

*Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and section 82(2) of the Freedom of Information Act 2000, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2004 No.**

**FREEDOM OF INFORMATION**

**ENVIRONMENTAL PROTECTION**

**The Environmental Information Regulations 2004**

*Made* - - - - - [ ]

*Coming into force* - - - - - 1<sup>st</sup> January 2005

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Whereas a draft of these Regulations has been approved by resolution of each House of Parliament in pursuance of paragraph 2(2) of Schedule 2 to the European Communities Act 1972 (a) and section 82(2) of the Freedom of Information Act 2000(b);

Now, therefore, the Secretary of State, being a Minister designated (c) for the purposes of section 2(2) of the European Communities Act 1972 in relation to freedom of access to, and dissemination of, information on the environment held by or for public authorities or other bodies, in exercise of the powers conferred on her by that section in relation to regulations 4, 12(8), 18(10) and (11) and 19 of these Regulations and by section 74(3) of the Freedom of Information Act 2000 in relation to the remaining provisions of these Regulations, makes the following Regulations:

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(a) 1972 c.68.  
(b) 2000 c.36.  
(c) S.I.2003/2901.

# **PART 1**

## **INTRODUCTORY**

### **Citation and commencement**

1. These Regulations may be cited as the Environmental Information Regulations 2004 and shall come into force on 1<sup>st</sup> January 2005.

### **Interpretation**

2.—(1) In these Regulations—

“the Act” means the Freedom of Information Act 2000;

“applicant”, in relation to a request for environmental information, means the person who made the request;

“the Directive” means Council Directive 2003/4/EC<sup>(a)</sup> on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” means—

- (a) a public authority (except a Scottish public authority) as defined in section 3(1) of the Act, except that—

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<sup>(a)</sup> OJ No. L 41, 14.2.2003, p.26.

(i) the definition of “government department” in section 84 of the Act shall be read as if the words, “but does not include—” to the end of that definition were omitted;

(ii) where any body or office holder is listed in Schedule 1 to the Act in relation to information of a specified description, or designated by Order under section 5 of the Act by falling within a specified description, that body or office holder is excluded from this paragraph of the definition of a public authority; and

(iii) the exceptions in paragraph 6 of Schedule 1 to the Act do not apply;

(b) any other body, office holder or person (except a Scottish public authority) that carries out functions of public administration; and

(c) any other body, office holder or person (except a Scottish public authority) that is under the control of a body, office holder or person falling within paragraphs (a) or (b) of this definition of a public authority and that in relation to the environment—

(i) has public responsibilities;

(ii) exercises functions of a public nature; or

(iii) provides public services;

“Scottish public authority” means—

(a) a body referred to in section 80(2) of the Act; and

(b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002<sup>(a)</sup>; and

“working day” has the same meaning as in section 10(6) of the Act.

(2) The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998<sup>(b)</sup>, namely—

(a) “data” except that for the purposes of regulation 12(3) and regulation 13, a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;

(b) “the data protection principles”;

(c) “data subject”; and

(d) “personal data”.

(3) Subject to paragraphs (1) and (2), expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive.

## **Application**

**3.**— (1) Subject to paragraph (3), these Regulations apply to a public authority that holds environmental information.

(2) For the purposes of these Regulations, environmental information is held by a public authority if the information—

(a) is in its possession and it has been produced or received by the authority; or

(b) is held by another person on behalf of the authority.

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<sup>(a)</sup> 2002 asp 13.

<sup>(b)</sup> 1998 c.29, to which a relevant amendment is made by section 68 of the Freedom of Information Act 2000 (c.36) with regard to the extension of the meaning of “data”.

(3) These Regulations shall not apply to—

(a) any public authority to the extent that it is acting in a judicial or legislative capacity;  
or

(b) either House of Parliament to the extent required for the purpose of avoiding an infringement of their privileges.

(4) For the purposes of these Regulations each government department is to be treated as a person separate from any other government department.

