



6 October, 2021

DPE 212/007/2020

Circular Number: 20/2021
Title: Open Data Directive
To: Heads of Departments/Offices

A Dhuine Uasail

Introduction

1. I am directed by the Minister for Public Expenditure and Reform to refer to Directive 2019/1024/EU of the European Parliament and of the Council of 20 June 2019 on Open Data & Re-Use of Public Sector Information (Open Data Directive), which has repealed earlier Directives 2003/98/EC & 2013/37/EU.

The 2019 Directive has been transposed into Irish law by S.I. No. 376 of 2021, the European Communities (Open Data & Re-use of Public Sector Information) Regulations 2021, which came into force on 22nd July, 2021 and which repeals S.I. No. 279/2005 as amended by S.I. No. 525/2015 .

Directive 2019/1024/EU on Open Data and the Re-use of Public Sector Information, and the earlier 2003 & 2013 Directives which it repeals, creates an EU statutory framework for the re-use by businesses and citizens of existing information held by public sector bodies. The Directive has been rewritten so as to fully exploit the potential of public sector information for the European economy and society, focusing on:

- the provision of real-time access to dynamic data,
- increasing the supply of public data for re-use, including public undertakings, research performing organisations and research funding organisations,
- tackling the emergence of new forms of exclusive arrangements,
- tackling the use of exceptions to the principle of charging at marginal cost,
- and clarifying the relationship between the Directive and certain related legal instruments such as Regulation (EU)2016/679(GDPR)and Directives 96/9/EC (Databases) and 2007/2/EC (INSPIRE).

Background

2. The rationale of the Open Data Directive is that the public sector in all EU countries collects, produces, reproduces and disseminates a wide range of information in many areas of activity, such as, political, economic, legal, geographical, environmental, meteorological, touristic, business and educational areas. Data produced by public sector bodies constitute a vast, diverse and valuable pool of resources that can benefit society. Providing that data,

which includes dynamic data, in a commonly used open electronic format allows citizens and legal entities to find new ways to use them and create innovative products and services.

The overall objective of the Directive is to continue the strengthening of the EU's data economy by:

- increasing the amount of public sector data available for re-use,
- ensuring fair competition,
- and enhancing cross-border innovation based on data.

3. In the context of the Directive, data is not confined to 'tabular data' but means all or part of any document, record or data, whether in physical, electronic or other form and includes:
 - a. any memorandum, book, plan, map, drawing, diagram, pictorial or graphic work,
 - b. any photograph, and
 - c. any sound, visual or audio-visual recording.

The Regulations do not affect existing regimes in respect of copyright, intellectual property, protection of personal data or Freedom of Information, and do not permit the release of information in a manner that is otherwise prohibited by law.

4. Open Data is generally understood to denote data in open format that can be freely used, re-used and shared by anyone for any purpose. The Directive lays down an obligation for public bodies to make all existing data available for re-use in open formats unless access is restricted or excluded.

Requests and Appeals

5. Requests for data must be facilitated where possible. Any person can make a request and requests must be dealt with within 20 days in accordance with procedures set out in Regulation 6 of SI 376/2021. Please note the response time may be extended to 40 days where the request is extensive or comprehensive. Where a request for data has been refused, the requester must be informed of the means of appeal, i.e. the Information Commissioner.
6. A requester can submit an appeal to the Information Commissioner where a request for re-use has been refused, costs applied for re-use are above what is allowed under the Directive or conditions have been applied to the reuse. Decisions by the Information Commissioner are binding.

7. Open by Design and Default

The Open Data Directive introduces the principle of 'open by design and default' for all data falling within the scope of the Directive. This means that data should be considered open by default unless access is restricted or excluded. Where processes or systems are being updated or new processes or system are being designed open access to data must be built in at the start.

8. Publication of Data

Where data is made available for re-use in open format, this data must be linked to the national open data portal, data.gov.ie. Published data shall be provided in compliance with

the standards set out in the [Open Data Publication Guidelines](#). Complete metadata must be provided with all data and should be provided in both Irish and English.

9. **Applicability of Circular**

The Regulations apply to all public sector bodies, with certain exceptions, notably educational, research (apart from publicly funded research data) and cultural organisations.

Publicly funded research data held by researchers, research performing organisations and research funding organisations has been brought under the scope of the Directive.

Public Undertakings also come under the scope of the Directive. These refer to entities entrusted with the provision of public services - water, energy, transport, postal services, public transport services by rail and road, air carriers or marine transport services which are funded or governed by public bodies. Public undertakings are encouraged to provide data for reuse, but are not required to comply with the request regime. Where Public Undertakings make their data available for re-use they must do so in compliance with the provisions in the Directive relating to open formats, charging, exclusive arrangements etc.

10. **Open Data License**

The standard licence for the re-use of open government data in Ireland is the Creative Commons BY 4.0 Attribution. This allows data to be freely reused for any purpose but requires acknowledgement of the source, for further information see <https://creativecommons.org/licenses/by/4.0/>. It is recommended that public sector bodies place a statement on their websites to the effect that re-use of their data is subject to the terms of this licence without the need for users to make an application.

On occasions where application of the standard licence is not possible or appropriate, the use of a more restrictive licence may be justified (such as where it is in the public interest, for example national weather warnings from Met Éireann). Where a more restrictive licence is used, this should be clearly identified both through the metadata and at the source. Where an organisation uses a license other than the CC BY 4.0, this must be notified to the Open Data Unit in DPER in advance.

