

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,448, 3 ta' Lulju, 2015

Taqsimha C

Nru. 106

3. 07. 2015

MALTA

KAMRA TAD-DEPUTATI

HOUSE OF REPRESENTATIVES

ABBOZZ ta' Liġi mressaq mill-Onorevoli Helena Dalli, M.P., Ministru għad-Djalogo Soċjali, Affarijiet tal-Konsumatur u Libertajiet Ċivili, f'isem il-Ministru għall-Ekonomija, Investiment u Intrapizi Żgħar, u moqri għall-Ewwel darba fis-Seduta tat-22 ta' Ġunju, 2015.

A BILL introduced by the Honourable Helena Dalli, M.P., Minister for Social Dialogue, Consumer Affairs and Civil Liberties, on behalf of the Minister for the Economy, Investment and Small Business, and read the First time at the Sitting of the 22nd June, 2015.

ATT biex jipprovdi għall-użu mill-ġdid tal-informazzjoni tas-settur pubbliku u għal hwejjeġ ancillari jew konsegwenzjali għal dan.

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

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

RAYMOND SCICLUNA
Clerk of the House of Representatives

ABBOZZ TA' LIĠI msejjah

Att biex jipprovdi għall-użu mill-ġdid tal-informazzjoni tas-settur pubbliku u għal ħwejjeġ ancillari jew konsegwenzjali għal dan.

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, ħarġet b'liġi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2015 dwar l-Użu mill-Ġdid tal-Informazzjoni tas-Settur Pubbliku.

Titolu fil-qosor, għan u bidu fis-seħh.

(2) L-għan ta' dan l-Att huwa sabiex jimplimenta d-dispożizzjonijiet tad-Direttiva 2003/98/KE tal-Parlament Ewropew u tal-Kunsill tas-17 ta' Novembru 2003 dwar l-użu mill-ġdid tal-informazzjoni tas-settur pubbliku u d-dispożizzjonijiet tad-Direttiva 2013/37/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 li temenda d-Direttiva 2003/98/KE dwar l-użu mill-ġdid tal-informazzjoni tas-settur pubbliku.

(3) Dan l-Att għandu jidhol fis-seħh fis-17 ta' Lulju, 2015.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma teħtieġ xort'oħra:

Tifsir.

"amministrazzjoni pubblika" għandha l-istess tifsir mogħti lilha bl-artikolu 2(1) tal-Att dwar l-Amministrazzjoni Pubblika;

Kap. 497.

"data personali" għandha l-istess tifsir mogħti lilha bl-artikolu 2(1) tal-Att dwar il-Protezzjoni u l-Privatezza tad-Data;

Kap. 440.

C 668

"dokument" tfisser kull kontenut ikun x'ikun il-mezz tiegħu (miktub fuq karta jew maħżun f'forma elettronika jew rekordjar bħala foss, viżwali jew awdjovizwali) u jinkludi kull parti ta' dak il-kontenut;

"format li jinqara elettronikament" tfisser format ta' fajl strutturat biex applikazzjonijiet tas-softwer ikunu jistgħu jidentifikaw, jirrikonoxxu u jieħdu faċilment *data* speċifika, inklużi dikjarazzjonijiet tal-fatti individwali, u l-istruttura interna tagħhom;

"format miftuħ" tfisser format ta' fajl li huwa indipendenti mill-pjattaforma u jitqiegħed għad-dispożizzjoni tal-pubbliku mingħajr xi restrizzjoni li tostakola l-użu mill-ġdid ta' dokumenti;

"korp regolat bil-liġi pubblika" tfisser korp:

(a) stabbilit għal fini speċifiku biex ihares il-ħtiġiet fl-interess ġenerali, li ma jkollux karattru industrijali jew kummerċjali; u

(b) li jkollu personalità ġuridika; u

(c) finanzjat, fil-parti 'l kbira tiegħu mill-amministazzjoni pubblika, jew minn Kunsilli Lokali jew minn korpi oħra regolati mill-liġi pubblika; jew soġġett għas-sorveljanza maniġerjali mill-amministazzjoni pubblika, jew minn Kunsilli Lokali jew minn korpi oħra regolati mill-liġi pubblika; jew li jkollu bord amministrattiv, maniġerjali jew ta' sorveljanza, li aktar minn-nofs il-membri tiegħu ikunu maħtura mill-amministrazzjoni pubblika, kunsilli lokali jew minn korpi oħra regolati mill-liġi pubblika;

