

**L.N. 20 of 2007**

**EUROPEAN UNION ACT**

**(CAP. 460)**

**Re-Use of Public Sector Information Order, 2007**

BY VIRTUE of the powers conferred by article 4(2) of the European Union Act (Cap. 460), the Prime Minister has made the following Order:-

Citation and scope.

**1.** (1) The title of this Order is the Re-Use of Public Sector Information Order, 2007.

(2) The purpose of this Order is the implementation of the provisions of Directive 2003/98/EC of the European Parliament and the Council on the re-use of public sector information of the 17th November 2003.

Definitions.

**2.** In this Order, unless the context otherwise requires:

"document" covers any representation of acts, facts or information - and any compilation of such acts, facts or information - whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording), held by public sector bodies, but is not intended to cover computer programmes;

"public sector body" means the Government of Malta, Local Councils, and public sector entities;

"public sector entity" means a body:

(a) established for the specific purpose of meeting needs in the general interest not having an industrial or commercial character; and

(b) having legal personality; and

(c) financed for the most part by the State or by Local Councils or by other public sector entities or subject to the management supervision by the Government, by Local Councils or by other public sector entities, or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the Government, by Local Councils or by other public sector entities;

"re-use of documents" means the use by a person or legal entity 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:

Provided that re-use of documents 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.

3. Where the re-use of documents held by Ministries, departments and public sector entities is allowed, the following minimum set of rules governing the re-use and the practical means of facilitating re-use of documents are to be followed.

Re-use of public sector information.

4. A public sector body shall allow the re-use of public sector information in full compliance with the principles relating to the protection of personal data in accordance with the provisions of the Data Protection Act.

Re-use of documents.

Cap. 440.

5. (1) The following documents are specifically excluded from the provisions of this Order:

Documents which are excluded.

(a) documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned;

(b) documents for which third parties hold intellectual property rights;

(c) documents which are excluded from access by virtue of the rules of access of Government, including on the grounds of:

(i) the protection of national security, defence or public security, and

(ii) statistical or commercial confidentiality;

(d) 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;

(e) documents held by educational and research establishments, such as schools, universities, archives, libraries and research facilities including, where relevant, organisations established for the transfer of research results, as well as research units within public sector bodies; and

(f) documents held by cultural establishments, such as museums, libraries, archives, orchestras, operas, ballets and theatres.

(2) The transfer for use of a document within a public sector body for the purpose of carrying out its own public task, or 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, shall not be considered as re-use.

Application  
procedure for  
re-use.

6. (1) Requests for re-use of information are to be addressed to the Department of Information, 3, Castille Place, Valletta ([info.doi@gov.mt](mailto:info.doi@gov.mt)) in the case of Government Ministries and Departments, and to the respective entity in the case of all other pertinent public sector bodies.

(2) A request for re-use shall:

(a) be in writing (including e-mail), in a form that can be filed for future reference;

(b) state the name of the applicant and an address for correspondence;

(c) indicate the document requested for re-use; and

(d) state the purpose for which the document is to be re-used.

Processing  
request for re-  
use.

7. (1) Where no time limits or other rules regulating the timely provision of documents have been established by law, a request for re-use shall be answered promptly and in any case before the end of the twentieth working day beginning with the day after receipt.

(2) Where the documents requested for re-use are extensive in quantity or the request raises complex issues the twenty working day period for responding may be extended by another twenty working days. When an extension is required, the applicant is to be notified in writing before the end of the twentieth working day beginning with the day after receipt, of the need for an extension, and of the estimated date by which to expect a reply.

**8.** (1) When a request for re-use is not accepted, the applicant is to be informed in writing of the reason for such refusal. The notification of refusal is to contain a reference to the means of redress available to the applicant.

Notification of refusal.

(2) When a request for re-use is refused because a third party owns relevant intellectual property rights in the document, the notification of refusal shall indicate, where known, a reference to the natural or legal person who is the rightholder, or alternatively to the licensor from which the public sector body has obtained the document.

**9.** (1) A document is to be made available to the applicant in the format and language in which it exists on the date of response to the request for re-use. Where possible and appropriate, a document shall be made available for re-use by electronic means.

