



STATUTORY INSTRUMENTS.

**S.I. No. 376 of 2021**

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EUROPEAN UNION (OPEN DATA AND RE-USE OF PUBLIC SECTOR  
INFORMATION) REGULATIONS 2021

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I, MICHAEL MCGRATH, Minister for Public Expenditure and Reform, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019<sup>1</sup>, hereby make the following regulations:

**Citation and commencement**

1. (1) These Regulations may be cited as the European Union (Open Data and Re-use of Public Sector Information) Regulations 2021.
- (2) These Regulations shall come into operation on 22 July 2021.

**Interpretation**

2. (1) In these Regulations—

“anonymisation” means the process of changing documents into anonymous documents which do not relate to an identified or identifiable natural person, or the process of rendering personal data anonymous in such a manner that the data subject is not or is no longer identifiable;

“API” means application programming interface;

“Appeal Commissioner” means the person who, for the time being, holds the office of Information Commissioner under the Freedom of Information Act 2014 (No. 30 of 2014);

“body governed by public law” means a body, having legal personality, established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, that—

- (a) is financed, for the most part, by one or more of the following:
  - (i) the State;
  - (ii) a regional assembly;
  - (iii) a local authority;
  - (iv) any other body governed by public law,
- (b) is subject to management supervision by one or more of the bodies referred to in subparagraph (a), or
- (c) has an administrative, managerial or supervisory board, more than half of whose members are appointed by one or more of the bodies referred to in subparagraph (a);

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<sup>1</sup> OJ No. L172, 26.6.2019, p. 56.

“Directive” means Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019<sup>1</sup> on open data and the re-use of public sector information (recast);

“document” means all or part of any form of document, record or data, whether in physical, electronic or other form, and includes—

- (a) any memorandum, book, plan, map, drawing, diagram, pictorial or graphic work,
- (b) any photograph, and
- (c) any sound, visual or audio-visual recording;

“dynamic data” means documents in a digital form that are subject to frequent or real-time updates, in particular because of their volatility or rapid obsolescence;

“enactment” has the same meaning as it has in the Interpretation Act 2005 (No. 23 of 2005);

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

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>2</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

“high-value datasets” means documents the re-use of which is associated with important benefits for society, the environment and the economy, in particular because of their suitability for the creation of value-added services, applications and new, high-quality and decent jobs, and the number of potential beneficiaries of the value-added services and applications based on those datasets;

“library” includes a university library;

“local authority” means a local authority for the purposes of the Local Government Act 2001 (No. 37 of 2001);

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

“Minister” means the Minister for Public Expenditure and Reform;

“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;

“personal data” has the same meaning as it has in Article 4 of the General Data Protection Regulation;

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<sup>2</sup> OJ No. L 119, 4.5.2016, p. 1.

“public sector body” means—

- (a) the State,
- (b) a regional assembly,
- (c) a local authority,
- (d) a body governed by public law, or
- (e) an association formed by one or more than one body referred to in this definition;

“public undertaking” shall be construed in accordance with paragraph (2);

“reasonable return on investment”, in relation to a charge made for the re-use of documents, means a percentage of the overall charge, in addition to that needed to recover the eligible costs, not exceeding 5 percentage points above the fixed interest rate of the European Central Bank;

“regional assembly” means a body established in accordance with section 43 of the Local Government Act 1991 (No. 11 of 1991);

“Regulations of 2005” means the European Communities (Re-Use of Public Sector Information) Regulations 2005 (S.I. No. 279 of 2005);

“requester”, in relation to a request for the release for re-use of a document pursuant to these

Regulations, means the person making the request;

“research data” means documents in a digital form, other than scientific publications, which are collected or produced in the course of scientific research activities and are used as evidence in the research process, or are commonly accepted in the research community as necessary to validate research findings and results;

“re-use” means—

- (a) in relation to a document held by a public sector body, the use of the document by an individual or legal entity for commercial or non-commercial purposes other than the initial purpose within the public task for which the document was produced, but does not include the exchange of that document between public sector bodies solely for the purpose of performing their public tasks, or
- (b) in relation to a document held by a public undertaking, the use of the document by an individual or legal entity for commercial or non-commercial purposes other than the initial purpose of providing services in the general interest for which the document was produced, but does not include the exchange of that document between public undertakings and public sector bodies solely for the purpose of the performance of the public tasks of the public sector bodies;

“specified high-value datasets” means high-value datasets that are—

- (a) held by a public sector body or public undertaking, and

- (b) included on a list of high-value datasets laid down in an implementing act adopted by the European Commission pursuant to Article 14(1) of the Directive;

“standard licence” means a set of predefined re-use conditions in a digital format, preferably compatible with standardised public licences available online;

“third party”, in relation to data, means any person other than a public sector body or a public undertaking that holds the data;

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

- (2) (a) In these Regulations, “public undertaking” means any undertaking active in the areas set out in Regulation 3(1)(b) over which a public sector body may exercise, directly or indirectly, a dominant influence by virtue of—

- (i) its ownership of the undertaking,
- (ii) its financial participation in the undertaking, or
- (iii) the rules which govern the undertaking.

- (b) For the purposes of paragraph (a), a public sector body is presumed to exercise a dominant influence where it directly or indirectly—

- (i) holds a majority of the undertaking’s subscribed capital,
- (ii) controls a majority of the votes attaching to shares issued by the undertaking, or
- (iii) can appoint more than half of the undertaking’s administrative, management or supervisory body.

(3) A word or expression that is used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations that it has in the Directive.