"korp tas-settur pubbliku" tfisser l-amministazzjoni pubblika, Kunsilli Lokali, u korpi regolati bil-liġi pubblika;

"*standard* formali miftuħ" tfisser *standard* li gie stabbilit f'forma miktuba, li jiddeskrivi fid-dettall l-ispeċifikazzjonijiet għar-rekwiziti dwar kif tiġi żgurata l-interoperabbiltà tas-softwer;

"università" tfisser entità mħallsa minn fondi pubbliċi li tipprovdi edukazzjoni oġhla ta' skola postsekondarja li twassal għal lawrji akkademiċi.

"użu mill-ġdid" tfisser l-użu minn persuni jew entitajiet ġuridiċi ta' dokumenti miżmuma minn korpi tas-settur pubbliku, għal finijiet kummerċjali jew mhux kummerċjali minbarra l-fini inizjali fi hdan il-kompitu pubbliku li għalih kienu prodotti d-dokumenti:

Izda użu mill-ġdid ma jinkludix:

(a) l-iskambju, għall-użu mill-ġdid, ta' dokument fi hdan korp tas-settur pubbliku purament fit-twettieq tal-kompiti pubbliċi tiegħu; jew

(b) l-iskambju, għall-użu mill-ġdid, ta' dokumenti bejn korpi tas-settur pubbliku purament fit-twettieq tal-kompiti pubbliċi ta' xi wiehed minn dawn il-korpi tas-settur pubbliku.

3. Dan l-Att ma għandux japplika għal:

Dokumenti
eskluzi.

(a) dokumenti li l-provvista tagħhom hija attività li taqa' barra mill-ambitu tal-kompitu pubbliku tal-korpi tas-settur pubbliku kkonċernati, sakemm il-kamp ta' applikazzjoni tal-kompiti pubbliċi jkun trasparenti u jkun suġġett għal rieżami;

(b) dokumenti li dwarhom partijiet terzi għandhom id-drittijiet ta' proprjetà intellettuali;

(c) dokumenti li huma esklużi mill-aċċess minhabba fir-regoli ta' aċċess fl-amministazzjoni pubblika, fosthom minhabba raġunijiet ta':

(i) protezzjoni tas-sigurtà nazzjonali, jiġifieri s-sigurtà tal-Istat, id-difiża jew is-sigurtà pubblika, u

(ii) kunfidenzjalità tal-istatistika, jew

(iii) kunfidenzjalità kummerċjali bħal sigrieti kummerċjali, professjonali jew tal-kumpanniji;

(d) dokumenti li l-aċċess għalihom huwa ristrett minhabba fir-regoli ta' aċċess fl-amministazzjoni pubblika, inklużi każijiet li fihom iċ-ċittadini jew il-kumpanniji jridu jippruvaw interess partikulari biex jiksbu aċċess għad-dokumenti;

(e) partijiet ta' dokumenti li fihom biss *logos*, armi u insinja;

(f) dokumenti li l-aċċess għalihom huwa eskluż jew ristrett minhabba fir-regoli ta' aċċess għal raġunijiet ta' protezzjoni tad-*data* personali, u partijiet ta' dokumenti aċċessibbli minhabba dawk ir-regoli li fihom *data* personali li l-użu mill-ġdid tagħha ġie definit mill-liġi bħala inkompatibbli mal-Att dwar il-Protezzjoni u l-Privatezza tad-*Data* fir-rigward tal-ipproċessar ta' *data* personali; Kap. 440.

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(g) dokumenti miżmuma minn xandara tas-servizz pubbliku u s-sussidjarji tagħhom, jew minn korpi oħra jew is-sussidjarji tagħhom għat-twertieq ta' xandir mis-servizz pubbliku;

(h) dokumenti miżmuma minn stabbilimenti tat-tagħlim jew tar-riċerka, inklużi organizzazzjonijiet imwaqqfa għat-trasferiment ta' riżultati tar-riċerka, skejjel u universitajiet, għajr il-libreriji universitarji; u

(i) dokumenti miżmuma minn stabbiliment kulturali, li ma jkunux libreriji, mużewijiet jew arkivji.

