

## 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

### Transposing:

Directive 2003/98/EC

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## 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;

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

“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

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- (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;

“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 House of Assembly;
- (d) the City Fire Brigade as constituted by the Fire Service Act;
- (e) the Royal Gibraltar Police as constituted by the Police Act;
- (f) a corporation established or a group of individuals appointed to act together for the specific purposes of meeting needs in the general interest, not having an industrial or commercial character, and financed wholly or mainly by another public sector body, or–
  - (i) subject to management supervision by another public sector body, or
  - (ii) more than half of the board of directors or members of which, or, in the case of a group of individuals, more

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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—

- (a) the activity of supplying the document is one which falls outside the public task of the public sector body; 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

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2004 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, such as schools, universities, archives, libraries, and research facilities including organisations established for the transfer of research results; or
  - (c) cultural establishments, such as museums, libraries, archives, orchestras, and dance and theatre establishments.

(4) For the purposes of sub-section (3), “subsidiary” has the same meaning as in section 175 of the Companies Act.

(5) This Act does not apply in any situation in which a person is under a legal obligation to prove an interest in order to gain access to documents.

## **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) A public sector body may permit re-use.
- (2) Where a public sector body permits re-use, it shall 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) 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—

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

## **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 may make a document available to an applicant pursuant to section 8(4)(b) or 8(4)(c) in the format and language in which it exists on the date of response to the request for re-use.

(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.

(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), 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.

(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.

(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) The total income from any charge shall not exceed the sum of—

- (a) the cost of collection, production, reproduction and dissemination of documents; and
- (b) a reasonable return on investment.

(3) Any charges for re-use shall, so far as is reasonably practicable, be calculated—



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- (a) in accordance with the accounting principles applicable to the public sector body from time to time; and
- (b) on the basis of a reasonable estimate of the demand for documents over the appropriate accounting period.

(4) A public sector body shall not charge an applicant for costs incurred in respect of activities mentioned under sub-section (2)(a) in respect of a request for re-use, if the same applicant had been charged in respect of those same activities by that public sector body for access to the same document under the Data Protection Act 2004 or the Public Health (Freedom of Access to Information on the Environment) Rules 1992.

(5) Where a public sector body charges for re-use, so far as is reasonably practicable, it shall establish standard charges.

(6) A public sector body shall specify in writing the basis on which a standard charge has been calculated if requested to do so by an applicant.

(7) Where a standard charge for re-use has not been established, the public sector body shall specify in writing the factors that will be taken into account in calculating the charge if requested to do so by an applicant.

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

16.(1) A public sector body shall ensure that the following information is made available to the public—

- (a) any applicable conditions for re-use;
- (b) any standard charges for re-use established under section 15(5);
- (c) a list of main documents available for re-use; and
- (d) details of the means of redress available to an applicant relating to any decision or practice affecting him under this Act.

(2) A public sector body shall, where possible and appropriate, make the information specified in sub-section (1) available to the public by electronic means.

(3) In relation to sub-section (1)(c), so far as is reasonably practicable, a public sector body shall ensure that potential applicants are able to search the list of documents by electronic means.

**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. 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.