

The Regulations on the Re-use of Public Sector Information

Background

The Regulations on the Re-use of Public Sector Information (PSI) come into force on 1st July 2005. These are based on an EU Directive which was approved by the Council of Ministers on 27th July 2003. The Regulations apply to Central Government and the wider public sector including Local Government and the NHS although not the education sector. While certain separate considerations apply to Scotland and the interface with the Freedom of Information (Scotland) Act 2002, the Regulations should be taken to apply on a UK wide basis.

Next to our staff, information is our greatest asset but one which we consistently fail to value. These Regulations are being introduced to open up this agenda and simultaneously steps have been taken by Central Government to re-enforce the message. HMSO as we knew it has changed out of all recognition to be replaced by the new energetic proactive and involved Office of Public Sector Information – something much more than the Government Printer!

The Directive and the Regulations

The Directive was promulgated in order to stimulate a latent market relating to information held in the public sector, a market which is worth many millions of pounds to public sector bodies in the UK and which is largely unexploited. Essentially, we in the public sector should recognise the inherent value in all the information we hold and then make decisions about whether we are prepared to allow others to re-use it – if appropriate at a cost thus bringing additional funds into the public sector.

The intention is to proactively identify all information held by public authorities which might be of use externally; encourage the re-use of that information and where appropriate to ensure that public authorities benefit commercially from information which will inevitably have ‘costs’ associated with production. The costs can be direct in the case of ‘commissioned’ work but can also be hidden because the information has been produced in the course of daily routine business.

The Regulations are not in conflict with the Freedom of Information Act, rather they should be seen in a context similar to that which allows public authorities to set charges for information made available either through Publication Schemes or other legislation. The PSI Regulations go one step further – the public authority will make decisions relating to the release of information either through the Publication Scheme or through an Individual Request for Information in the normal way but may impose some restriction on the future use of the information. However, the Regulations also require Public Authorities to publish details of its *unpublished* information which may be available for re-use as well as that which it publishes and this should already have been established through the creation of an Information Asset Register.

It is important to recognise that public authorities do not have to agree to the re-use of information they hold. In some cases they may be unable to do so because they do not hold copyright – in others it might well be against their own commercial interests to do so; all the exemptions which apply to the Freedom of Information Act apply to the refusals to permit the reuse of information under the PSI. However, where the public authority does hold copyright or intellectual property rights and it is content for the information to be reused it must follow the procedure laid down in the Regulations; it will be necessary to issue a permit or licence, and, where it considers it appropriate to do so will charge a fee.

Application of the Regulations

Re-use of Information

The Regulations refer to the re-use of documents which means ‘the use by a person of a document held by the public sector body for a purpose other than the initial purpose within the public sector body’s public task for which the document was produced.’

It will obviously be a little while before we have any real benchmarking under these Regulations but this reference to ‘documents’ would appear to make it unlikely that the use of small excerpts from whole documents will fall within the scope of this legislation as for example when a journalist quotes from documents when writing a story. Such use is already covered by the Fair Dealing Provisions of the Copyright Legislation and case law.

The Regulations envisage applications being made for the re-use of information on both commercial and non-commercial grounds – both are acceptable in themselves but it is up to the public authority to decide whether to allow the reuse of information which has been made available. It may do this in relation to a class of information in some cases and in others on a case-by-case basis. Where information is released for re-use it will normally be in the format in which it is held by the public authority.

We would recommend that when releasing information under the Freedom of Information Act you consider your position should you be asked for permission for that same information to be re-used. You should then include a statement about your decision in your letter to the applicant.

Where you do not hold copyright or intellectual property rights

It is not within the locus of any public sector body holding information to which it does not hold copyright or intellectual property rights to agree or otherwise to re-use. This right stays with the owner of the copyright or intellectual property rights. So while such information may be released under FOIA – any re-use depends upon the permission of the copyright holder or the owner of the intellectual property and in such cases permission to re-use must be refused. Any such refusal should, where possible, contain details of the person or organisation that can give permission for re-use.

Dual Applications

We may well receive information requests under FOIA which include a request for reuse. In these circumstances the two aspects of the request should be aggregated and dealt with according to the 20 day time limit imposed by both FOIA and PSI. If the request is complex the time limit may be extended under PSI to such time as is reasonable but public sector bodies, by reviewing information they hold in advance of any request should be able to give a decision within the time allowed by legislation.

Licences and Charges

A Public Authority may charge for the reuse of information but it must make clear what those charges are by making a licence available to requestors which set out the terms and conditions of re-use. These licences can be standard and wide ranging as one would find on a website, or individual and related to a specific document or material.

OPSI have helpfully produced template licences which we would recommend are used. These can be incorporated into information provided from within a publication scheme whenever information permission is given for the re-use of information. Any information which is released into the public domain should be accompanied by a copyright notice or a licence.