Format of documents.

(2) Public sector bodies shall not be obliged to:

(a) create or adapt a document in order to comply with a request for re-use; or

(b) provide an extract from a document where to do so would involve disproportionate effort; or

(c) continue to produce a certain type of document for the purposes of re-use by others.

**10.** (1) Where it is deemed appropriate by the public sector body that conditions on re-use are imposed, such conditions shall not be discriminatory, nor shall they be such as to unnecessarily restrict the way in which a document can be re-used.

Conditions for re-use.

(2) In cases where the re-use of documents may be authorised subject to a licence imposing conditions (dealing with issues such as liability, the proper use of documents, guaranteeing non-alteration and the acknowledgement of source), the said licence conditions shall be fair and transparent.

(3) If a public sector body which holds a document wishes to re-use the document for its commercial 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.

**11.** (1) A public sector body shall not enter into an exclusive arrangement (contract or any other arrangement granting an exclusive right to re-use a document) with any person, including an applicant, except where necessary for the provision of a service in the

Exclusive arrangements.

public interest. Where an exclusive arrangement is entered into, the validity of the reason for granting such an arrangement is to be reviewed at least once every three years. Any exclusive arrangement permitted and entered into on or after 31 December 2003 shall be published by the public sector body within thirty days from the date of the coming into force of this Order or from the date of such future exclusive arrangement as the case may be.

(2) Any exclusive arrangement, other than one arising from the necessity to provide a service in the public interest, shall be terminated at the date on which it comes to an end in accordance with its terms, or on the 31 December 2008, whichever is the earlier.

Charges.

**12.** (1) Where a public sector body charges for allowing re-use, the total income from any charge shall not exceed the sum of the cost of collection, production, reproduction and dissemination of the documents, together with a reasonable return on investment.

(2) Any charges for re-use should be cost-oriented over the appropriate accounting period and calculated in accordance with the accounting principles applicable to the public sector body concerned, and on the basis of a reasonable estimate of the demand for documents over the appropriate period.

(3) Where a public sector body charges for re-use, so far as is reasonably practicable, it shall establish standard charges. A public sector body is to specify in writing the basis on which a standard charge has been calculated if requested to do so by an applicant.

(4) 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.

**13.** A public sector body shall ensure that the following information is made available to the public (where possible and appropriate by electronic means):

- (a) any applicable conditions for re-use, including any licence terms involved;
- (b) any standard charges for re-use;
- (c) a list of main documents available for re-use; and
- (d) details of the means of redress available to the public relating to any decision regarding re-use of documents.

**14.** (1) The internal complaints procedure for dealing with complaints relating to actions in this area shall be as follows: Complaints procedure.

(a) in the case of Government Ministries and Departments, complaints are to be addressed to the Department of Information, 3, Castille Place, Valletta ([info.doi@gov.mt](mailto:info.doi@gov.mt)), or submitted through the [Servizz.gov.mt](http://Servizz.gov.mt) website ([www.servizz.gov.mt](http://www.servizz.gov.mt)); and

(b) in the case of all other public sector bodies, complaints shall be referred to the particular entity. Where the said entity has a customer care unit complaints shall be referred to the entity through its respective customer care unit.

(2) Any complaints are to be submitted in writing. A public sector body must determine any complaint within a reasonable time and thereafter notify the person of its decision without delay in writing, giving reasons for its decision and also indicating the means of redress available where appropriate.

**15.** (1) Where a person has exhausted the procedure established in respect of any complaint or where the public sector body has failed to deal with a complaint within a reasonable time, the person may refer the complaint to the Principal Permanent Secretary, Office of the Prime Minister, Auberge de Castille, Valletta ([pps@gov.mt](mailto:pps@gov.mt)), who will act as the appellate body in all cases. Appeals.

(2) Any appeal shall:

(a) be made in writing;

(b) state the nature of the complaint; and

(c) include a copy of the written notification of the decision being appealed.

(3) The appellant and the relevant public sector body shall be informed in writing about the outcome of the appeal, which shall include a recommendation, giving reasons for the decision.

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