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**Title:** The Freedom of Information Act and the Re-use Regulations

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The Freedom of Information Act 2000 (FOIA), which came into force on 1 January 2005, is concerned with *access* to information. It confers a general right of access to information held by public authorities subject to specified exemptions. The new Re-Use Regulations (the Regulations) which implement the Re-use Directive (the Directive) which are due to come into effect on 1 July 2005 concern the *re-use* of this public sector information. The Regulations were laid before Parliament on 10 June 2005.

Although the subject matter (public information) and scope (public bodies) is similar, the policies underpinning the legislation are quite different. FOIA seeks to promote greater transparency and openness in the conduct of public affairs, whilst the Directive recognises the value of public information, and aims to encourage commercial exploitation of it. It is hoped that the Regulations will open up a vast resource and create a level playing field for business in Europe.

UK officials are keen to maintain a distinction between access and re-use, however practically speaking, much of the same public sector information will be subject to both regimes, although the obligations imposed and entitlements conferred are by no means the same.

It is important to recognise that the Regulations do not provide a right of access to information. The supply of information under FOIA does not automatically give the recipient of the information the right to re-use it. Moreover, there is no obligation in the Regulations for a public sector body to permit re-use of documents held by it. What information is made available for re-use is left to the discretion of the public body. However, if it does decide to permit re-use, it must comply with the terms of the Regulations.

## **WHAT DOES THIS MEAN FOR PUBLIC BODIES?**

With the implementation of FOIA and the Environmental Information Regulations (EIRs) in January 2005, public bodies have had a lot to deal with. With the Re-use Regulations fast approaching, what new obligations will public bodies have to face?

### **Asset lists**

There is an obligation under the Regulations to provide asset lists which detail what information is available, how it can be obtained and the terms and conditions of the re-use. Consideration should be given to undertaking an information audit to identify which information is held, both published and unpublished, that can be made available for re-use. It may be that a similar list has already been produced by a public body to meet obligations under FOIA, and therefore in practice this may not be such a daunting task. Consideration should be given to linking the asset lists to the publication scheme in order to meet the obligations under both regimes in a way that avoids unnecessary duplication of effort and also provides potential re-users with a one stop shop in terms of finding out what information is available.

### **Charging**

Public bodies will be able to make a charge for information requests that reflects the cost of providing it, plus a reasonable return on investment if they wish. However it is unclear what a "*reasonable return on investment*" is. Neither the Directive nor the Regulations define what is meant by this and the Office of Public Sector Information (formerly HMSO) guidance calculates this by reference to the particular circumstances and the costs incurred of developing specific products and services. What is clear however is that whatever a public body decides to charge for re-use, it should publish charges and terms and conditions for re-use.

It is expected that a number of requests will combine both access and re-use, and therefore the Regulations provide for the fee for re-use to be offset against any fee charged for access under FOIA. This is a small but important change and standard practices in terms of FOIA fees should be revised and staff alerted of the change.

## **Licensing**

It is not compulsory to use licences to permit the re-use of documents, however where licences are used, "user-friendly" online standard licences should be used. The Office of Public Sector Information has developed the Click-Use Licence which may be adapted for public bodies for their own use. To ensure transparency and fairness, public bodies are encouraged to publish their standard licence terms, preferably on a website. The thinking behind the use of standard licences is to avoid some of the administrative burdens of dealing with licensing applications on an individual basis.

## **Timescales for responses**

To be effective, re-users will need to be given permission to re-use the information within a reasonable time. The timescales provided in the Regulations to a large extent mirror those set out in FOIA, allowing up to 20 working days following a request to finalise any licence offer. However, consideration of whether re-use is allowed does not affect the 20 working days time limit for access to information under FOIA. If there is a combined release and re-use request then it should be dealt with fully in terms of access to the information within the statutory timescale for handling an FOIA request, irrespective of whether a final decision has been made on re-use.

## **Complaints Procedures**

In order to meet transparency obligations under the Directive, public bodies will need to operate an effective complaints procedure so that it is clear to users how complaints will be handled. The complaints procedure should set out how complaints will be handled, where complaints should be sent, expected response time and what the means of redress are. Complaints should be made to the appropriate public body in the first instance, but users should be informed of the dispute resolution process established under the Regulations. The complaints procedure should be readily accessible and ideally published on a public authority's website.

## **Conclusion**

Whilst it is too early to say with any certainty what impact the Regulations will have on the day to day operations of public bodies, despite Government reassurance that the disruption will be modest yet the benefits to industry will be significant, what is

clear is that public bodies should endeavour to be "ahead of the game" by taking the following steps;

Prepare asset lists;

Consider charging and licensing arrangements;

Set up complaints process;

Train key staff;

Set up processes to handle requests.

## References

The Freedom of Information Act 2000. c36.

Council Directive 2003/98. (2003)

The Re-Use of Public Sector Information Regulations 2005. S.S.I. 2005/1553.

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