### **Limit on application, etc.**

3. (1) These Regulations apply to the re-use of—

- (a) existing documents held by public sector bodies,
- (b) existing documents held by public undertakings that are—
  - (i) active in an area to which the European Union (Award of Contracts by Utility Undertakings) Regulations 2016 (S.I. No. 286 of 2016) apply,
  - (ii) acting as public service operators within the meaning of Article 2 of Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007<sup>3</sup> on public passenger transport services by rail and by road,

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<sup>3</sup> OJ L 315, 3.12.2007, p. 1.

- (iii) acting as air carriers fulfilling public service obligations pursuant to Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008<sup>4</sup> on common rules for the operation of air services in the Community, or
- (iv) acting as Community shipowners fulfilling public service obligations pursuant to Article 4 of Council Regulation (EEC) No 3577/92 of 7 December 1992<sup>5</sup> applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage),

and

- (c) research data pursuant to the conditions set out in Regulation 12.

(2) These Regulations shall not apply to the following:

- (a) documents held by a public sector body, the supply of which is an activity falling outside the scope of the public task of the public sector body concerned as provided for—
  - (i) by law, or
  - (ii) otherwise in accordance with common administrative practice, provided that the scope of the public task is transparent and subject to review;
- (b) documents held by a public undertaking—
  - (i) produced outside the scope of the provision of services in the general interest as provided for by law, or
  - (ii) related to activities directly exposed to competition and therefore, pursuant to Article 34 of Directive 2014/25/EU<sup>6</sup>, not subject to procurement rules;
- (c) documents in respect of which third parties hold intellectual property rights;
- (d) documents access to which is excluded under—
  - (i) the Data Protection Acts 1988 to 2018,
  - (ii) the European Communities (Access to Information on the Environment) Regulations 2007 to 2018,
  - (iii) the Freedom of Information Act 2014 (other than documents to which section 15(2) of that Act applies),
  - (iv) the European Communities (Establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) Regulations 2010 (S.I. No. 382 of 2010), or
  - (v) any other enactment, including on grounds of the protection of national security, defence, or public security, statistical

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<sup>4</sup> OJ L 293, 31.10.2008, p. 3.

<sup>5</sup> OJ L 364, 12.12.1992, p. 7.

<sup>6</sup> OJ L 94, 28.3.2014, p. 243.

confidentiality or commercial confidentiality (including business, professional or company secrets);

- (e) documents access to which is excluded or restricted on grounds of sensitive critical infrastructure protection related information, as defined in point (d) of Article 2 of Directive 2008/114/EC<sup>7</sup>;
- (f) documents access to which is restricted by virtue of the enactments referred to in subparagraph (d) or any other enactment, including where a person is required to prove a particular interest in order to obtain access to documents;
- (g) parts of documents containing only logos, crests and insignia;
- (h)
  - (i) documents access to which is excluded or restricted by virtue of the enactments referred to in subparagraph (d) or any other enactment on the grounds of protection of personal data, and
  - (ii) parts of documents that are accessible under the enactments referred to in subparagraph (d) or any other enactment and contain 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 or as undermining the protection of privacy and the integrity of the individual;
- (i) documents held by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;
- (j) documents held by cultural establishments other than libraries, museums and archives;
- (k) documents held by educational establishments of secondary level and below, and, in the case of all other educational establishments, documents other than those referred to in paragraph (1)(c);
- (l) documents other than those referred to in paragraph (1)(c) held by research performing organisations and research funding organisations, including organisations established for the transfer of research results.

(3) These Regulations are in addition and without prejudice to the enactments referred to in paragraph (2)(d).

(4) Nothing in these Regulations shall be read as—

- (a) affecting any right or function under the Data Protection Acts 1988 to 2018,
- (b) permitting the release of information by a public sector body in a manner that is prohibited by law, in particular the General Data Protection Regulation or the European Communities (Electronic

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<sup>7</sup> OJ L 345, 23.12.2008, p. 75.

Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No. 336 of 2011), or

- (c) requiring the release of information that is legally privileged.

(5) The obligations imposed by these Regulations apply only in so far as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the World Intellectual Property Organization (WIPO) Copyright Treaty.

(6) The database right provided for in section 321 of the Copyright and Related Rights Act 2000 (No. 28 of 2000) shall not be exercised by public sector bodies in order to prevent the re-use of documents or to restrict re-use beyond the limits set by these Regulations.

(7) These Regulations govern the re-use of existing documents held by public sector bodies and public undertakings, including documents to which the European Communities (Establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)) Regulations 2010 apply.

### **Obligation to supply information to Minister**

4. (1) A public sector body shall supply the Minister with—

- (a) in relation to documents made available by the public sector body for re-use, information relating to those documents, and
- (b) such other information as the Minister may, from time to time, require for the purpose of enabling him or her to take all reasonable steps to ensure that practical arrangements are in place to facilitate a search for documents available for re-use.

(2) A public sector body or a public undertaking shall comply with any other request from the Minister for information that may, from time to time, be made for the purposes of these Regulations or the Directive.

(3) Information provided under this Regulation shall be in such format as the Minister may specify.

### **Requirement to make documents available for re-use**

5. (1) Subject to paragraph (2), a document to which these Regulations apply shall be made available for re-use in accordance with the conditions provided for in Regulations 7 to 13.

(2) In respect of a document—

- (a) in which a library, museum or archive holds intellectual property rights, or
- (b) held by a public undertaking,

paragraph (1) shall apply where the re-use of such a document is allowed.

