are not direct costs and which are incurred by the body in connection with–

- (a) chargeable activity; and
- (b) any other of the body’s activities.

## **Information to be published by a public sector body.**

16.(1) Where a public sector body charges for re-use it shall, so far as reasonably practicable, determine standard charges.

(2) Where a public sector body establishes standard charges it shall, so far as is reasonably practicable, establish—

- (a) any applicable conditions for reuse;
- (b) the actual amount of any charges;
- (c) the basis on which such charges have been calculated.

(3) Where sub-section (2) applies, the public sector body must ensure that the information specified in that sub-section is made available to the public.

(4) Where a standard charge for re-use has not been established, a public sector body—

- (a) must indicate from the outset which factors have been taken into account in the calculation of a charge for re-use; and
- (b) if requested to do so by an applicant, must specify in writing the way in which any such charge has been calculated in relation to a specific request for re-use.

(5) Where section 15(3)(b) applies, a public sector body must, so far as is reasonably practicable, predetermine the requirements specified in that sub-section.

(6) A public sector body must, where possible and appropriate, make the information referred to in paragraphs (2) and (5) available by electronic means.

(7) A public sector body must ensure that the following information is made available to the public

- (a) a list of main documents available for re-use with relevant metadata; and
- (b) details of the means of redress available to an applicant relating to any decision or practice affecting that applicant under this Act.

(8) In relation to sub-section (7)(a) a public sector body must ensure that—

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- (a) where possible and appropriate, the list of main documents is available in machine-readable format;
- (b) where possible and appropriate, potential applicants are able to search the list of documents and relevant metadata by electronic means with portal sites that are linked to asset lists; and
- (c) where possible, the cross-linguistic search for documents is facilitated.

## **Internal complaints procedure.**

17.(1) A public sector body shall establish an internal complaints procedure for determining complaints relating to its actions under this Act.

(2) Where a person believes that a public sector body has failed to comply with any requirement of this Act, he may complain in writing to the public sector body in accordance with its internal complaints procedure.

(3) A public sector body shall determine any complaint made under sub-section (2) within a reasonable time and thereafter notify the person of its determination without delay.

(4) Notification under sub-section (3) shall be in writing and give reasons for the determination.

## **Complaints to the Ombudsman.**

18.(1) Where a person has exhausted the procedure established under section 17(1) in respect of any complaint made under section 17(2) or where the public sector body has failed to deal with a complaint made under section 17(2) within a reasonable time, the person may refer that complaint to the Ombudsman.

(2) A complaint referred to the Ombudsman in accordance with sub-section (1) shall be investigated in accordance with the Public Services Ombudsman Act 1998.

(3) The findings of the Ombudsman as a result of an investigation conducted under sub-section (2) is binding upon the public sector body concerned.

## **Reports by the Ombudsman.**

19.(1) The Ombudsman shall—

- (a) every 3 years, prepare and provide to the Minister, a report on the availability of public sector information for re-use and the conditions under which it is made available and the redress practices;
- (b) make the reports prepared under paragraph (1) public; and
- (c) on the basis of reports prepared under paragraph (1), review the implementation of Article 6 of Directive 2003/98/EC, in particular as regards charging above marginal costs, and make recommendations to the Minister.

(2) In this section–

“Directive 2003/98/EC” means Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, as amended from time to time; and

“Minister” means the Minister with responsibility for information.

#### **Reports to the Commission.**

20.(1) The Minister with responsibility for information shall–

- (a) ensure that reports provided by the Ombudsman under section 19(1)(a) is submitted to the European Commission every 3 years; and
- (b) consider any recommendations made by the Ombudsman under section 19(1)(c).