

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4182 of 9 July, 2015

LEGAL NOTICE NO. 106 OF 2015.

INTERPRETATION AND GENERAL CLAUSES ACT

**PUBLIC SECTOR INFORMATION ACT 2005 (AMENDMENT)
REGULATIONS 2015**

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act, and in order to transpose, into the law of Gibraltar Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Public Sector Information Act 2005 (Amendment) Regulations 2015 and come into operation on 18 July 2015.

Amendment of Act.

2.(1) The Public Sector Information Act 2005 is amending in accordance with this regulation.

(2) In section 2—

(a) after the definition of “document”, insert the following—

““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;”;

(b) after the definition of “government department” insert the following—

““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;” and

(c) after the definition of “re-use”, insert the following–

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

(3) In section 3(1), for paragraph (f) substitute the following–

“(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;”.

(4) In section 5–

- (a) in subsection (1)(a), insert “provided that the scope of the public task is transparent and subject to review” after “public sector body”;
- (b) in subsection (2)(c), after “Data Protection Act 2004” insert “, the Environment (Infrastructure for Spatial Information) Regulations 2010, the Freedom of Information Act 2015,”;

- (c) in subsection (3)(b)–
 - (i) delete “such as schools, universities, archives, libraries, and research facilities”, and
 - (ii) insert “, schools and universities (except university libraries);” after “results”;
 - (d) in subsection (3)(c), for “, such as museums, libraries, archives, orchestras, and dance and theatre establishments” substitute “other than libraries, museums and archives”;
 - (e) in subsection (4), for “175 of the Companies Act” substitute “236 of the Companies Act 2014”;
 - (f) in subsection (5), insert “access to a document is restricted under Gibraltar law, including where” after “in which”;
 - (g) after subsection (5) insert the following–
 - “(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.”.
- (5) For section 7, substitute the following–

“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.”.

(6) In section 9–

(a) in subsection (4), for “Where”, substitute “Subject to paragraphs (5) and (6), where”;

(b) after subsection (4), insert the following–

“(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.”.

(7) In section 11–

(a) in subsection (1), for “may” substitute “must”, and for “in the format and language in which it exists on the date of response to the request for re-use.” Substitute “-“;

(b) after subsection (1) insert–

“(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.”.

(8) In section 12(1), after “re-use” insert “, where appropriate through a licence”.

(9) In section 14–

(a) in subsection (1), insert “and (4B)” after “(2)”;

(b) after subsection (4) insert the following–

“(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.

(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 11th 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.”;

(c) after subsection (5) insert the following–

“(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.”.

(10) In section 15, for subsections (2) to (7), substitute the following–

“(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;
- (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.
- (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.”.

(11) For section 16, substitute the following–

“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—
- (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.”.

(12) Re-number section 18 as subsection (1).

(13) After section 18(1), insert the following—

- “(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). ”.

Dated 9th July, 2015,

DR J GARCIA
Minister with responsibility for information,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose into the law of Gibraltar Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information.