## Requests for re-use

6. (1)(a) A person may make a request in a legible form to a public sector body to release documents for re-use.
  - (b) A request under subparagraph (a) shall clearly indicate that it is being made for the purpose of the re-use of public sector information.
  - (c) A request made under subparagraph (a) in a language other than Irish or English shall be accompanied by a translation of the request into Irish or English.
- (2) A public sector body shall, where it decides to allow the re-use of a document on receipt of a request for re-use, through electronic means where possible and appropriate—
- (a) process the request and deliver the documents for re-use to the requester, or
  - (b) if necessary, finalise the offer of a licence to the requester, as soon as possible and within—
    - (i) 40 working days from receipt of the request, if the request is extensive or complex, or
    - (ii) 20 working days from receipt of the request in any other case.
- (3) Where processing the request and delivering the documents concerned to the requester will exceed, or is likely to exceed, 20 working days from receipt of the request, then the public sector body concerned shall advise the requester accordingly as soon as possible, and in any event within 3 weeks after the initial request is received, that more time is needed to process the request and of the reasons why that is the case.
- (4) Nothing in this Regulation shall affect the granting, in accordance with Regulation 13, of an exclusive right to re-use a document where such grant is necessary for the provision of a service in the public interest.
- (5) (a) Where a request under this Regulation is refused by a public sector body, it shall communicate the grounds for refusal to the requester, in particular and where appropriate by reference to the matters contained in Regulation 3(2)(a) to (h) or Regulation 5.
- (b) Subject to paragraph (c), where the refusal is based on the intellectual property rights of a third party, the public sector body concerned shall include in the communication of the refusal to the requester a reference to the third party, where known, or alternatively to the licensor from which the public sector body has obtained the relevant material.
- (c) Subparagraph (b) shall not apply to libraries, museums or archives.
- (6) Any decision made on foot of a request under paragraph (1) shall contain a reference to the means of redress available under these Regulations to the requester.

(7) Public bodies shall establish practical arrangements to facilitate the effective re-use of documents, which may include the provision of information in relation to the rights provided for by these Regulations and relevant assistance and guidance in relation to those rights.

(8) This Regulation shall not apply to—

- (a) public undertakings, and
- (b) educational establishments, research performing organisations and research funding organisations.

### **Available formats**

7. (1) Where a public sector body or a public undertaking makes a document available for re-use it shall make the document available in any pre-existing format or language, by electronic means where possible and appropriate, in a format that is open, machine-readable, accessible, findable and re-usable, together with its metadata, and the format and metadata shall, where possible, comply with formal open standards.

(2) Where possible and appropriate, public bodies and public undertakings shall produce and make available documents to which these Regulations apply in accordance with the principle of “open by design and by default”.

(3) Nothing in these Regulations shall be construed as requiring a public sector body or public undertaking to—

- (a) create or adapt any document,
- (b) provide extracts from documents where this would involve disproportionate effort, going beyond a simple operation, or
- (c) continue the production and storage of a certain type of document with a view to the re-use of such documents by a private or public sector organisation.

(4) Subject to paragraph (5), where a public sector body or public undertaking makes a document available for re-use it shall make dynamic data in relation to the document available for re-use immediately after collection of the data using a suitable API and, where relevant, as a bulk download.

(5) Where making dynamic data available for re-use immediately after collection, as referred to in paragraph (4), would exceed the financial and technical capacities of the public sector body or public undertaking, thereby imposing a disproportionate effort, those dynamic data shall be made available for re-use within a time-frame or with temporary technical restrictions that do not unduly impair the exploitation of the economic and social potential of the data.

(6) In relation to documents held by a public undertaking, paragraphs (1) to (5) shall apply only to existing documents held by the public undertaking that are made available for re-use.

### **Charges for re-use**

8. (1) Except as provided for in this Regulation, the re-use of documents shall be free of charge.

(2) Subject to paragraph (3), where charges are made for the re-use of documents such charges shall be limited to the marginal costs incurred for the reproduction, provision and dissemination of the documents, the anonymisation of personal data and measures taken to protect commercially confidential information.

(3) Paragraphs (1) and (2) shall not apply in the case of charges made by—

- (a) public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks,
- (b) libraries, museums and archives, or
- (c) public undertakings.

(4) A list of the public sector bodies referred to in paragraph (3)(a) shall be published on a website maintained by or on behalf of the Minister.

(5) In the cases referred to in paragraph (3)(a) and (c)—

- (a) the total charges made by the public service body or public undertaking concerned for the re-use of documents shall be calculated according to objective, transparent and verifiable criteria laid down by the Minister,
- (b) the total income of the public service body or public undertaking concerned from supplying and allowing the re-use of documents over the appropriate accounting period shall not exceed the sum of—
  - (i) the cost of collection, production, reproduction, dissemination and data storage,
  - (ii) a reasonable return on investment, and
  - (iii) where applicable, the cost of anonymisation of personal data and measures taken to protect commercially confidential information,

and

- (c) the charges shall be calculated in accordance with the accounting principles applicable to the public sector body or public undertaking concerned.

(6) In the case referred to in paragraph (3)(b)—

- (a) the total income of the library, museum or archive concerned from supplying and allowing the re-use of documents over the appropriate accounting period shall not exceed the sum of—
  - (i) the cost of collection, production, reproduction, dissemination, data storage, preservation and rights clearance,

- (ii) a reasonable return on investment, and
- (iii) where applicable, the cost of anonymisation of personal data and measures taken to protect commercially confidential information,

and

- (b) the charges shall be calculated in accordance with the accounting principles applicable to the library, museum or archive concerned.

(7) Notwithstanding anything in this Regulation, the re-use of the following shall be free of charge for the user:

- (a) subject to Regulation 14, specified high-value datasets;
- (b) research data referred to in Regulation 3(1)(c).