## PART 2

### ACCESS TO ENVIRONMENTAL INFORMATION HELD BY PUBLIC AUTHORITIES

#### **Dissemination of environmental information**

4.—(1) Subject to paragraph (3), a public authority shall in respect of environmental information that it holds—

(a) progressively make the information available to the public by electronic means which are easily accessible; and

(b) take reasonable steps to organize the information relevant to its functions with a view to the active and systematic dissemination to the public of the information.

(2) For the purposes of paragraph (1) the use of electronic means to make information available or to organize information shall not be required in relation to information collected before 1<sup>st</sup> January 2005 in non-electronic form.

(3) Paragraph (1) shall not extend to making available or disseminating information which a public authority would be entitled to refuse to disclose under regulation 12.

(4) The information under paragraph (1) shall include at least—

(a) the information referred to in Article 7(2) of the Directive; and

(b) facts and analyses of facts which the public authority considers relevant and important in framing major environmental policy proposals.

#### **Duty to make available environmental information on request**

5.— (1) Subject to paragraph (3) and in accordance with paragraphs (2), (4) (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

(4) For the purposes of paragraph (1), where the information made available is compiled by the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

(5) Where information in paragraph (b) of the definition of environmental information is made available, if the applicant requests, the public authority shall inform the applicant, providing it is able to do so, of the place where information can be found on the measurement procedures, including methods of analysis, sampling, and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedures used.

(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

### **Form and format of information**

**6.**— (1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

(2) If the information is not made available in the form or format requested, the public authority shall—

- (a) explain the reason for its decision as soon as possible and no later than 20 working days after the date of receipt of the request for the information;
- (b) provide the explanation in writing if the applicant so requests; and
- (c) inform the applicant of the provisions of regulation 11 and of the enforcement and appeal provisions of the Act applied by regulation 18.

### **Extension of time**

**7.**—(1) Where a request is made under regulation 5, the period of 20 working days referred to in the provisions in paragraph (2) may be extended by the public authority to 40 working days if it reasonably believes that the complexity or volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.

(2) The following provisions are those referred to in paragraph (1)—

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

(3) Where paragraph (1) applies the public authority shall notify the applicant accordingly as soon as possible and no later than 20 working days after the date of receipt of the request.

### **Charging**

**8.**— (1) Subject to paragraphs (2) to (8), where a public authority makes information available to an applicant in accordance with regulation 5(1), the authority may charge the applicant for making the information available.

(2) A public authority shall not make any charge for allowing an applicant—

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for that examination.

(3) A charge under paragraph (1) shall not exceed an amount which the public authority is satisfied is a reasonable amount.

(4) A public authority may require advance payment of a charge and if it does it shall notify the applicant of the amount.

(5) Where a public authority has notified an applicant under paragraph (4) that advance payment is required, the public authority is not required—

- (a) to make available the information requested; or
- (b) to comply with regulations 6 or 14,

unless the charge is paid no later than 60 working days after the date on which it gave the notification.

(6) The period beginning with the day on which the notification of advance payment is made and ending on the day on which that payment is received by the public authority is to be disregarded for the purposes of determining the period of 20 working days referred to in the provisions in paragraph (7), including any extension to those periods under regulation 7(1).

(7) The following provisions are those referred to in paragraph (6)—

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

(8) A public authority shall publish and make available to applicants—

- (a) a schedule of its charges; and
- (b) information on the circumstances in which a charge may be levied or waived.

### **Advice and assistance**

**9.**— (1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

- (a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and
- (b) assist the applicant in providing those particulars.

(3) Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

(4) Where paragraph (2) applies, in respect of the provisions in paragraph (5), the date on which the further particulars are received by the public authority shall be treated as the date after which the period of 20 working days referred to in those provisions shall be calculated.

(5) The following provisions are those referred to in paragraph (4)—

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

### **Transfer of a request**

**10.**—(1) If a public authority believes, when it receives a request, that another public authority or a Scottish public authority holds the information requested, the public authority shall either—

(a) transfer the request to the other public authority or Scottish public authority; or  
(b) supply the applicant with the name and address of that authority,  
and inform the applicant accordingly with the refusal sent under regulation 14(1).