Applikabilità tal-Att dwar il-Libertà tal-Infommazzjoni. Kap. 496.

4. Dan l-Att jibni fuq u huwa bla ħsara għar-regoli ta' aċċess skont id-disposizzjonijiet tal-Att dwar il-Libertà' tal-Infommazzjoni.

Applikabilità tal-Att dwar il-Protezzjoni u l-Privatezza tad-Data. Kap. 440.

5. Kull korp tas-settur pubbliku għandu jippermetti l-użu mill-ġdid tal-infommazzjoni tas-settur pubbliku f'konformità shiħa mal-prinċipji dwar l-ipproċessar ta' *data* personali skont id-disposizzjonijiet tal-Att dwar il-Protezzjoni u l-Privatezza tad-Data.

Applikabilità ta' leġislazzjoni oħra.

Kap. 416.
Kap. 417.
Kap. 415.
Kap. 414.
Kap. 488.

6. L-obbligi imposti b'dan l-Att għandhom japplikaw biss sal-limitu li ikunu kompatibbli mad-disposizzjonijiet ta' patti ta' ftehim internazzjonali dwar il-protezzjonijiet ta' drittijiet ta' proprjetà intellettuali, b'mod partikolari l-Konvenzjoni ta' Berna u l-Ftehim TRIPS. F'każ ta' kunflitt, għandhom jipprevalu d-disposizzjonijiet tal-Att dwar it-Trademarks, l-Att dwar id-Drittijiet tal-Awtur, l-Att dwar il-Privattivi Industrijali u d-Disinni, l-Att dwar id-Drittijiet dwar Proprjetà Intellettuali (Miżuri Intrakonfini) u l-Att li jirregola l-Infurzar ta' Drittijiet ta' Proprjetà Intellettuali.

L-użu mill-ġdid tal-infommazzjoni tas-settur pubbliku.

7. Bla ħsara għall-artikolu 8, il-korpi tas-settur pubbliku għandhom jiżguraw li d-dokumenti li dan l-Att japplika għalihom skont l-artikolu 3 ikunu jistgħu jintużaw mill-ġdid għal finijiet kummerċjali u mhux kummerċjali, skont il-kundizzjonijiet stipulati f'dan l-Att.

Dokumenti li fuqhom hemm drittijiet tal-proprjetà intellettuali.

8. Għad-dokumenti li fihom il-libreriji, inklużi l-libreriji universitarji, il-mużewijiet u l-arkivji jzommu d-drittijiet tal-proprjetà intellettuali, il-korpi tas-settur pubbliku għandhom jiżguraw li, fejn ikun permess l-użu mill-ġdid ta' tali dokumenti, dawn id-dokumenti jkun jistgħu jintużaw għal finijiet kummerċjali u mhux kummerċjali, skont il-kundizzjonijiet stipulati f'dan l-Att.

Proċessar ta' talbiet.

9. Il-korpi tas-settur pubbliku għandhom, permezz ta' mezzi elettronici fejn possibbli u xieraq, jipproċessaw talbiet għall-użu mill-ġdid u għandhom jagħmlu d-dokument disponibbli għall-użu mill-

għdid lill-applikant jew, jekk tkun meħtieġa liċenza, jiffinalizzaw l-offerta tal-liċenza lill-applikant f'limitu ta' żmien raġonevoli li ikun konsistenti mal-limitu ta' żmien preskritti għall-ipproċessar ta' talbiet għall-aċċess għal dokumenti.

10. (1) Talba ta' applikant lill-korp tas-settur pubbliku għandha -

Htiġiet applikabbli għall-ipproċessar ta' talbiet għall-użu mill-ġdid.

(a) tintbagħat bil-miktub, inklużi bil-posta jew elettronikament, lill-uffiċċju tal-korp tas-settur pubbliku; u

(b) tagħti dik l-informazzjoni dwar id-dokument kif hu raġonevolment meħtieġ biex uffiċjal responsabbli tal-korp tas-settur pubbliku jidentifikaha; u

(ċ) tispeċifika indirizz postali li fih avvizi maħruġin taħt dan l-Att jistgħu, jekk ikun meħtieġ, jintbagħtu lill-applikant.

