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To: Heads of Departments/Offices

Circular 16/15: Re-use of Public Sector Information – Criteria for charges that may be applied by certain categories of public service body in permitting re-use of information

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1. I am directed by the Minister for Public Expenditure and Reform to refer to Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 on the re-use of public sector information, which has amended earlier Directive 2003/98/EC on the re-use of public sector information. The 2013 Directive has been transposed into Irish law by the European Communities (Re-Use of Public Sector Information) (Amendment) Regulations 2015 (S.I. No. 525 of 2015), which amend S.I. No. 279/2005 (the 2005 Re-Use of Public Sector Information Regulations)¹ (collectively “the Regulations”) and which came into force on 24 November 2015.
2. Directive 2013/37/EU on the re-use of Public Sector Information (PSI), and the earlier 2003 PSI Directive, which it amends, create 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 Directives 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, but they do not create any new rights of access to information.
3. According to general principles provided for by Directive 2013/37/EU (and reflected henceforth by the Regulations), accessible documents held by bodies to which the Regulations apply should be made available for re-use for commercial and non-commercial purposes and where a body seeks to impose a charge for permitting re-use of information, such charge should be limited to the marginal costs incurred by the body in respect of the reproduction, provision and dissemination of the documents concerned.

¹ Previously amended by the European Communities (Re-Use of Public Sector Information) (Amendment) Regulations 2008 (S.I. No. 103 of 2008)

4. The general principle regarding charging as set out in paragraph 3 above does not apply to:
 - (a) a body that is required to generate revenue to cover a substantial part of its costs relating to the performance of its public task;
 - (b) documents for which the body making the charge is required to generate sufficient revenue to cover a substantial part of the costs relating to their collection, production, reproduction or dissemination; or
 - (c) libraries (including university libraries), museums and archives.

The requirement referred to in sub-paragraph (b) must be one which is defined—

- i. by law or other binding rules; or
 - ii. in the absence of such rules, in accordance with common administrative practice.
5. Accordingly I am to say that, in the case of those bodies to which the Regulations apply and which fall within the categories set out at paragraph 4(a) and (b) above, if they seek to apply a charge for the re-use of information under the Regulations such charge should not exceed the sum of—
 - (a) the direct costs incurred by the body;
 - (b) a reasonable apportionment of indirect and overhead costs attributable to chargeable activity; and
 - (c) a reasonable return on investment.
6. In the case of those bodies falling within the category at 4(c) above, the total income of the body from supplying and permitting re-use of documents over the appropriate accounting period must, for each document, not exceed the aggregate of —
 - (a) the direct costs;
 - (b) a reasonable apportionment of indirect and overhead costs attributable to chargeable activity; and
 - (c) a reasonable return on investment.
7. Any charges for re-use must, so far as is reasonably practicable, be calculated in accordance with the accounting principles applicable to the body from time to time.

8. Where a body to which the Regulations apply establishes standard charges for the re-use of documents under the Regulations based on the criteria set out in this circular, any applicable conditions and the actual amount of those charges, including the calculation basis for such charges, shall be pre-established and published, through electronic means, where possible and appropriate.
9. In the context of paragraphs 5 and 6 above:

“apportionment”, in relation to indirect and overhead costs, means the allocation of such costs to each activity of the body in connection with which the costs are incurred;

“chargeable activity”, in relation to a document and a public sector body, means—

- (a) in the context of paragraph 5 above, the body’s collection, production, reproduction and dissemination of the document; and
- (b) in the context of paragraph 6, the body’s collection, production, reproduction, dissemination, preservation and rights clearance of the document.

“direct costs”, in relation to a document and the body, means costs which are incurred by the body only as a consequence of it undertaking chargeable activity;

“indirect and overhead costs”, in relation to a document and the body, means costs which are not direct costs and which are incurred by the body in connection with—

- (a) chargeable activity; and
- (b) any other of the body’s activities.

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24 November 2015