VERŻJONI ELETTRONIKA

A 1000

I assent.

(L.S.) **MARIE LOUISE COLEIRO PRECA**
President

13th October, 2015

ACT No. XXIX of 2015

AN ACT to provide for the re-use of public sector information and for matters ancillary or consequential thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title and scope.

1. (1) The short title of this Act is the Re-Use of Public Sector Information Act, 2015.

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

Interpretation.

2. In this Act, unless the context otherwise requires:

"document" covers any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording), including any part of such content;

"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;

"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;

VERŻJONI ELETTRONIKA

"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" shall have the same meaning assigned to it by article 2(1) of the Data Protection Act; Cap. 440.

"public administration" shall have the same meaning assigned to it by article 2(1) of the Public Administration Act; Cap. 497.

"public sector body" means the public administration, 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 public administration or by Local Councils or by other public sector entities or subject to the management supervision by the public administration, 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 public administration, 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 commercial or non-commercial purposes, 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;

"university" means any publicly funded entity that provides post-secondary-school higher education leading to academic degrees.

VERŻJONI ELETTRONIKA

Excluded documents.

3. The following documents are specifically excluded from the provisions of this Act:

(a) documents the supply of which is an activity falling outside the scope of the public task of the public sector bodies concerned, provided that the scope of the public tasks is transparent and subject to review;

(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 the public administration, including on the grounds of:

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

(ii) statistical confidentiality, or

(iii) commercial confidentiality such as business, professional or company secrets;

(d) documents access to which is restricted by virtue of the rules of access of the public administration, including cases whereby citizens or companies have to prove a particular interest to obtain access to documents;

(e) parts of documents containing only logos, crests and insignia;

(f) documents access to which is excluded or restricted by virtue of the rules of access on the grounds of protection of personal data, and parts of documents accessible by virtue of those rules of access which contain personal data the re-use of which has been defined by law as being incompatible with the Data Protection Act with regard to the processing of personal data;

Cap. 440.

(g) 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;

(h) documents held by educational and research establishments, including organisations established for the transfer of research results, as well as research units within public sector bodies, schools and universities, except university libraries; and

VERŻJONI ELETTRONIKA

(i) documents held by cultural establishments, other than libraries, museums and archives.

Applicability of the Freedom of Information Act. Cap. 496.

4. This Act builds on and is without prejudice to rules for access to documents held by the public administration in accordance with the provisions of the Freedom of Information Act.

Applicability of the Data Protection Act. Cap. 440.

5. 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.

Applicability of other legislation. Cap. 416. Cap. 417. Cap. 415. Cap. 414. Cap. 488.

6. The obligations imposed by this Act shall apply only insofar as they are compatible with the provisions of international agreements on the protection of intellectual property rights, in particular the Berne Convention and the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. In case of conflict, the provisions of the Trademarks Act, Patents and Designs Act, Copyright Act, Intellectual Property Rights (Cross-Border Measures) Act and the Enforcement of Intellectual Property Rights (Regulation) Act shall prevail.

Re-use of public sector information.

7. Subject to article 8, public sector bodies shall ensure that documents to which this Act applies in accordance with article 3 shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in this Act.

Documents in which intellectual property rights are held.

8. For documents in which libraries, including university libraries, museums and archives hold intellectual property rights, public sector bodies shall ensure that, where the re-use of such documents is allowed, these documents shall be re-usable for commercial or non-commercial purposes in accordance with the conditions set out in this Act.

Processing of requests.

9. Public sector bodies shall, through electronic means where possible and appropriate, process requests for re-use and shall make the document available for re-use to the applicant or, if a licence is needed, finalise the licence offer to the applicant within the time-frames laid down for the processing of requests for access to documents.

Requirements for requests for re-use.

10. (1) An applicant's request to a public sector body shall -

(a) be delivered in writing, including by post or electronically to an office of the public sector body;

(b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the public sector body to identify it; and

VERŻJONI ELETTRONIKA

(c) specify a postal address at which notices under this Act may, if necessary, be sent to the applicant.

(2) No applicant shall be required to justify or give any reasons for a request under this Act, and any beliefs of the public sector body as to what are the applicant's reasons for seeking access and re-use of a document shall not affect that request.