(2) Ebda applikant m'għandu jintalab li jiġġustifika talba magħmula taħt dan l-Att jew jagħti raġuni għaliha, u kull twemmin li korpi tas-settur pubbliku jista' jkollhom fuq x'inhuma r-raġunijiet tal-applikant li jkun qed ifittex aċċess u użu mill-ġdid ta' dokument m'għandux jolqot it-talba tal-applikant.

(3) Meta persuna -

(a) tixtieq tagħmel talba lill-korp tas-settur pubbliku; jew

(b) tkun għamlet lill-korp tas-settur pubbliku talba li ma tikkonformax mas-subartikolu (1),

hu d-dmir tal-korp tas-settur pubbliku li jieħu passi raġonevoli biex jgħin lill-persuna tagħmel it-talba b'mod li tikkonforma mas-subartikolu (1), u l-korp tas-settur pubbliku għandu jagħmel dan b'xejn.

(4) Il-korpi tas-settur pubbliku koperti taħt l-artikolu 3(g), (h) u (i) ma għandhomx ikunu meħtieġa li jikkonformaw mal-htiġiet ta' dan l-artikolu.

11. L-artikolu 8, l-artikolu 10 u l-artikolu 11 tal-Att dwar il-Libertà tal-Infommazzjoni għandhom japplikaw, *mutatis mutandis*, għal talbiet għall-użu mill-ġdid skont l-artikolu 10(1) ta' dan l-Att.

Applikabilità ta' ċerti artikoli tal-Att dwar il-Libertà tal-Infommazzjoni. Kap. 496.

12. (1) Fil-każ ta' deċiżjoni negattiva, il-korp tas-settur pubbliku għandu jikkomunika r-raġunijiet għar-rifjut lill-applikant.

Rifjut ta' talba għall-użu mill-ġdid.

C 672

Kwalunkwe deċiżjoni rigward l-użu mill-ġdid għandha tinkludi referenza għall-mezz ta' rikors f'każ li l-applikant ikun jixtieq jappella kontra d-deċiżjoni.

(2) Fejn deċiżjoni negattiva tkun ibbażata fuq ir-raġuni li terza persuna għandha d-drittijiet ta' proprjetà intellettuali fuq id-dokument, in-notifika tar-rifjut għandha tindika referenza għall-persuna fiżika jew ġuridika li tkun id-detentur tad-dritt, fejn magħrufa, jew alternattivament lil min joħroġ il-liċenza li mingħandu l-korp tas-settur pubbliku jkun kiseb il-materjal relevanti. Il-libreriji, inklużi l-libreriji universitarji, il-mużewijiet u l-arkivji ma għandhomx l-obbligu li jinkludu tali referenza.

Il-formati disponibbli.

13. (1) Il-korpi tas-settur pubbliku għandhom jagħmlu d-dokumenti tagħhom disponibbli fil-format u lingwa eżistenti fid-data tar-rispons għat-talba għall-użu mill-ġdid. Fejn ikun possibbli u xieraq, dokument għandu jkun magħmul disponibbli f'format miftuħ u li jinqara elettronikament, flimkien mal-metadejta tagħhom. Kemm il-format u l-metadata għandhom, sa fejn hu possibbli, jikkonformaw ma' *standards* miftuħa formali.

(2) Korpi tas-settur pubbliku ma għandhomx ikunu obbligati li:

(a) johlqu jew jadattaw dokument; jew

(b) jipprovdu siltiet minn dokument sabiex jikkonformaw mas-subartikolu (1) meta dan ikun jinvolvi sforz sproporzjonat, li jmur lil hinn minn sempliċi operazzjoni.

Produzzjoni jew ħzin ta' dokumenti.

14. Il-korpi tas-settur pubbliku ma jistgħux ikunu meħtieġa li jkomplu l-produzzjoni jew il-ħzin ta' ċertu tip ta' dokumenti bil-ħsieb tal-użu mill-ġdid ta' tali dokumenti minn organizzazzjoni privata jew tas-settur pubbliku.

