
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive [2003/4/EC](#) of the European Parliament and of the Council on public access to environmental information and repealing Council Directive [90/313/EEC](#) (O.J. No. L 41, 14.2.2003, p.26) (“the Directive”), as regards Scottish public authorities (as defined in regulation 2). They provide for the making available of environmental information held by those authorities.

Regulation 2 sets out definitions of expressions used in these Regulations either directly or by reference to the definition of expressions used in the Freedom of Information (Scotland) Act 2002 or the Directive. Except as so provided, expressions which also appear in the Directive have the same meaning in these Regulations as they have in the Directive (regulation 2(4)). Regulation 2(2) defines the circumstances in which environmental information is “held” by a Scottish public authority.

Regulation 3 applies these Regulations to Scottish public authorities, provides that it will not apply to such authorities, however, to the extent that they act in a judicial or legislative capacity and further provides that nothing in these Regulations limits any other power of such authorities to disclose environmental information held by them.

Regulation 4 imposes a general duty on Scottish public authorities to take reasonable steps to organise and keep up to date environmental information relevant to their functions with a view to its active and systematic dissemination to the public. Regulation 4(2) sets out the principal kinds of information which should be made available in this way.

Regulation 5 imposes a duty on Scottish public authorities holding environmental information to make it available when requested to do so by an applicant. Subject to other provisions of these Regulations such requests should be complied with no later than 20 working days (as defined in regulation 2(1)) after the date of receipt of the request. Such information should be up to date, accurate and comparable (regulation 5(4)). In the case of certain matters affecting or likely to affect the elements of the environment, information relating to sampling and analysis should also be provided if requested (regulation 5(5)).

Regulation 6 provides for requests for environmental information to be provided by Scottish public authorities in a particular form or format when it is reasonable to do so.

Regulation 7 provides for circumstances in which the period of 20 working days for response to a request may be extended by a further period of 20 working days.

Regulation 8 provides for a power to charge fees for making information available except in cases referred to in regulation 8(2) and subject to a restriction as to amount (regulation 8(3)). Provision is also made for payment of fees in advance (regulation 8(4)). Authorities must publish a schedule of fees and related information (regulation 8(8)).

Regulation 9 obliges Scottish public authorities to provide advice and assistance to applicants and prospective applicants. Provision is also made to extend time for response to requests to make information available where these requests are formulated in too general a manner (regulation 9(2)).

Regulation 10 provides for the circumstances in which a Scottish public authority may refuse a request to make environmental information available where an exception applies under paragraph (4) or (5) and it is in the public interest. Exceptions must be interpreted restrictively and there must be a presumption in favour of disclosure. Personal data (as defined in regulation 2(3)) may only be made available in accordance with regulation 11. Provision is made for environmental information on emissions to be available despite exceptions in regulation 10(5)(d) to (g) (regulation 10(6)),

the separation of excepted information from that which is not (regulation 10(7)), withholding of information on the existence or holding of information (regulation 10(8) and (9)) and the extension of certain exceptions to protect the interests of UK public bodies (regulation 10(10)).

Regulation 11 describes the circumstances in which environmental information which is personal data may be made available.

Regulation 12 makes provision for certificates to be issued by the Scottish Ministers where they consider that making environmental information available would, or would be likely to, prejudice substantially national security.

Regulation 13 requires Scottish public authorities which refuse a request to make information available to provide written reasons and other particulars of their decisions no later than 20 working days after the date of receipt of the request.

Regulation 14 makes provision for the transfer of requests or the provision of information about the holder when the Scottish public authority to which a request has been made does not hold the information. Provision is also made as to the time for response to such a transferred request once it is received (regulation 14(2)).

Regulation 15 makes provision in relation to requests to the Keeper of the Records of Scotland. It imposes certain duties on the Keeper in relation to environmental information which is contained in a record transferred to the Keeper. The regulation does not apply to “open information” as defined in regulation 15(8).

Regulation 16 makes provision for representations to a Scottish public authority by an applicant who considers that the authority has not complied with the regulations. The authority must review the case and notify the applicant of its decision no later than 20 working days after the date of receipt of representations. If the authority decides that it has not complied it must immediately take steps to remedy the breach.

Regulation 17 applies provisions of Part 4 of the Freedom of Information (Scotland) Act 2002 (“the Act”) to analogous provisions of these Regulations. The provisions of the Act relate inter alia to powers of the Scottish Information Commissioner to consider applications by applicants dissatisfied by decisions following review by a Scottish public authority and to issue notices and rights of appeal to the Court of Session.

Regulation 18 provides for a code of practice to be issued by the Scottish Ministers as to desirable practice by Scottish public authorities in connection with the discharge of their functions under these Regulations and with the keeping, management and destruction of their records. It also makes provision for functions of the Scottish Information Commissioner under the Act to apply in relation to these Regulations (with modifications) as they apply under the Act.

Regulation 19 makes provision for an offence related to interference with records with the intention of preventing their disclosure under the Regulations.

Regulation 20 provides that, for the purposes of the Act, these Regulations be treated in the same way as regulations made under section 62 of the Act.

Regulation 21 revokes the Environmental Information Regulations 1992 and the Environmental Information (Amendment) Regulations 1998 so far as they have effect in relation to Scottish public authorities.