(2) Where a request is transferred to a public authority, for the purposes of the provisions referred to in paragraph (3) the request is received by that public authority on the date on which it receives the transferred request.

(3) The following provisions are those referred to in paragraph (2)—

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

### **Representations and reconsideration**

**11.**—(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

(3) The public authority shall on receipt of the representations and free of charge—

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.

(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

## **PART 3**

### **EXCEPTIONS TO THE DUTY TO DISCLOSE ENVIRONMENTAL INFORMATION**

#### **Exceptions to the duty to disclose environmental information**

**12.**— (1) Subject to paragraphs (2), (3) and (8), a public authority may refuse to disclose environmental information requested if—

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.



(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, those data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with its duty under regulation 9;
- (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

- (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 that or any other public authority 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 of the person who provided the information where that person—
  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority,
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it, and
  - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

(6) For the purposes of paragraph (1), a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

(7) For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.

(8) To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse disclosure of that information under an exception referred to in paragraphs (5)(d) to (g).

(9) For the purposes of paragraphs (5)(b) and (d), reference to a public authority shall include reference to a Scottish public authority.

(10) Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.

## Personal data

**13.**—(1) Where regulation 12(3) applies, a public authority shall not disclose those personal data if either the first or second condition below is satisfied.

(2) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—

(i) any of the data protection principles; or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it, and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998<sup>(a)</sup> (which relate to manual data held by public authorities) were disregarded.

(3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

(4) In determining whether anything done before 24<sup>th</sup> October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(5) For the purposes of this regulation, a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that—

(a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded; or

(b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of that Act.

## Refusal to disclose information

**14.**—(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) The refusal shall specify the reasons not to disclose the information requested, including—

(a) any exception relied on under regulations 12(4), 12(5) or 13; and

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<sup>(a)</sup> Section 33A of the Data Protection Act 1998 (c.29) was inserted by section 70(1) of the Freedom of Information Act 2000 (c.36).

- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) and, where these apply, regulations 13(2)(a)(ii) or 13(3).

(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

(5) The refusal shall inform the applicant—

- (a) that he can make representations to the public authority under regulation 11; and
- (b) subject to regulation 11, of the enforcement and appeal provisions of the Act applied by regulation 18.

### **Ministerial certificates**

**15.**—(1) A Minister of the Crown may certify that a refusal to disclose information under regulation 12(1) is because the disclosure—

- (a) would adversely affect national security; and
- (b) would not be in the public interest under regulation 12(1)(b).

(2) For the purposes of paragraph (1) —

- (a) a Minister of the Crown may designate a person to certify the matters in that paragraph on his behalf; and
- (b) a refusal to disclose information under regulation 12(1) includes a response under regulation 12(6).

(3) A certificate issued in accordance with paragraph (1)—

- (a) shall be conclusive evidence of the matters in that paragraph; and
- (b) may identify the information to which it relates in general terms.

(4) A document purporting to be a certificate under paragraph (1) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.

(5) A document which purports to be certified by or on behalf of a Minister of the Crown as a true copy of a certificate issued by that Minister under paragraph (1) shall in any legal proceedings be evidence (or, in Scotland, sufficient evidence) of that certificate.

(6) In paragraphs (1) and (4), a “Minister of the Crown” has the same meaning as in section 25(3) of the Act.

## **PART 4**

### **CODE OF PRACTICE AND HISTORICAL RECORDS**

#### **Issue of a code of practice and functions of the Commissioner**

**16.**—(1) The Secretary of State may issue, and may from time to time revise, a code of practice providing guidance to public authorities as to the practice which it would, in the Secretary of State’s opinion, be desirable for them to follow in connection with the discharge of their functions under these Regulations.

(2) The code may make different provision for different public authorities.

(3) Before issuing or revising any code under this regulation, the Secretary of State shall consult the Commissioner<sup>(a)</sup>.