(8) Nothing in this Regulation shall be read so as to prevent—

- (a) the exchange of information between public sector bodies free of charge for the exercise of public tasks even where, in any other case, a charge would be imposed in respect of the re-use concerned, or
- (b) the adoption of a differential charging policy for commercial and non-commercial re-use.

(9) If documents which are, or may be, made available by a public sector body under these Regulations are re-used by such public sector body or another public sector body as input for its commercial activities which fall outside the scope of its public tasks, the same charges and other conditions shall apply to the supply of the documents for those activities as apply to other users.

## Transparency

9. (1) Where a public sector body or public undertaking makes standard charges for re-use of a document, it shall establish and publish, on a website maintained by the public sector body or public undertaking—

- (a) any conditions applicable to re-use,
- (b) the amount of the charges, and
- (c) the basis for the calculation of the charges.

(2) Where a public sector body or public undertaking makes a charge other than a standard charge for re-use of a document, it shall—

- (a) indicate at the time the request for re-use is made the factors that are taken into account in the calculation of the charge, and
- (b) if requested to do so, indicate the way in which the charge is calculated in relation to the request for re-use.

(3) Public sector bodies shall ensure that requesters for re-use of documents are informed of available means of redress relating to decisions or practices affecting them.

### **Standard licences**

10. (1) Where a public sector body or public undertaking makes documents available for re-use, the re-use of the documents shall not be subject to conditions unless the conditions are in accordance with paragraph (2).
- (2) Any applicable conditions for the re-use of documents shall—
- (a) be objective, proportionate, non-discriminatory and justified on grounds of an objective of public interest,
  - (b) not unnecessarily restrict possibilities for re-use, and
  - (c) not be used to restrict competition.
- (3) Subject to Regulation 8(8), any applicable conditions for the re-use of documents shall be non-discriminatory for comparable categories of re-use, including for cross-border re-use.
- (4) A public sector body or public undertaking shall, where possible and appropriate, use the standard licence for the re-use of documents published from time to time by the Minister.

### **Practical arrangements**

11. (1) A public sector body or public undertaking shall make available to the public a list of its main documents available for re-use together with relevant metadata.
- (2) A public sector body or public undertaking shall, in relation to the list referred to in paragraph (1)—
- (a) where possible and appropriate, ensure that the list is available online and in machine-readable format,
  - (b) where possible and appropriate, ensure that potential requesters are able to search the list by electronic means, and
  - (c) where possible, facilitate the cross-linguistic search for documents, in particular by enabling the aggregation of metadata at European Union level.
- (3) A public sector body or public undertaking shall, where possible and appropriate—
- (a) make practical arrangements facilitating the preservation of documents available for re-use, and
  - (b) make datasets relating to documents to which these Regulations apply available in open format through the website maintained by the Minister known as the “Open Data Portal”.

### **Research data**

12. Without prejudice to Regulation 3(2)(c), researchers, research performing organisations or research funding organisations shall make research

data available for re-use for commercial or non-commercial purposes in accordance with Regulations 7 to 13, in so far as—

- (a) the research data are publicly funded,
- (b) the research data have already been made publicly available through an institutional or subject-based repository, and
- (c) legitimate commercial interests, knowledge transfer activities and pre-existing intellectual property rights relating to the data have been taken into account.

### **Exclusive arrangements**

13. (1) Subject to this Regulation, contracts or other arrangements between a public sector body or public undertaking and a third party in respect of any document shall not grant exclusive rights to re-use the document, unless such a grant is necessary for the provision of a service in the public interest.

- (2) (a) Where a grant of exclusive rights to re-use a document is necessary for the provision of a service in the public interest the grant shall—
  - (i) be subject to regular review at intervals of not more than 3 years, and
  - (ii) cease to be a grant of exclusive rights where it is found not to be necessary for the provision of a service in the public interest,

and the public sector body or public undertaking concerned shall take all steps necessary for the purposes of this paragraph.

- (b) Exclusive arrangements established in accordance with this paragraph shall be made publicly available online at least 2 months before the arrangements come into effect and the final terms of such arrangements shall be transparent and made publicly available online.
- (c) This paragraph shall not apply to exclusive arrangements for the digitisation of cultural resources.
- (3) (a) Where an exclusive right relates to the digitisation of cultural resources, the period of exclusivity shall—
  - (i) in general not exceed 10 years, and
  - (ii) where that period exceeds 10 years, be subject to review during the eleventh year of that period and, if applicable, every 7 years thereafter.
- (b) Arrangements granting exclusive rights relating to the digitisation of cultural resources shall be transparent and made public.
- (c) Where a public sector body or public undertaking enters into an arrangement in accordance with this paragraph, a person managing or carrying out the digitisation shall provide the public sector body or public undertaking with a copy of the digitised

cultural resources free of charge, and such copy shall be available for re-use at the end of the period of exclusivity.