(3) Where a person -

(a) wishes to make a request to a public sector body; or

(b) has made to a public sector body a request that does not comply with sub-article (1),

it is the duty of the public sector body to take reasonable steps to assist the person to make the request in a manner that complies with sub-article (1), and it shall do so at no charge.

(4) Public sector bodies covered under article 3(g), (h) and (i) shall not be required to comply with the requirements of this article.

Applicability of certain articles of the Freedom of Information Act. Cap. 496.

11. Article 8, article 10 and article 11 of the Freedom of Information Act shall apply, *mutatis mutandis*, to the requests for re-use made in accordance with article 10(1) of this Act.

Non-acceptance of request for re-use.

12. (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.

(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 right holder, or alternatively to the licensor from which the public sector body has obtained the document. Libraries, including university libraries, museums and archives shall not be required to include such a reference.

Available formats.

13. (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 in open and machine-readable format together with their metadata. Both the format and the metadata should, in so far as possible, comply with formal open standards.

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

VERŻJONI ELETTRONIKA

(a) create or adapt a document; or

(b) provide an extract from a document in order to comply with sub-article (1) where this would involve disproportionate effort, going beyond a simple operation.

Production or storage of documents.

14. Public sector bodies shall not be required to continue to produce or store a certain type of document for the purposes of re-use by a private or public sector organisation.

Charges.

15. (1) A public sector body may charge a fee to an applicant for the re-use of a document, subject to any rules issued under this Act:

Provided that any charges set by the public sector body shall be limited to the marginal costs incurred for their reproduction, provision and dissemination.

(2) The proviso to sub-article (1) shall not apply to the following:

(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) by way of exception, documents for which the public sector body concerned is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction and dissemination. The public sector body shall pre-establish such requirements and publish them by electronic means, where possible and appropriate;

(c) libraries, including university libraries, museums and archives.

(3) In the cases referred to in sub-article (2)(a) and (b), the public sector bodies concerned shall calculate the total charges according to objective, transparent and verifiable criteria as set out in the rules issued under this Act. The total income of those bodies from supplying and allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction and dissemination, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved.

(4) Where charges are made by the public sector bodies referred to in sub-article (2)(c), the total income from supplying and

VERŻJONI ELETTRONIKA

allowing re-use of documents over the appropriate accounting period shall not exceed the cost of collection, production, reproduction, dissemination, preservation and rights clearance, together with a reasonable return on investment. Charges shall be calculated in line with the accounting principles applicable to the public sector bodies involved.

(5) Where a public sector body decides to charge an applicant a fee, it shall advise him accordingly and inform him that he has the right to appeal to the Administrative Review Tribunal as provided under article 24(3) if he feels that the fee is excessive:

Provided that if the fee is a standard fee established by rules under this Act, the Tribunal may only inquire into whether the rules have been correctly applied.

(6) A public sector body may waive any fees payable in respect of a particular application if, in the opinion of the authority -

(a) the fee payable is so small as to be not worth collecting; or

(b) payment of the fee would cause financial hardship to the applicant, bearing in mind the applicant's means and circumstances.

(7) Where a public sector body fails to meet the time limit set by article 11, it shall not charge any fee for the re-use of a document.

Transparency.

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

(a) where standard charges are applied, any applicable conditions for re-use and the actual amount of those charges, including the calculation basis for such charges;

(b) in case of any charges for re-use other than standard charges, the factors that are taken into account in the calculation of those charges;

(c) a list of main documents available for re-use, including any licence terms involved; and

(d) details of the means of redress available to the applicants for re-use of documents relating to any decision or practice affecting them.

VERŻJONI ELETTRONIKA

(2) In case of any charges for re-use other than standard charges referred to in sub-article (1)(b), the public sector body shall, upon request, indicate the way in which such charges have been calculated in relation to the specific re-use request.

Licences.

17. (1) Where it is deemed appropriate by the public sector body that conditions on re-use are imposed, such conditions shall be imposed through a licence. These conditions shall not be discriminatory for comparable categories of re-use, nor shall they be such as to unnecessarily restrict the way in which a document can be re-used including restrictions in competition.

(2) Any licence imposing 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.