11. **Charging**

The default position with regard to charging for public sector data is that re-use should be allowed free of charge. This is subject to some exceptions and if charges are applied these must be clearly set out on the website of the charging organisation.

The position with regard to charging and how charges may be calculated are set out in Regulation 8, Charges for Re-Use, of [SI 376/2021](#).

Public sector bodies who are allowed to charge above the marginal rate, in accordance with Regulation 8 of SI 376/2021, must notify the Open Data Unit in DPER in order to be included in the published list of such bodies.

12. Exclusive Arrangements

In the interests of fair competition, exclusive arrangements to data are not permitted unless to provide a public service that could not otherwise be provided, or for the digitising of cultural resources. To facilitate transparency, the terms of exclusive arrangements must be published on the relevant public body's website in line with the Regulation 13 of [SI 376/2021](#). The details of any new exclusive arrangements being entered into must be published online at least two months before they come into force.

Additionally, arrangements between data holders and data re-users which can reasonably be expected to restrict the availability of documents/data for re-use must also adhere to this provision.

Exclusive arrangements must be reviewed at regular intervals as set out in Regulation 13 of [SI 376/2021](#).

13. Implementing Acts

Directive 2019/1024/EU introduces the concept of high value datasets (HVDs), which is defined as data the re-use of which is associated with important benefits for society and the economy. Implementing Acts under the Directive will set out certain high value datasets which will have to be made available by public bodies and public undertakings free of charge, in machine readable format, be accessible via APIs, provided as a bulk download (where relevant) and be free to re-use. The publication of HVDs specified in an Implementing Act will be mandatory. Public bodies should take immediate steps to ensure compliance with the forthcoming Implementing Act on HVDs, particularly those public bodies that currently charge for data.

14. Actions Required:

- i. Under Regulation 4 of SI 376/2021 all Departments/Offices and relevant bodies under their aegis are obliged to supply to the Minister for Public Expenditure and Reform with information as requested from time to time, such as open data progress reports.
- ii. All entities covered by the Regulations are required to familiarise themselves with and implement their obligations under the Open Data Directive and the national [Open Data Strategy](#). This must include the development and publication of an Open Data Publication Plan.
- iii. All Departments/Offices and relevant bodies under their aegis must assign responsibility to an officer for matters arising under these Regulations in line with the national [Open Data Strategy](#). Note, public bodies may already have an Open Data Liaison Officer in place.
- iv. All entities covered by the Regulations should take immediate steps to ensure that their websites provide, as a minimum, the following information:
 - a. The name and email address of the officer nominated to take responsibility for this area.
 - b. Details of what data is available for re-use and the licencing conditions that apply (CC BY 4.0 Attribution advised).
 - c. A link to any data published by them on the national open data portal, data.gov.ie.

- d. Details of how requests for re-use can be made, how they will be processed, and means of appeal.
- e. Details of any charges for re-use (if applicable) and how any charges are calculated.
- f. Details of any exclusive arrangements in place with regard to reuse of the data (if applicable).
- g. A link to the Open Data Directive page on the national open data portal, <https://data.gov.ie/pages/open-data-directive>, which contain the text of the Directive and Regulations.
- v. Where possible, public sector bodies should make practical arrangements facilitating the preservation of documents available for re-use.
- vi. All entities covered by the Regulations are required to respond positively to requests for data under the Open Data Directive, unless this would place a significant burden on the body concerned.

15. In order to support public bodies to meet their obligations under the Open Data Directive, the Office of Government Procurement (OGP) are putting in place a **Technical Services Framework for Open Data and Data Management for the Irish Public Service**. Public Sector Bodies (PSBs) will be able to use the Framework to drawdown services and support to fulfil their obligations under the Open Data Directive. All services will be available for direct drawdown by PSBs via a Notification to Activate Services Form (NASF). The Direct Drawdown mechanism will allow for faster and more convenient delivery of the Technical Services for Open Data and Data Management for PSBs.

The framework is expected to be available from January 2022 and will provide services in the following areas:

- i. **Data Management:**
 - a. Data Audits,
 - b. Data Cataloguing,
 - c. Data Extraction, Load and Preparation
 - d. Data Publication Plan
 - e. Data Publication
 - f. Data Maintenance
 - g. Data Maturity Assessment
- ii. **Hosted and Managed Open Data Platform Solution**
- iii. **Consultancy Advice and Support Services for Open Data and Data Management**

16. Review

The EU Commission is to carry out a review, before 17 July 2025, of the application of the Directive. Accordingly, all relevant public sector bodies should ensure that adequate records are maintained of applications for re-use, refusals of applications (including grounds), appeals, prices charged for data (if any) etc.

17. An information note setting out the main provisions of the Regulations is available at <https://data.gov.ie/pages/open-data-directive>.

18. Dissemination

Each Department and Office is required to bring this Circular to the attention of all bodies and sectors under its aegis.

19. Enquiries

Officers should address queries in relation to this Circular to **opendata@per.gov.ie**.

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Colin Menton
Assistant Secretary
Department of Public Expenditure and Reform

Note: This circular replaces Circular 32/05: Re-use of Public Sector Information (PSI), 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 and Circular 12/2016: Licence for Re-Use of Public Sector Information