- (4) (a) A contract or other arrangement entered into between a public sector body or public undertaking and a third party that, without expressly granting an exclusive right to re-use documents, has as its aim, or could reasonably be expected to lead to, restricted availability for re-use of documents by entities other than the third party, shall be made publicly available online at least 2 months before such arrangement comes into effect.
- (b) The effect of an arrangement referred to in subparagraph (a) on the availability of data for re-use shall be subject to regular review at intervals of not more than 3 years.
- (c) The final terms of an arrangement referred to in subparagraph (a) shall be transparent and made publicly available online.
- (5) (a) Any contract or other arrangement entered into before 17 July 2013 between a public body and a third party that—
  - (i) grants exclusive rights to re-use a document,
  - (ii) is not necessary for the provision of a service in the public interest, and
  - (iii) does not relate to the digitisation of cultural resources,
 shall be terminated on the date the contract or other arrangement ends, or shall cease to have effect after 18 July 2043, whichever first occurs.
- (b) Any contract or other arrangement entered into on or after 17 July 2013 and before 16 July 2019 between a public undertaking and a third party that—
  - (i) grants exclusive rights to re-use a document,
  - (ii) is not necessary for the provision of a service in the public interest, and
  - (iii) does not relate to the digitisation of cultural resources,
 shall be terminated on the date the contract or other arrangement ends, or shall cease to have effect after 17 July 2049, whichever first occurs.

### **High-value datasets**

14. (1) Specified high-value datasets shall be—
  - (a) subject to paragraphs (3) and (4), available free of charge,
  - (b) machine-readable,
  - (c) provided via APIs, and
  - (d) provided as a bulk download, where relevant.

(2) A public sector body or public undertaking shall comply with any arrangements for the publication and re-use of high-value datasets that may be specified in implementing acts adopted by the European Commission pursuant to Article 14(1) of the Directive.

(3) Paragraph (1)(a) shall not apply to—

- (a) high-value datasets held by public undertakings specified, in an implementing act adopted by the European Commission pursuant to Article 14(1) of the Directive, for the purposes of Article 14(3) of the Directive on the basis of distortion of competition in the relevant market, and
- (b) high-value datasets held by libraries, museums and archives.

(4) For a period of 2 years after the date of entry into force of an implementing act adopted by the European Commission in accordance with Article 14(1) of the Directive, paragraph (1)(a) shall not apply to specified high-value datasets listed in the implementing act held by public sector bodies that are required to generate revenue to cover a substantial part of their costs relating to the performance of their public tasks, where to make such datasets available for re-use free of charge would lead to a substantial impact on the budget of those bodies.

## Appeals

15. (1) Where a public sector body decides—

- (a) to refuse to allow a requester to re-use a document,
- (b) to refuse to grant an exclusive right to a requester to re-use a document,
- (c) to allow the re-use of a document but subject to a proposed charge being paid which the requester believes does not accord with the requirements of these Regulations in setting the amount of the proposed charge, or
- (d) to allow the re-use of a document subject to imposing conditions,

then, the requester may appeal against the refusal, the amount of the proposed charge or any condition so imposed, as the case may be.

(2) An appeal shall be sent to the Appeal Commissioner in a legible form.

(3) An appeal under paragraph (1) shall be made—

- (a) not later than 4 weeks after the notification of the decision by the public sector body to the requester concerned, or
- (b) in a case in which the Appeal Commissioner is of the opinion that there are reasonable grounds for extending that period, not later than the expiration of an additional period of such length as he or she may determine.

### **Delegation of functions by Appeal Commissioner**

16. (1) The Appeal Commissioner may delegate his or her functions as Appeal Commissioner in respect of an appeal under these Regulations to a member of his or her staff.

(2) Where a delegation has been made under paragraph (1), references elsewhere in these Regulations to the Appeal Commissioner shall be read, where appropriate having regard to the delegation, as including references to any person to whom functions stand delegated by the delegation.

(3) A person exercising functions by virtue of a delegation made under paragraph (1) shall cease to exercise those functions—

- (a) if the delegation is revoked by the Appeal Commissioner, or
- (b) if the person ceases to be a member of the staff of the Appeal Commissioner,

and consequentially, those functions are exercisable by the Appeal Commissioner or by such other person as the Appeal Commissioner may delegate those functions to under paragraph (1).

(4) In this Regulation, a reference to a member of staff includes, where appropriate, an employee, officer or servant.

### **Review of decision by Appeal Commissioner**

17. (1) This Regulation applies to a decision by a public sector body to which an appeal under Regulation 15(1) relates.

(2) The Appeal Commissioner—

- (a) shall review in accordance with these Regulations a decision to which this Regulation applies, and
- (b) following the review, may, as the Appeal Commissioner considers appropriate, decide—
  - (i) to affirm or vary the decision, or
  - (ii) to annul the decision and, if appropriate, make such decision in relation to the matter concerned as he or she considers proper,

in accordance with these Regulations.

(3) A decision by the Appeal Commissioner under paragraph (2) shall be made as soon as may be and, in so far as practicable, not later than 4 months after the receipt by the Appeal Commissioner of the appeal.

- (4) (a) A person who makes an appeal under Regulation 15 may, by notice in writing given to the Appeal Commissioner, at any time before a notice under paragraph (9) in relation to the appeal is given to the person, withdraw the appeal.
- (b) The Appeal Commissioner shall cause a copy of any notice given to him or her under this paragraph to be given to the public sector

body concerned and to any other person to whom, in the opinion of the Appeal Commissioner, it should be given.

(5) As soon as may be after the receipt by the Appeal Commissioner of an appeal under Regulation 15, the Appeal Commissioner shall—

- (a) cause a copy of the appeal to be given to the public sector body concerned, and
- (b) if he or she proposes to review the decision concerned, cause the public sector body concerned and any other person who, in the opinion of the Appeal Commissioner, should be notified of the proposal to be so notified.

(6) Where an appeal under Regulation 15 is made, the Appeal Commissioner may at any time endeavour to effect a settlement between the parties concerned of the matter concerned and may for that purpose, notwithstanding paragraph (3), suspend, for such period as may be agreed with the parties concerned and, if appropriate, discontinue, the review concerned.