Prinċipji li jirregolaw l-hlas ta' tariffi.

15. (1) Korp tas-settur pubbliku jista' jimponi tariffa lill-applikant għall-użu mill-ġdid ta' dokument, bla ħsara għal kull regola maħruġa bis-saħħa ta' dan l-Att:

Izda dawn it-tariffi imposti mill-korp tas-settur pubbliku għandhom ikunu limitati għall-ispejjeż marginali mgarrba fir-riproduzzjoni, il-forniment u t-tixrid tagħhom.

(2) Il-proviso għas-subartikolu (1) ma għandux japplika għal dan li ġej:

(a) korpi tas-settur pubbliku li huma mitluba jiġġeneraw dħul biex ikopru parti sostanzjali mill-ispejjeż tagħhom marbuta

mal-qadi tal-kompiti pubbliċi tagħhom;

(b) b'deroga, dokumenti li għalihom il-korp tas-settur pubbliku konċernat hu mehtieġ jiġġenera dhul biżżejjed biex ikopri parti sostanzjali mill-ispejjeż marbuta mal-ġbir, il-produzzjoni, ir-riproduzzjoni u t-tixrid tagħhom. Dawk ir-rekwiziti għandhom jiġu definiti mill-korp tas-settur pubbliku u ppublikati eletronikament, fejn possibbli u xieraq;

(ċ) libreriji, inkluzi libreriji universitarji, mużewijiet u arkivji.

(3) Fil-każijiet imsemmija fis-subartikolu (2)(a) u (b), il-korpi tas-settur pubbliku kkonċernati għandhom jikkalkulaw it-tariffi totali skont kriterji oġġettivi, trasparenti u verifikabbli skont regoli mahruġa taht dan l-Att. L-introjtu totali ta' dawn l-entitajiet mill-provvista u l-awtorizzazzjoni tal-użu mill-ġdid ta' dokumenti matul il-perjodu ta' kontabbiltà ma għandux jisboq l-ispiza tal-ġbir, il-produzzjoni, ir-riproduzzjoni u t-tixrid, flimkien ma' redditu raġonevoli fuq l-investment. It-tariffi għandhom ikunu kkalkulati skont il-prinċipji tal-kontabbiltà applikabbli għall-korpi tas-settur pubbliku involuti.

(4) Meta jiġu imposti tariffi mill-korpi tas-settur pubbliku msemmija fis-subartikolu (2)(ċ), l-introjtu totali mill-provvista u l-awtorizzazzjoni tal-użu mill-ġdid ta' dokumenti matul il-perjodu ta' kontabbiltà xieraq m'għandux jisboq l-ispiza tal-ġbir, il-produzzjoni, ir-riproduzzjoni, it-tixrid, il-konservazzjoni u l-ikklerjar tad-drittijiet, flimkien ma' redditu raġonevoli fuq l-investment. It-tariffi għandhom ikunu kkalkulati skont il-prinċipji tal-kontabbiltà applikabbli għall-korpi tas-settur pubbliku involuti.

(5) Meta korp tas-settur pubbliku jiddeciedi li għandu jitlob pagament mingħand applikant, l-korp tas-settur pubbliku għandu jinnotifikah b'dan u jinfurmah li hu għandu dritt li jappella lit-Tribunal ta' Revizjoni Amministrattiva taht l-artikolu 24(3) jekk iħoss li l-ħlas hu eċċessiv:

Izda jekk il-pagament hu ħlas komuni stabbilit b'regolamenti taht dan l-Att, it-Tribunal jista' bi twegiba għal dan l-ilment jinvestiga biss jekk ir-regoli kienux ġew applikati b'mod korrett.

(6) Korp tas-settur pubbliku jista' jirrinunzja għall-ħlasijiet pagabbli fir-rigward ta' xi applikazzjoni partikolari jekk, fl-opinjoni tal-korp -

C 674

(a) il-ħlas pagabbli hu tant żgħir li mhux ta' min jiġbru; jew

(b) il-ħlas jikkaġuna piż finanzjarju lill-applikant, meta wieħed iqis il-mezzi u ċ-ċirkostanzi tal-applikant.

