
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 440

The INSPIRE (Scotland) Regulations 2009

Public access to spatial data sets and spatial data services

10.—(1) Subject to paragraph (6), access by the public to a spatial data set or spatial data service by means of a service specified in regulation 8(2) may be limited only if—

- (a) a limitation is permitted or required under paragraph (2), (3) or (4); and
- (b) except in the case of a limitation under paragraph (2)(a), the public interest in limiting or placing conditions on public access outweighs the public interest in providing full access, in all the circumstances of the case.

(2) A Scottish public authority or a third party must not provide public access to personal data included in a spatial data set for which that authority or third party is responsible, if the provision of public access to that personal data otherwise than under these Regulations would contravene—

- (a) any of the data protection principles, ^{F1}...

^{F2}(b) Article 21 of the [^{F3}UK GDPR] (general processing: right to object to processing), or

- (c) section 99 of the Data Protection Act 2018 (intelligence services processing: right to object to processing).]

^{F4}
...

(3) A Scottish public authority or a third party may, in relation to a spatial data set or spatial data service for which that authority or third party is responsible, limit public access to that data set or data service through a discovery service if such access would adversely affect international relations, public security or national defence.

(4) A Scottish public authority or a third party may, in relation to a spatial data set or spatial data service for which that authority or third party is responsible—

- (a) limit public access to that data set or data service through a service described in regulation 8(2)(b), (c), (d) or (e), or
- (b) limit public access to the e-commerce services referred to in regulation 11(4) which relate to that data set or data service,

if such access would adversely affect any matter specified in paragraph (5).

(5) The matters are—

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of any body where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;

- (f) the interests or protection of the person who provided the spatial data in question where that person—
- (i) was not under, and could not have been put under, any legal obligation to supply that data to any other person,
 - (ii) did not provide that data in circumstances such that any person is entitled apart from these Regulations to provide public access to that data, and
 - (iii) has not consented to the public being provided with access to that data; and
- (g) the protection of the environment to which the spatial data set or spatial data service in question relates.
- (6) A Scottish public authority or a third party may not limit public access to a spatial data set or spatial data service which contains information on emissions into the environment, on a ground specified in paragraph (5)(d), (e), (f) or (g).

[^{F5}(7) In this regulation—

“the data protection principles” means the principles set out in—

- (a) Article 5(1) of the [^{F6}UK GDPR],
- (b) section 34(1) of the Data Protection Act 2018, and
- (c) section 85(1) of that Act;

^{F7}
...

“personal data” has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(2) and (14) of that Act).

[^{F8}“the UK GDPR” has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(10) and (14) of that Act);]

- (8) In determining for the purposes of this regulation whether the lawfulness principle in Article 5(1)(a) of the [^{F9}UK GDPR] would be contravened by the disclosure of information, Article 6(1) of the [^{F9}UK GDPR] (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.]

Textual Amendments

- F1** Word in reg. 10(2)(a) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 344(2)(a)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F2** Reg. 10(2)(b)(c) substituted for reg. 10(2)(b) (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 344(2)(b)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F3** Words in reg. 10(2)(b) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 78(2)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in reg. 10(2) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 344(2)(c)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F5** Reg. 10(7)(8) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 344(3)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F6** Words in reg. 10(7) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 78(3)(a)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in reg. 10(7) omitted (31.12.2020) by virtue of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 78(3)(b)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

- F8** Words in reg. 10(7) inserted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 78(3)(c)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in reg. 10(8) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 78(4)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

There are currently no known outstanding effects for the The INSPIRE (Scotland) Regulations 2009, Section 10.