(7) In relation to a proposed review under this Regulation—

- (a) the public sector body concerned, and
- (b) any other person who is notified under paragraph (5) of the review,

may make submissions (in writing, orally or by electronic means) to the Appeal Commissioner in relation to any matter relevant to the review and the Appeal Commissioner shall take any such submissions into account for the purposes of the review.

(8) (a) The Appeal Commissioner may refuse to grant an appeal under Regulation 15 or discontinue a review under this Regulation if he or she is or becomes of the opinion that—

- (i) the appeal aforesaid or the appeal to which the review relates (“the appeal”) is frivolous or vexatious,
- (ii) the appeal does not relate to a decision specified in paragraph (1), or
- (iii) the matter to which the appeal relates is, has been or will be, the subject of another review under this Regulation.

(b) In determining whether to refuse to grant an appeal under Regulation 15 or to discontinue a review under this Regulation, the Appeal Commissioner shall, subject to these Regulations, act in accordance with his or her own discretion.

(9) Notice, in writing (including by electronic means), of a decision under paragraph (2)(b), or of a refusal or discontinuation under paragraph (8) and the reasons therefor, shall be given by the Appeal Commissioner to—

- (a) the public sector body concerned,
- (b) the person appealing to the Appeal Commissioner against the decision of the public sector body concerned, and

(c) any other person to whom, in the opinion of the Appeal Commissioner, such notice should be given.

(10) The notice referred to in paragraph (9) shall be given as soon as may be after the decision, refusal or discontinuation concerned and, if it relates to a decision under paragraph (2), in so far as practicable, within the period specified in paragraph (3).

(11) A decision of the Appeal Commissioner following a review under this Regulation shall, where appropriate, specify the period within which effect shall be given to the decision and, in fixing such a period, the Appeal Commissioner shall have regard to the desirability, subject to any appeal to the High Court from the decision, of giving effect to such a decision as soon as may be after compliance in relation thereto with paragraph (10).

(12) Subject to these Regulations, a decision under paragraph (2) shall—

- (a) in so far as it is inconsistent with the decision to which Regulation 6(2) relates, have effect in place of the decision to which that Regulation relates, and
- (b) be binding on the parties concerned.

### **Request for further information**

18. (1) Where—

- (a) an appeal is made under Regulation 15 to the Appeal Commissioner of a decision referred to in Regulation 6(2), and
- (b) the Appeal Commissioner considers that the statement of the reasons for the decision referred to in Regulation 6(2) is not adequate,

then the Appeal Commissioner shall direct the public sector body concerned to furnish to the requester concerned and the Appeal Commissioner a statement, in writing (including by electronic means), containing any further information in relation to those matters that is in the power or control of the public sector body.

(2) A public sector body shall comply with a direction under this Regulation as soon as may be, but not later than 3 weeks after its receipt, or such longer period or periods as the Appeal Commissioner considers appropriate in the circumstances.

### **Powers of Appeal Commissioner**

19. (1) The Appeal Commissioner may, for the purposes of a review under Regulation 17—

- (a) require any person who, in the opinion of the Appeal Commissioner, is in possession of information, or has a record in his or her power or control that, in the opinion of the Appeal Commissioner, is relevant to the said purposes, to furnish to the Appeal Commissioner any such information or record that is in his or her possession or, as the case may be, power or control and,

where appropriate, require the person to attend before him or her for that purpose, and

- (b) examine and take copies in any form of, or of extracts from, any record that, in the opinion of the Appeal Commissioner, is relevant to the review or investigation and for those purposes take possession of any such record, remove it from the premises and retain it in his or her possession for a reasonable period.

(2) The Appeal Commissioner may for the purpose of such a review enter any premises occupied by a public sector body and there—

- (a) require any person found on the premises—
  - (i) to furnish the Appeal Commissioner with such information in the possession of that person as the Appeal Commissioner may reasonably require for that purpose, and
  - (ii) to make available to the Appeal Commissioner any record in that person's power or control that, in the opinion of the Appeal Commissioner, is relevant to that purpose,
- and
- (b) examine and take copies of, or of extracts from, any record so made available or found on the premises.

(3) Subject to paragraph (4), no enactment or rule of law prohibiting or restricting the disclosure or communication of information shall preclude a person from furnishing to the Commissioner any information or record to which paragraph (2) relates.

(4) A person to whom a requirement is addressed under this Regulation is entitled to the same immunities and privileges as a witness in a court.

(5) The Appeal Commissioner may, if he or she thinks fit, pay to any person who for the purposes of a review under Regulation 17, attends before the Appeal Commissioner or furnishes information or a record to him or her—

- (a) sums in respect of travelling and subsistence expenses properly incurred by the person, and
- (b) allowances by way of compensation for loss of his or her time, of such amount as may be determined by the Minister.

(6) Subject to these Regulations, the procedure for conducting a review under Regulation 17 shall be such as the Appeal Commissioner considers appropriate in all the circumstances of the case and, without prejudice to the foregoing, shall be as informal as is consistent with the due performance of the functions of the Appeal Commissioner.

- (7) (a) A person who fails or refuses to comply with a requirement under this Regulation or who hinders or obstructs an Appeal Commissioner in the performance of his or her functions under this section commits an offence and is liable on summary conviction to a Class A fine or to imprisonment for a term not exceeding 6 months or to both.

- (b) Where an offence under this paragraph is committed by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any wilful neglect of, a person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate or of a person purporting to act in such a capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if guilty of the first-mentioned offence.