(4) The Secretary of State shall lay before each House of Parliament any code issued or revised under this regulation.

(5) The general functions of the Commissioner under section 47 of the Act and the power of the Commissioner to give a practice recommendation under section 48 of the Act shall apply for the purposes of these Regulations as they apply for the purposes of the Act but with the modifications specified in paragraph (6).

(6) For the purposes of the application of sections 47 and 48 of the Act to these Regulations, any reference to—

- (a) the requirements or operation of the Act, or functions under the Act, includes a reference to the requirements or operation of these Regulations, or functions under these Regulations; and
- (b) a code of practice made under section 45 of the Act includes a reference to a code of practice made under this regulation.

### **Historical and transferred public records**

**17.**—(1) Where a request relates to information contained in a historical record other than one to which paragraph (2) applies and the public authority considers that it may be in the public interest to refuse to disclose that information under regulation 12(1)(b), the public authority shall consult —

- (a) the Lord Chancellor, if it is a public record within the meaning of the Public Records Act 1958; or
- (b) the appropriate Northern Ireland Minister, if it is a public record to which the Public Records Act (Northern Ireland) 1923<sup>(b)</sup> applies,

before it decides whether the information may or may not be disclosed.

(2) Where a request relates to information contained in a transferred public record, other than information which the responsible authority has designated as open information for the purposes of this regulation, the appropriate records authority shall consult the responsible authority on whether there may be an exception to disclosure of that information under regulation 12(5).

(3) If the appropriate records authority decides that such an exception applies—

- (a) subject to paragraph (4), a determination on whether it may be in the public interest to refuse to disclose that information under regulation 12(1)(b) shall be made by the responsible authority;
- (b) the responsible authority shall communicate its determination to the appropriate records authority within such time as is reasonable in all the circumstances; and
- (c) the appropriate records authority shall comply with regulation 5 in accordance with that determination.

(4) Where a responsible authority is required to make a determination under paragraph (3), it shall consult—

- (a) the Lord Chancellor, if the transferred public record is a public record within the meaning of the Public Records Act 1958; or
- (b) the appropriate Northern Ireland Minister, if the transferred public record is a public record to which the Public Records Act (Northern Ireland) 1923 applies,

before it determines whether the information may or may not be disclosed.

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<sup>(a)</sup> “The Commissioner” under these Regulations is the Information Commissioner referred to in section 18 of the Freedom of Information Act 2000 (c.36).

<sup>(b)</sup> 1923 c.20(N.I.).

(5) A responsible authority which is not a public authority under these Regulations shall be treated as a public authority for the purposes of—

- (a) the obligations of a responsible authority under paragraphs (3)(a) and (b) and (4); and
- (b) the imposition of any requirement to furnish information relating to compliance with regulation 5.

## PART 5

### ENFORCEMENT, OFFENCES AND REVOCATION

#### **Enforcement and appeal provisions**

**18.**—(1) This regulation applies where—

- (a) an applicant has made representations to a public authority in accordance with regulation 11; and
- (b) the applicant believes that the authority has failed to comply with any requirement of that regulation in relation to those representations.

(2) Where this regulation applies, section 76(1) of the Act (disclosure of information between Commissioner and ombudsmen) shall apply to any information obtained by, or furnished to, the Commissioner under or for the purposes of these Regulations.

(3) Where this regulation applies, the enforcement and appeals provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of the Act but with the modifications specified in paragraphs (6) to (11).

(4) In this regulation, “the enforcement and appeals provisions of the Act” means—

- (a) Part IV of the Act (enforcement), including Schedule 3 (powers of entry and inspection) which has effect by virtue of section 55 of the Act; and
- (b) Part V of the Act (appeals).

(5) Part IV of the Act shall not apply in any case where a certificate has been issued in accordance with regulation 15(1).