(4) Public sector bodies shall use such standard licences as the Minister responsible for public sector information may direct. Such standard licences may be adapted to meet particular licence applications and shall be made available in digital format and can be processed electronically.

Practical arrangements.

18. The Minister responsible for public sector information may issue such directives or rules in order to:

(a) make practical arrangements facilitating the search for documents available for re-use, such as asset lists of main documents with relevant metadata, accessible where possible and appropriate online and in machine-readable format, and portal sites that are linked to the asset lists; and

(b) where possible facilitate the cross-linguistic search for documents.

Prohibition of exclusive arrangements.

19. (1) The re-use of documents shall be open to all potential actors in the market, even if one or more market players already exploit added-value products based on these documents. Subject to sub-article (2), contracts or other arrangements between the public sector bodies holding the documents and third parties shall not grant exclusive rights.

(2) However, where an exclusive right is necessary for the provision of a service in the public interest, the validity of the reason for granting such an exclusive right shall be subject to regular review,

VERŻJONI ELETTRONIKA

and shall, in any event, be reviewed every three years. The exclusive arrangements established after the 27 June 2013 shall be transparent and made public. This sub-article shall not apply to digitisation of cultural resources.

(3) Notwithstanding the provisions of sub-article (1), where an exclusive right relates to digitisation of cultural resources, the period of exclusivity shall in general not exceed ten years. In case where that period exceeds ten years, its duration shall be subject to review during the eleventh year and, if applicable, every seven years thereafter.

Arrangements to be transparent and made public.

20. The arrangements granting exclusive rights referred to in article 19(3) shall be transparent and made public.

Copy of the digitised cultural resources.

21. In the case of an exclusive right referred to in article 19(3), the public sector body concerned shall be provided free of charge with a copy of the digitised cultural resources as part of those arrangements. That copy shall be available for re-use at the end of the period of exclusivity.

Termination of exclusive arrangement.

22. Any exclusive arrangement existing on the 1 July 2005 that does not qualify for the exception under article 19(2) 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.

Exclusive arrangements existing on 17 July 2013.

23. Without prejudice to article 22, exclusive arrangements existing on 17 July 2013 that do not qualify for the exceptions under articles 19(2) and (3) shall be terminated at the end of the contract or in any event not later than 18 July 2043.

Appeal.

24. (1) Where a decision on re-use has been served to the applicant, the applicant may request the public sector body to review its decision.

(2) The request for review to the public sector body shall:

(a) be made in writing;

(b) state the reason for the review; and

(c) include a copy of the written notification of the decision being reviewed,

and shall be filed within twenty days from receipt of the decision by the public sector body.

VERŻJONI ELETTRONIKA

(3) Where the public sector body retains the decision taken, the applicant may appeal to the Administrative Review Tribunal, as defined in the Administrative Justice Act, against the notice within twenty working days. Cap. 490.

(4) Any decision given by the public sector body shall contain particulars of the right of appeal to the Administrative Review Tribunal.

(5) Decisions of the Tribunal shall be subject to appeal to the Court of Appeal as provided for by article 22 of the Administrative Justice Act. Cap. 490.

25. The Minister responsible for public sector information may make regulations for any or all of the following purposes: Regulations.

(a) to prescribe application forms, manual or electronic and other documents required for the purposes of this Act, or authorising any person to prescribe or approve such forms or documents:

Provided that forms cannot place requirements on applicants additional to those set out by this Act, and that an application meeting all such requirements shall still be considered if it is made otherwise than using the prescribed form;

(b) to establish a regulatory authority responsible for the monitoring of the implementation of the provisions of this Act;

(c) to establish an entity responsible for the implementation of the provisions of this Act;

(d) to prescribe reasonable charges or scales of reasonable charges for the purposes of this Act; and

(e) to provide for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

26. The Re-Use of Public Sector Information Order is hereby revoked, without prejudice to anything done or omitted to be done thereunder. Revocation of Re-Use of Public Sector Information Order. S.L. 460.13

VERŻJONI ELETTRONIKA

A 1010

Passed by the House of Representatives at Sitting No. 298 of the 7th October, 2015.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta riċiklata — ***Printed at the Government Printing Press on recycled paper***

Prezz/*Price*
€1.08