(7) Meta korp tas-settur pubbliku jonqos milli jissodisfa l-limiti taż-żmien imniżżlin fl-artikolu 11, m'għandux jitlob ebda ħlas għall-użu mill-ġdid ta' dokument.

Trasparenza.

16. (1) Korp tas-settur pubbliku għandu jiżgura li l-informazzjoni li ġejja tingħata lill-pubbliku, b'mezzi elettronici meta jkun possibbli u xieraq:

(a) fil-każ ta' tariffi *standard* għall-użu mill-ġdid ta' dokumenti miżmuma minn korpi tas-settur pubbliku, kwalunkwe kundizzjoni applikabbli u l-ammont attwali ta' dawk it-tariffi, inkluża l-bażi ta' kalkolu għal tali tariff;

(b) fil-każ ta' tariffi għall-użu mill-ġdid għajr dawk tariffi *standard*, liema fatturi jitqiesu fil-kalkolu ta' dawk it-tariffi;

(c) lista ta' dokumenti ewlenin li jistgħu jintużaw mill-ġdid, inkluż kwalunkwe liċenza li tista' tapplika; u

(d) dettalji dwar il-mezzi disponibbli lill-applikanti għall-użu mill-ġdid ta' dokumenti, għal appell fir-rigward ta' deċiżjonijiet jew Prattiki li jaffettwawhom.

(2) Fil-każ ta' tariffi għall-użu mill-ġdid għajr dawk imsemmija fis-subartikolu (1)(b), il-korp tas-settur pubbliku inkwistjoni għandu, fuq talba, jindika wkoll il-mod li bih tali tariffi ġew ikkalkulati fir-rigward tat-talba speċifika ta' użu mill-ġdid.

Liċenzi.

17. (1) Meta jitqies xieraq mill-korp tas-settur pubbliku li jiġu imposti kundizzjonijiet fuq l-użu mill-ġdid, dawn il-kundizzjonijiet għandhom jiġu imposti permezz ta' liċenza. Dawn il-kundizzjonijiet ma għandhomx ikunu diskriminatorji meta mqabbla ma kategoriji oħra ta' użu mill-ġdid, ma għandhomx jirrestringu bla bżonn il-possibiltajiet għall-użu mill-ġdid, u ma għandhomx jintużaw biex jirrestringu l-kompetizzjoni.

(2) Kull liċenza li timponi kondizzjonijiet għandha tkun ġusta u trasparenti.

(3) Jekk korp ta' settur pubbliku li għandu dokument jixtieq jużah mill-ġdid minn bħala materjal għall-attivitajiet kummerċjali

tiegħu, li ikunu barra l-kamp tal-applikazzjoni tal-kompiti pubbliċi tiegħu, l-istess kondizzjonijiet għandhom japplikaw għall-użu mill-ġdid bħal dawk li japplikaw għall-użu mill-ġdid minn xi applikant ieħor.

(4) Korpi tas-settur pubbliku għandhom jużaw dawk il-liċenzi *standard* li l-Ministru responsabbli għall-informazzjoni dwar is-settur pubbliku jista' jstabilixxi. Dawn il-liċenzi *standard* jkunu jistgħu jiġu adattati biex iħarsu l-applikazzjonijiet partikolari għal liċenzi, u għandhom ikunu disponibbli f'format diġitali u ikunu jistgħu jiġu proċessati elettronicament.

18. Il-Ministru responsabbli għall-informazzjoni dwar is-settur pubbliku jista' joħroġ direttivi jew regoli sabiex:

Arranġamenti
prattiċi.

(a) isiru arranġamenti prattiċi li jiffaċilitaw it-tiftix għad-dokumenti disponibbli għall-użu mill-ġdid, bħal listi ta' dokumenti ewlenin bil-metadejta rilevanti, aċċessibbli meta jkun possibbli u xieraq fuq l-Internet u f'format li jinqara elettronicament, u siti u portali li jkollhom holqa għall-listi ta' listi; u

(b) meta jkun possibbli, jiġi faċilitat it-tiftix interlingwistiku għal dokumenti.