(6) For the purposes of the application of any of the enforcement and appeals provisions of the Act—

- (a) for any reference to—
  - (i) this Act there shall be substituted a reference to these Regulations; and
  - (ii) the requirements of Part I of the Act there shall be substituted a reference to the requirements of Part 2 of these Regulations and regulation 14;
- (b) any reference to a public authority is a reference to a public authority within the meaning of these Regulations;
- (c) for any reference to the code of practice under section 45 of the Act (issue of a code of practice by the Secretary of State) there shall be substituted a reference to any code of practice issued under regulation 16(1);
- (d) for the reference to sections 1(1) (general right of access to information), 11 (means by which communication to be made) and 17 (refusal of request) of the Act in section 50(4) of the Act (contents of decision notice) there shall be substituted respectively reference to regulations 5(1), 6 and 14;
- (e) for the references to the Act in section 56 of the Act (no action against public authority) there shall be substituted references to these Regulations;

- (f) for the reference to section 66 of the Act (decisions relating to certain transferred public records) in section 57(3)(a) of the Act (appeal against notices served under Part IV) there shall be substituted a reference to regulations 17(2) to (5);
- (g) for the reference to an offence under section 77 of the Act (offence of altering etc. records with intent to prevent disclosure) in paragraph 1 of Schedule 3 to the Act (powers of entry and inspection) there shall be substituted a reference to an offence under regulation 19; and
- (h) for the reference to information which is exempt information by virtue of section 23(1) (information supplied by, or relating to, bodies dealing with security matters) or section 24(1) of the Act (national security) in paragraph 8 of Schedule 3 to the Act (powers of entry and inspection) there shall be substituted a reference to information whose disclosure would adversely affect national security.

(7) The reference to confirmation or denial in section 50(4)(a) of the Act (contents of decision notice) applies to a response given by a public authority under regulation 12(6) or regulation 13(5).

(8) Section 53 of the Act (exception from duty to comply with decision notice or enforcement notice) applies to a decision notice or enforcement notice served on any public authority under these Regulations.

(9) Section 60 of the Act (appeals against national security certificate) shall apply with the following modifications—

- (a) for the references to a certificate under section 24(3) of the Act (national security) there shall be substituted a reference to a certificate issued in accordance with regulation 15(1);
- (b) sub-section (2) shall be omitted; and
- (c) in sub-section (3), for the words, “the Minister did not have reasonable grounds for issuing the certificate” there shall be substituted, “the Minister or person designated by him did not have reasonable grounds for issuing the certificate under regulation 15(1)”.

(10) A person found guilty of an offence under paragraph 12 of Schedule 3 to the Act (offences in relation to the execution of a warrant) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) A government department is not liable to prosecution in relation to an offence under paragraph 12 of Schedule 3 to the Act (offences in relation to the execution of a warrant) but that offence shall apply to a person in the public service of the Crown and to a person acting on behalf of either House of Parliament or on behalf of the Northern Ireland Assembly as it applies to any other person.

### **Offence of altering records with intent to prevent disclosure**

**19.** —(1) Where—

- (a) a request for environmental information has been made to a public authority under regulation 5; and
- (b) the applicant would have been entitled (subject to payment of any charge) to that information in accordance with that regulation,

any person to whom this paragraph applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to which the applicant would have been entitled.

(2) Subject to paragraph (5), paragraph (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.

(3) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) No proceedings for an offence under this regulation shall be instituted—

(a) in England and Wales, except by the Commissioner or by or with the consent of the Director of Public Prosecutions; or

(b) in Northern Ireland, except by the Commissioner or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(5) A government department is not liable to prosecution in relation to an offence under paragraph (1) but that offence shall apply to a person in the public service of the Crown and to a person acting on behalf of either House of Parliament or on behalf of the Northern Ireland Assembly as it applies to any other person.

## Revocation

20. The following are revoked—

(a) The Environmental Information Regulations 1992 (a) and the Environmental Information (Amendment) Regulations 1998 (b) except insofar as they apply to Scottish public authorities; and

(b) The Environmental Information Regulations (Northern Ireland) 1993(c) and the Environmental Information (Amendment) Regulations (Northern Ireland) 1998(d).