**Appeal to High Court, etc.**

20. (1) A party to a review under Regulation 17 or any other person affected by the decision of the Appeal Commissioner following such a review may appeal to the High Court on a point of law from the decision.

(2) The requester concerned or any other person affected by—

- (a) a decision by the Appeal Commissioner under Regulation 17(2), or
- (b) a direction by the Appeal Commissioner under Regulation 18(1),

may appeal to the High Court on a point of law against such decision or direction or from such decision or direction.

(3) An appeal under this Regulation shall be initiated not later than 8 weeks after notice of the decision or direction concerned was given to the person bringing the appeal.

(4) The Appeal Commissioner may refer any question of law arising in a review under Regulation 17 to the High Court for determination, and the Appeal Commissioner may postpone the making of a decision following the review until such time as he or she considers convenient after the determination of the High Court.

- (5) (a) Where an appeal under this Regulation by a person is dismissed by the High Court, that Court may, if it considers that the point of law concerned was of exceptional public importance, order that some or all of the costs of the person in relation to the appeal be paid by the public sector body concerned.
- (b) The High Court may order that some or all of the costs of a person in relation to a reference under this section be paid by the public sector body concerned.
- (c) The Court of Appeal may order that some or all of the costs of a person in relation to an appeal to that Court from a decision of the High Court under this Regulation be paid by the public sector body concerned if it considers that a point of law of exceptional public importance was involved in the appeal and, but for this paragraph, that Court would not so order.

(6) A decision of the High Court following an appeal under paragraph (1) or (2) shall, where appropriate, specify the period within which effect shall be given to the decision.

**Precautions by Court and Appeal Commissioner against disclosure of certain information**

21. (1) In proceedings before a Court under or in relation to these Regulations, the Court shall take all reasonable precautions to prevent the disclosure to the public or, if appropriate, to a party (other than the public sector body concerned) to the proceedings of—

(a) information contained in any document access to which is excluded under an enactment referred to in Regulation 3(2)(d) (other than documents to which section 15(2) of the Freedom of Information Act 2014 applies), or

(b) information as to whether a record exists or does not exist in a case where the head of the public sector body concerned (being such a head for the purposes of the Freedom of Information Act 2014) is required by that Act not to disclose whether the record exists or does not exist.

(2) Without prejudice to the generality of paragraph (1), precautions under that paragraph may include—

(a) hearing the whole or part of any proceedings before a Court otherwise than in public,

(b) prohibiting the publication of such information in relation to any such proceedings as it may determine, including information in relation to the parties to the proceedings and the contents of orders made by the Court concerned in the proceedings, and

(c) examining a document or a copy of a document without giving access or information in relation to it to a party (other than the public sector body concerned) to the proceedings.

(3) In the performance of his or her functions under these Regulations, the Appeal Commissioner shall take all reasonable precautions (including conducting the whole or part of a review under Regulation 17 otherwise than in public) to prevent the disclosure to the public or, in the case of such a review, to a party (other than the public sector body concerned) to the proceedings concerned of information specified in paragraph (a) or (b) of paragraph (1) or matter that, if it were included in a record, would cause the record to be an exempt record for the purposes of the Freedom of Information Act 2014.

**Revocation**

22. The Regulations of 2005 are revoked.

### **Construction of references and savings provisions**

23. (1) A reference in any other enactment to the Regulations of 2005 shall be construed as a reference to these Regulations.

(2) A reference in any other enactment to a provision of the Regulations of 2005 listed in column 1 of the Schedule shall be construed as a reference to the corresponding provision of these Regulations listed in column 3 of the Schedule.

(3) Where any document or notice refers to the Regulations of 2005 then, unless the context otherwise requires, that reference shall be construed as or, as the case may be, as including a reference to these Regulations.

(4) Where any document or notice refers to a provision of the Regulations of 2005 and provision is made by these Regulations corresponding to the provision of the Regulations of 2005, then, unless the context otherwise requires, that reference shall be construed as or, as the case may be, as including a reference to, the corresponding provision of these Regulations listed in column 3 of the Schedule.

(5) A reference in any other enactment to Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003<sup>8</sup> shall be construed as a reference to the Directive and shall be read in accordance with the correlation table in Annex III of the Directive.

(6) Where, before the date on which these Regulations come into operation—

- (a) a person has made a request under Regulation 5 of the Regulations of 2005 and, by that date, no decision has been made by the public sector body concerned consequent on the request, the person shall be deemed to have made a request under Regulation 6 of these Regulations and the provisions of these Regulations shall apply accordingly,
- (b) a person has made an appeal under Regulation 10 of the Regulations of 2005 to the Appeal Commissioner and, by that date, the appeal has not been decided, the person shall be deemed to have made an appeal to the Appeal Commissioner under Regulation 15 and the provisions of these Regulations shall apply accordingly, or
- (c) a person has made an appeal, or the Appeal Commissioner has referred a question of law, to the High Court under Regulation 15 of the Regulations of 2005 and, by that date, no decision or determination has been made by the High Court consequent on the appeal or referral, the person or the Appeal Commissioner shall be deemed to have made an appeal or referred a question of law, as the case may be, to the High Court under Regulation 20 and the provisions of these Regulations shall apply accordingly.

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<sup>8</sup> OJ No. L 345, 31.12.2003, p. 90.

