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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Council Directive [2003/4/EC](#) on public access to environmental information and repealing Council Directive [90/313/EEC](#) (OJNo. L 41, 14.2.2003, p.26), except in relation to Scottish public authorities (as specified in section 80(2) of the Freedom of Information Act 2000 and defined in section 3 of the Freedom of Information (Scotland) Act 2002). Separate Regulations will be made by Scottish Ministers to implement this Directive in respect of Scottish public authorities.

Regulation 2 contains definitions of expressions in these Regulations, including the definition of environmental information, which is the same as in Council Directive [2003/4/EC](#). Except as provided in these definitions, expressions in these Regulations which appear in Council Directive [2003/4/EC](#) have the same meaning in these Regulations as they have in that Directive.

Regulation 3 applies the Regulations to public authorities and makes provision in relation to the environmental information held by public authorities. It also provides that a public authority will not be subject to these Regulations to the extent that it is acting in a judicial or legislative capacity and that the Regulations do not apply to either House of Parliament to the extent required for the purpose of avoiding an infringement of the privileges of either House. And it provides that each Government department is to be treated separately for the purposes of Parts 2, 4 and 5 of the Regulations.

Part 2 of the Regulations contains provisions relating to access to environmental information.

Regulation 4 requires public authorities progressively to make available environmental information to the public by electronic means which are easily accessible. And public authorities must take reasonable steps to organize the environmental information they hold relevant to their functions with a view to the active and systematic dissemination of the information to the public.

Regulation 5 requires a public authority that holds environmental information to make it available on request, as soon as possible and no later than 20 working days after the date of receipt of the request. This requirement is subject to the remaining provisions of Part 2 of the Regulations and Part 3, which include the exceptions to disclosure under regulation 12. Regulation 5 also provides that where environmental information requested includes personal data of which the applicant is the data subject the requirement to make the information available under regulation 5 does not apply to that aspect of the request. Instead, such requests for personal data fall to be dealt with under section 7 of the Data Protection Act 1998.

Regulation 6 provides for the form or format in which information must be provided.

Regulation 7 makes provision for a public authority to extend the time to deal with complex and voluminous requests and to inform the applicant if it intends to rely on such an extension.

Under regulation 8, a public authority may charge applicants for environmental information a reasonable amount for making the information available. Payment in advance may be requested. It provides that no charge can be made for access to public registers or lists held by the authority or for examination of the information requested at the place which the authority makes available for that examination.

Regulation 9 provides for a public authority to give reasonable advice and assistance to an applicant or prospective applicant.

Regulation 10 makes provision in relation to the transfer of requests to another public authority or a Scottish public authority.

Regulation 11 provides that a person who has requested environmental information from a public authority may make representations to the authority if it appears that the authority has not complied with the requirements of these Regulations in relation to the request. These representations must be considered by the authority free of charge. It also provides that a public authority must make a decision on those representations as soon as possible and no later than 40 working days after the date of receipt of the representations.

Part 3 of the Regulations contains provisions relating to exceptions to the duty to disclose environmental information.

Under regulation 12, a public authority may refuse to disclose environmental information if an exception to disclosure applies and the public authority decides that in all the circumstances the public interest in maintaining the exception outweighs the public interest in disclosing the information. In these decisions public authorities must apply a presumption in favour of disclosure. Regulation 12 also provides that where the information requested relates to information on emissions, disclosure of that information cannot be refused under the exceptions listed in paragraphs (5)(d) to (g).

Regulation 13 makes provision for exceptions to the disclosure of environmental information which includes personal data of which the person requesting the information is not the data subject. It provides that the personal data shall not be disclosed if that would breach the data protection principles set out in Part I of Schedule 1 to the Data Protection Act 1998. It also provides that the personal data must not be disclosed if the individual who is the subject of the personal data has properly given notice that disclosure would cause unwarranted substantial damage or distress and there is no overriding public interest in disclosure. It also provides that there must be no disclosure if the individual who is the subject of the personal data would not be entitled to have access to the data under section 7(1) of the Data Protection Act 1998 and there is no overriding public interest in disclosure.

Regulation 14 provides that a decision by a public authority to refuse a request for environmental information must be explained to the applicant as soon as possible and no later than 20 working days after the date of receipt of the request. The applicant must be informed of the right to make representations to the authority under regulation 11 and of the enforcement and appeal provisions of the Act applied by regulation 18, under which he may appeal against the refusal to the Information Commissioner.

Regulation 15 provides that a Minister of the Crown, or a person designated by him, may certify that a refusal to disclose information has been made under regulation 12 on the grounds that disclosure would adversely affect national security and would not be in the public interest.

Part 4 of the Regulations contains provisions relating to a code of practice and historical records.

Regulation 16 provides that the Secretary of State may, after consultation with the Information Commissioner, issue a code of practice providing guidance to public authorities as to the practice for them to follow in connection with the discharge of their functions under these Regulations.

Regulation 17 makes provision for consultation by public authorities in relation to requests for the disclosure of information contained in historical records. And in relation to requests for the disclosure of information contained in transferred public records it makes provision for consultation by appropriate records authorities with responsible authorities.

Part 5 of the Regulations contains provisions relating to enforcement and appeals, offences, amendment and revocation.

Regulation 18 applies the enforcement and appeals provisions of the Freedom of Information Act 2000 for the purposes of the Regulations. A person who has made a request for environmental information from a public authority may complain to the Information Commissioner if he believes that the public authority has not dealt with the request, or representations to the authority about the request, in accordance with the requirements of these Regulations. The Information Commissioner

has equivalent powers to enforce the requirements of these Regulations as apply under Part IV of the Freedom of Information Act 2000. These include the powers of entry and inspection and, in respect of the exercise of those powers, the offence of obstruction in Schedule 3 to that Act, as applied to these Regulations. Regulation 18 also provides for rights of appeal to the Information Tribunal equivalent to those under Part V of the Freedom of Information Act 2000. It also provides that for these purposes a Ministerial certificate issued under regulation 15 is equivalent to a certificate issued under section 24 of the Freedom of Information Act 2000.

Regulation 19 provides that an offence will be committed by any person who alters, defaces, blocks, erases, destroys or conceals any record of the public authority with the intention of preventing the disclosure to an applicant of the information that they are entitled to receive under regulation 5. The maximum fine is level 5 on the standard scale. Except for prosecutions brought by the Information Commissioner, prosecutions for the offence require the consent of the Director of Public Prosecutions or, as appropriate, the Director of Public Prosecutions for Northern Ireland.

Regulation 20 amends section 39 of the Freedom of Information Act 2000. The effect of the amendment is that information which can be required to be disclosed to the public under these Regulations (or which could be required to be disclosed but for an exception in these Regulations) is exempt information for the purposes of that Act.

Regulation 21 revokes previous Environmental Information Regulations: S.I.1992/3240, as amended by S.I. 1998/1447, except insofar as these apply to Scottish public authorities; and the [Environmental Information \(Northern Ireland\) Regulations 1993 \(S.R. 1993 No.45\)](#) as amended by the [Environmental Information \(Northern Ireland\) Regulations 1998 \(S.R. 1998 No.238\)](#).

A Transposition Note has been prepared for these Regulations and a copy has been placed in the library of each House of Parliament. Copies of the Transposition Note can be obtained from Information Management Division, DEFRA, Nobel House, 17 Smith Square, London SW1P 3JR.

A Regulatory Impact Assessment has not been prepared in relation to these Regulations.

**Changes to legislation:**

There are currently no known outstanding effects for the The Environmental Information Regulations 2004.