[Date]

Secretary of State  
for Environment, Food and Rural Affairs

## EXPLANATORY NOTE

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

These Regulations implement provisions relating to access to environmental information of the Aarhus Convention(1) and provisions of Council Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC (OJ No. L 41, 14.2.2003, p.26). These Regulations do not extend to Scottish public authorities specified in section 80(2) of the Freedom of Information Act 2000 nor those defined in section 3 of the Freedom of Information (Scotland) Act 2002. Separate Regulations will be made in respect of these Scottish public authorities by Scottish Ministers.

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(a) S.I. 1992/3240.

(b) S.I. 1998/1447.

(c) S.R. 1993 No. 45.

(d) S.R. 1998 No. 238.

(1) The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters signed at Aarhus on 25<sup>th</sup> June 1998, the text of which can be found at-  
<http://www.unece.org/env/pp/documents/cep43e.pdf>.

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. It provides that, unless otherwise stated, expressions in Council Directive 2003/4/EC have the same meaning in these Regulations as they do in that Directive.

By regulation 3, a public authority will not be subject to these Regulations to the extent that it is acting in a judicial or legislative capacity. It also provides that both Houses of Parliament are excluded from these Regulations to the extent that their application to either House would amount to an infringement of their privileges.

By regulation 4, a public authority shall take reasonable steps to organize its environmental information with a view to that information being more easily disseminated to the public and more progressively available electronically.

By regulation 5, a public authority that holds environmental information must make it available to an applicant as soon as possible and no later than 20 working days after the date of receipt of the request. It further provides that there are exceptions to disclosure under regulation 12. It also provides that where information requested is personal data and the applicant is the subject of those data, these Regulations do not apply to that aspect of the request. Such requests 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 provides for a public authority to extend the time to deal with a request and to inform the applicant if it intends to rely on such an extension.

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

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

Regulation 10 provides for the transfer of requests to another public authority or a Scottish public authority.

Regulation 11 provides that if an applicant believes that the public authority has not complied with the requirements of these Regulations, he can make representations to the authority, which must be considered 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.

By regulation 12, disclosure of environmental information under regulation 5 may be refused if an exception to disclosure exists and, if there is, where the public authority decides that disclosure would not be in the public interest. It prescribes a presumption in favour of disclosure. It 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 (d) to (g) inclusive of paragraph (5).

Regulation 13 provides that personal data referred to in regulation 12 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 further provides that those personal data shall not be disclosed if the individual who is the subject of the 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 shall be no disclosure if the individual who is the subject of those data would not be entitled to have access to those data under section 7(1) of the Data Protection Act and there is no overriding public interest in disclosure.

Regulation 14 provides that a decision to refuse a request 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 and to seek a reconsideration of the decision under regulation 11 and of the right to refer the matter to the Information Commissioner under regulation 18.

By regulation 15, 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.

Regulation 16 provides that the Secretary of State may, after consultation with the Information Commissioner, issue a code of practice concerning a public authority's compliance with these Regulations.

Regulation 17 provides for consultation on disclosure with regard to historical records (defined in section 62 of the Freedom of Information Act 2000) and transferred public records by appropriate records authorities and responsible authorities (all defined in section 15 of the Freedom of Information Act 2000).

By regulation 18, an applicant may complain to the Information Commissioner if he believes that a public authority has not dealt with a request in accordance with the requirements of these Regulations. It provides that the Information Commissioner has equivalent powers to enforce those requirements as apply under Part IV of the Freedom of Information Act 2000. An offence will be committed under paragraph 12 of Schedule 3 to the Freedom of Information Act 2000 by any person who obstructs the execution of a warrant. 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. Any prosecution requires the consent of the Director of Public Prosecutions or, as appropriate, the Director of Public Prosecutions for Northern Ireland.

By regulation 20, these Regulations revoke the Environmental Information Regulations 1992 (S.I. 1992/3240) as amended by the Environmental Information Regulations 1998 (S.I. 1998/1447) (except insofar as they apply to Scottish public authorities) and they revoke 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.