19. (1) L-użu mill-ġdid ta' dokumenti għandu jkun miftuħ għall-utenti kollha potenzjali fis-suq, ukoll jekk utent wiehed jew aktar tas-suq ikunu diġà utilizzaw prodotti b'valur miżjud ibbażati fuq dawn id-dokumenti. Bla ħsara għas-subartikolu (2), kuntratti jew arranġamenti oħra bejn il-korpi tas-settur pubbliku li jzommu d-dokumenti u partijiet terzi ma għandhomx jagħtu drittijiet esklussivi.

Projbizzjoni ta'
arranġamenti
esklusivi.

(2) Madanakollu, fejn dritt esklussiv ikun meħtieġ għall-provvista ta' servizz fl-interess pubbliku, il-validità tar-raġuni għall-ghoti ta' dak id-dritt esklussiv għandha tkun sugġetta għal revizjoni regolari, u għandha, f'kull każ, tiġi riveduta kull tliet snin. L-arranġamenti esklussivi stabbiliti wara s-27 ta' Ġunju 2013 għandhom ikunu trasparenti u magħmula pubbliċi. Dan is-subartikolu m'għandux japplika għad-diġitalizzazzjoni tar-rizorsi kulturali.

(3) Minkejja d-dispożizzjonijiet tas-subartikolu (1), meta dritt esklussiv jirrigwarda d-diġitalizzazzjoni tar-rizorsi kulturali, il-perjodu ta' esklussività generalment m'għandux jisboq l-ghaxar snin. F'każ li dak il-perjodu jisboq l-ghaxar snin, id-durata tiegħu għandha tkun sugġetta għal rieżami matul il-ħdax-il sena u, jekk applikabbli, kull seba' snin wara dan.

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L-arranġamenti
għandhom
ikunu
trasparenti u
jsiru pubbliċi.

20. L-arranġamenti li jagħtu drittijiet esklussivi msemmija fl-artikolu 19(3) għandhom ikunu trasparenti u għandhom isiru pubbliċi.

Kopja tar-riżorsi
kulturali
diġitalizzati.

21. Fil-każ ta' dritt esklussiv msemmi fl-artikolu 19(3), il-korp tas-settur pubbliku kkonċernat għandu jingħata b'xejn kopja tar-riżorsi kulturali diġitalizzati bhala parti minn daww l-arranġamenti. Dik il-kopja għandha tkun disponibbli għal użu mill-ġdid fi tmiem il-perjodu ta' esklussività.

Terminazzjoni
ta' arranġamenti
esklusivi.

22. Arranġamenti esklussivi eżistenti fl-1 ta' Lulju 2005 li ma jikkwalifikawx għall-eċċezzjonijiet skont l-artikolu 19(2) għandhom jiġu terminati fl-aħħar tal-kuntratt jew, f'kull każ, mhux iktar tard mill-31 ta' Diċembru 2008, liema minnhom jiġi l-ewwel.

Arranġamenti
esklusivi
eżistenti fis-17
ta' Lulju 2013.

23. Bla ħsara għall-artikolu 22, l-arranġamenti esklussivi eżistenti fis-17 ta' Lulju 2013 li ma jikkwalifikawx għall-eċċezzjonijiet skont l-artikoli 19(2) u (3) għandhom ikunu terminati fl-aħħar tal-kuntratt u f'kull każ mhux aktar tard mit-18 ta' Lulju 2043.

Appelli.

24. Meta deċiżjoni dwar użu mill-ġdid ta' dokumenti tintbagħat lill-applikant, l-applikant jista' jitlob lill-korp tas-settur pubbliku jerga' jeżamina d-deċiżjoni tiegħu.

(2) Talba għall-rieżami lill-korp tas-settur pubbliku għandha:

(a) tkun bil-miktub;

(b) tinkludi r-raġunijiet għalfejn għandu jsir rieżami; u

(ċ) tinkludi kopja tad-deċiżjoni li tagħha qed tintalab rieżami,

u tintbagħat fi żmien għoxrin ġurnata minn meta l-applikant jirċievi d-deċiżjoni tal-korp tas-settur pubbliku.

Kap. 490.

