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**To:** Finance & Resources Policy Board

**On:** 26 August 2015

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**Report by:** Director of Finance & Resources

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**Heading:** The Re-Use of Public Sector Information Regulations 2015

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1. **Summary**

- 1.1 The Re-Use of Public Sector Information Regulations 2015 ("the 2015 Regulations") came into force on 18 July 2015.
- 1.2 The Regulations implement the revised European Directive on the Re-Use of Public Sector information and replace The Re-Use of Public Sector Information Regulations 2005.
- 1.3 The purpose of the 2005 Regulations was to establish a framework which provides for the effective re-use of public sector information. The 2005 Regulations encouraged re-use of public sector information, on request, but the 2015 Regulations *require* it. This is an important change in emphasis.

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2. **Recommendations**

- 2.1 That the Board notes the content of the Report and authorises the Information Governance Team, within Legal and Democratic Services, to establish procedures to meet the requirements of the 2015 Regulations, including an internal complaints procedure.

- 2.2 That the Board delegates responsibility for dealing with internal complaints to the Managing Solicitor (Information Governance), who is also responsible for handling internal reviews under the Freedom of Information (Scotland) Act 2002.

### **3. Background**

- 3.1 The 2015 Regulations require public sector bodies to make information available for re-use, on request and support the Government's commitment to open data.
- 3.2 The 2015 Regulations apply to all information which is held by the Council.
- 3.3 Enabling the re-use of public sector information is intended to permit re-users to create new products and services using official information, thereby stimulating economic activity. It also increases the efficiency and transparency of public functions. This builds on the Council's commitment to transparency and proactive disclosure. Improving the re-use of public sector information can increase accountability and maximise the use of public sector information.
- 3.4 Notwithstanding this, it is accepted that re-use should only extend so far. There are a number of fairly narrow exemptions for the right to re-use. For example, the Regulations do not require public sector bodies to make material available that could validly be withheld under information access legislation (e.g. the Freedom of Information (Scotland) Act 2002 (FOI)). This includes personal information or instances where allowing re-use would have a harmful public policy effect (e.g. on national security).

### **4. Summary**

The 2015 Regulations, which retain a protection for personal data, provide for:

- proactive publication of information that is easy to re-use
- mandatory re-use permission for all information produced, held or disseminated unless exempt
- the easy identification of public sector information that is available for re-use
- transparency and use of open or non-restrictive licences for re-use
- the availability of most public sector information for re-use at nil or marginal cost
- clarity of any charges to be made for re-use
- processing of requests for re-use in a timely, open and transparent manner
- an accessible complaints process .

## **5. Dealing with Requests**

- 5.1 A person who wishes to make a request for re-use must ensure that the request:
- (a) is in writing;
  - (b) states his/ her name and address
  - (c) specifies the information requested; and
  - (d) states the purpose for which the information is to be re-used.
- 5.2 A public sector body must respond to a request for re-use promptly and in any event within twenty working days. Where information requested for re-use is extensive or the request raises complex issues the public sector body may extend the period for responding by such time as is reasonable in the circumstances.
- 5.3 An applicant should be notified in writing of the reason of any refusal and told the means of redress available.
- 5.4 A public sector body may make information available in the format and language in which it exists on the day of response to the request and where possible and appropriate it shall be made available by electronic means. However, there is no obligation to create or adapt information, provide an extract from a document where this would involve disproportionate effort or to continue to produce a certain type of document for the re-use by another person.
- 5.5 A public sector body may impose conditions on re-use although these should not unnecessarily restrict the way in which a document can be re-used.
- 5.6 A public sector body may charge for permitting re-use. However any charge for re-use must be limited to the marginal costs incurred in respect of the reproduction, provision and dissemination of documents.
- 5.7 Where a public sector body charges for re-use it shall, so far as is reasonably practicable, determine standard charges and, so far as is reasonably practicable, establish:
- (a) any applicable conditions for re-use
  - (b) the actual amount of any charges; and
  - (c) the basis on which such charges have been calculated.
- 5.8 A public sector body is obliged to establish an internal complaints procedure for determining complaints relating to its actions under the 2015 Regulations. Where someone believes that the public sector body has failed to comply with any requirement of these Regulations,

he can complain in writing to the public sector body in accordance with its internal complaints procedure. Any complaint must be determined within a reasonable time and the person should thereafter be notified of its determination without delay in writing and with reasons.

Thereafter, a complainer may refer his complaint to the Office of Public Sector Information. Where either an individual or the public sector body is dissatisfied with any recommendation made by the Office of Public Sector Information, this will be reviewed by the Advisory Panel on Public Sector Information who shall notify the person, the relevant public sector body and the Office of Public Sector Information of its recommendations.

## 6. **Relationship with Freedom of Information**

There is a clear link between freedom of information and the 2015 Regulations. However, there are also significant differences. FOI provides a statutory right of access to all information held by public authorities. This does not, however, include an automatic right to re-use information accessed. The 2015 Regulations do not change current access rights under FOI. They simply provide a framework for re-use of some of the information once access has been obtained under FOI.

Although FOI regulates access to information and the 2015 Regulations deal with re-use of that information, synergies between the two include:-

- **Charging:** It is important to avoid double charging as there is a correlation between fees charged for access and for re-use. An applicant who has been charged for accessing information must not be re-charged for re-use under the 2015 Regulations.
- **Timescales:** Permission to re-use is subject to access being granted under freedom of information. If an applicant is refused access to information because this is exempt under FOI, re-use of that information under the Regulations will not be an issue.

## 8. **Copyright**

The 2015 Regulations do not extend to information held by the Council which is subject to third party copyright or other intellectual property rights.

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## Implications of the Report

1. **Financial** – standard charges for the re-use of public sector information will require to be developed.
2. **HR & Organisational Development** – none.
3. **Community Planning** – none.
4. **Legal** – The Council are required to comply with the requirements of the Re-Use of Public Sector Information Regulations 2015. There is a clear link between the 2015 Regulations and Freedom of Information.
5. **Property/Assets** – none.
6. **Information Technology** – Making information available may require input from ICT and Information Management, including the ongoing management of the Information Asset Register.
7. **Equality & Human Rights** -The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations will be reviewed and monitored, and the results of that assessment will be published on the Council's website.
8. **Health & Safety** – none.
9. **Procurement** – none.
10. **Risk** – none.
11. **Privacy Impact** – none.

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## List of Background Papers

N/A

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