## SCHEDULE

*Regulation 23*

Provisions of Regulations of 2005 and corresponding provisions in these Regulations

Column 1	Column 2	Column 3	Column 4
Number of provision of Regulations of 2005	Title of provision of Regulations of 2005	Number of corresponding provision in these Regulations	Title of corresponding provision of Regulations of 2005
1	Citation and Commencement	1	Citation and Commencement
2	Interpretation	2	Interpretation
3	Limit on Application, etc	3	Limit on Application, etc.
4	Obligation to supply information to Minister	4	Obligation to supply information to Minister
5	Release of documents	5 6 7	Requirement to make documents available for re-use Requests for re-use Available formats
6	Charging for re-use of documents	8	Charges for re-use
7	Transparency	9	Transparency
8	Licensing	10	Standard licences
8A	Practical arrangements to facilitate searches	11	Practical arrangements
		12	Research data

9	Restriction on grant of exclusive rights	13	Exclusive Arrangements
		14	High-value datasets
10	Appeals	15	Appeals
11	Appointment of Appeal Commissioner	16	Delegation of functions by Appeal Commissioner
12	Review of decision by Appeal Commissioner	17	Review of decision by Appeal Commissioner
13	Request for further information	18	Request for further information
14	Powers of Appeal Commissioner	19	Powers of Appeal Commissioner
15	Appeal to High Court, etc.	20	Appeal to High Court, etc.
16	Precautions by Court and Appeal Commissioner against disclosure of certain information	21	Precautions by Court and Appeal Commissioner against disclosure of certain information
		22	Revocation
		23	Construction of references and savings provisions



GIVEN under my Official Seal,  
21 July, 2021.

MICHAEL MCGRATH,  
Minister for Public Expenditure and Reform.

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation)*

These Regulations transpose Directive EU2019/1024 of the European Parliament and of the Council of 20 June 2019 on Open Data & and the re-use of Public Sector Information (PSI).

This (recast) Directive repeals Directive 2003/98/EC (the 2003 Directive) on the re-use of public sector information as amended by Directive 2013/37/EU (the 2013 Directive). As such, the 2021 Regulations repeal previous Regulations as follows:

- (a) European Communities (Re-Use of Public Sector Information) Regulations 2005 (S.I. No. 279 of 2005),
- (b) European Communities (Re-Use of Public Sector Information) (Amendment) Regulations 2008 (S.I. No. 103 of 2008), and
- (c) European Communities (Re-use of Public Sector Information) (Amendment) Regulations 2015. (S.I. No. 525 of 2015).

The 2003 and 2013 Directives set out an EU statutory framework for the re-use by businesses and citizens of existing information held by public sector bodies in new products and services. The 2019 (recast) Directive was published in order to address the remaining and emerging barriers to a wide re-use of public sector and publicly funded information across the Union, to bring the legislative framework up to date with the advances in digital technologies and to further stimulate digital innovation, especially with regard to artificial intelligence.

The main changes, a synopsis of which are set out below are framed so as to allow full exploitation of the potential of public sector information:

- The inclusion of ‘Open Data’ in the title provides clarity and strengthens the requirement for public bodies to publish data in open formats. The 2021 changes also clarify the relationship with other EU legal instruments including the Database (96/9/EC), INSPIRE (2007/2/EC) and GDPR (2016/679/EC).
- *Regulation 5.* The scope of the regime is extended to include public undertakings. These refer to entities entrusted with the provision of certain public services (water, energy, transport, postal services, public transport services by rail and road, air carriers or marine transport services) which are funded or governed by public bodies. These organisations will retain the discretion to make data available for re-use except where requested in an EU Implementing Act. Only after the public undertaking has made a document available for re-use, should it observe the relevant obligations laid down as regards format, charging, transparency, licences, non-discrimination and prohibition of exclusive arrangements. A public undertaking must comply with the High Value

Datasets requirements in *Regulation 14* except in relation to data that would lead to a distortion of competition in the relevant markets. Information outside the scope of the public service is excluded.

- *Regulation 6.* Public Undertakings do not have to comply with requests for reuse. The request regime also does not apply to research data.
- *Regulation 7.* Dynamic data should be made available via APIs (application programming interface) and bulk download where relevant. Public bodies and public undertakings should where possible, make public service information available in accordance with the principles of ‘open by design and default’.
- *Regulation 8.* Re-use free of charge is the default, otherwise charges should be restricted to marginal cost recovery subject to some exceptions (public bodies who are required to generate income to cover a substantial part of their costs and libraries, museums and archives) where some charges can be applied. In the interests of transparency public bodies who charge, as they are required to generate income to enable them to perform their functions, must be included on a published list of such bodies.
- *Regulation 9.* Public bodies or public undertakings who charge for re-use must also publish details of the charges including how they are calculated on their website.
- *Regulation 12.* The scope of the regime is extended to include publicly funded research data and national policies will be required aimed at making this research openly available.
- *Regulation 13.* Exclusive arrangements for the re-use of public sector information should not be entered into unless to provide a service in the general interest or for the digitising of cultural resources. Where exclusive arrangements are entered into, those arrangements must be made publicly available online. Arrangements between data holders and data re-users which do not expressly grant exclusive rights but which can reasonably be expected to restrict the availability of documents for re-use should be subject to additional public scrutiny. The essential aspects of such arrangements should be published online at least two months before coming into effect.
- *Regulation 14.* The Directive introduces powers to establish lists of high value datasets by means of Implementing Acts. Certain lists of high value datasets will have to be made available by public bodies and public

undertakings for free, in machine readable format, be accessible via APIs (application programming interface) and provided as a bulk download, where relevant. The first such Implementing Act is due to be published in Autumn 2021.

**Note:** These Regulations affect how information can be re-used, once it has been legitimately accessed, by placing obligations on the public sector to the benefits of re-users with the aim of boosting economic activity. However, they do not create any new rights of access to information or override or modify data protection rules in any way.

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