(3) Jekk il-korp tas-settur pubbliku ma jbidilx id-deċiżjoni tiegħu, l-appellant jista' jappella lit-Tribunal ta' Revizjoni Amministrattiva kif definit fl-Att dwar il-Ġustizzja Amministrattiva fi żmien għoxrin ġurnata tax-xogħol.

(4) Kull deċiżjoni mogħtija mill-korp tas-settur pubbliku għandha tinkludi d-dettalji dwar id-dritt ta' appell lit-Tribunal ta' Revizjoni Amministrattiva.

Kap. 490.

(5) Deċiżjonijiet tat-Tribunal huma suġġetti għall-appell lill-Qorti tal-Appell kif stipulat fl-artikolu 22 tal-Att dwar il-Ġustizzja Amministrattiva.

25. Il-Ministru responsabbli għall-informazzjoni dwar is-settur Regolamenti.
pubbliku jista' jagħmel regolamenti għall-finijiet kollha li ġejjin jew għal xi wħud minnhom:

(a) biex jippreskrivi formoli ta' applikazzjoni, manwali jew elettronici, u dokumenti oħra meħtieġa għall-finijiet ta' dan l-Att, jew biex jawtorizza xi persuna biex tippreskrivi jew tapprova dawn il-formoli jew dokumenti:

Izda formoli ma jistgħux jimponu rekwiżiti fuq l-applikanti b'zieda ma' dawk imniżżlin f'dan l-Att, u applikazzjoni li tissodisfa dawn ir-rekwiżiti kollha għandha xorta waħda titqies jekk issir b'mod ieħor milli bl-użu tal-formola preskritta;

(b) biex jistabilixxi entità regolatorja responsabbli għall-monitoraġġ tal-implimentazzjoni tad-disposizzjonijiet ta' dan l-Att;

(ċ) biex jistabilixxi entità responsabbli għall-implimentazzjoni tad-disposizzjonijiet ta' dan l-Att;

(d) biex jippreskrivi hlasijiet raġonevoli jew skali ta' hlasijiet raġonevoli għall-finijiet ta' dan l-Att; u

(e) biex jipprovdi għal dawk il-materji kif kontemplati minn dan l-Att jew li huma neċessarji biex jagħtuh effett shiħ u jipprovdu għall-amministrazzjoni xierqa tiegħu.

26. L-Ordni dwar l-Użu mill-Ġdid tal-Infommazzjoni tas-Settur Pubbliku hu b'dan revokat, mingħajr ħsara għal dak kollu li sar jew li naqas milli jsir taħtu.

Revoka tal-Ordni dwar l-Użu mill-Ġdid tal-Infommazzjoni tas-Settur Pubbliku.
L.S. 460.13

Għanijiet u Raġunijiet

L-għanijiet ta' dan l-Abbozz ta' Liġi huma sabiex jiġu implimentati d-disposizzjonijiet tad-Direttiva 2003/98/KE tal-Parlament Ewropew u tal-Kunsill tas-17 ta' Novembru 2003 dwar l-użu mill-ġdid tal-informazzjoni tas-settur pubbliku u d-disposizzjonijiet tad-Direttiva 2013/37/UE tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Ġunju 2013 li temenda d-Direttiva 2003/98/KE dwar l-użu mill-ġdid tal-informazzjoni tas-settur pubbliku.

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**A BILL
entitled**

*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,
scope and
commencement.

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.

(3) This Act shall come into force on the 17 July, 2015.

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;

"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 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 State 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.

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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

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

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 Freedom of Information Act.
Cap. 496.

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 the Data Protection Act.
Cap. 440.

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.

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

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.

Re-use of public sector information.

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.

Documents in which intellectual property rights are held.

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 a reasonable time that is consistent with the time-frames laid down for the processing of requests for access to documents.

Processing of requests.

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; and

(b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the

Requirements for requests for re-use.

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public sector body to identify it; and

(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 rightholder, 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:

(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.

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. Production or storage of documents.

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. Charges.

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.

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

(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.

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. Licences.

(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.

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

(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.

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. Prohibition of exclusive arrangements.

(2) However, where an exclusive right is necessary for the

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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, 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.

(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

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Objects and Reasons

The objects of the Bill are 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.

