SCOTTISH STATUTORY INSTRUMENTS

2004 No. 520

FREEDOM OF INFORMATION

The Environmental Information (Scotland) Regulations 2004

Made - - - -	*30th November 2004*
Laid before the Scottish Parliament - - - -	*2nd December 2004*
Coming into force - -	*1st January 2005*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F1], and of all other powers enabling them in that behalf, hereby make the following Regulations:

F1 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), **Schedule 8**, paragraph 15(3). The function conferred on the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Information (Scotland) Regulations 2004 and shall come into force on 1st January 2005.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Freedom of Information (Scotland) Act 2002 [F2];

"applicant" means any person who requests that environmental information be made available;

"the Commissioner" means the Scottish Information Commissioner constituted by section 42 of the Act;

[[F3]"the data protection principles" means the principles set out in—

(a) Article 5(1) of the **[**[F4]UK GDPR **]**, and

(b) section 34(1) of the Data Protection Act 2018;**]**

[[F3]"data subject" has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);**]**

"the Directive" means 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[F5];

"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 paragraph (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 paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (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 paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

[F6]…

[[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);**]**

"Scottish public authority" means–

(a) any body which, any other person who, or the holder of any office which is–

(i) listed in schedule 1 to the Act (but subject to any qualification in that schedule), or

(ii) designated by order under section 5(1) of the Act;

(b) a publicly-owned company as defined by section 6 of the Act;

(c) any other Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998 [F8]); and

(d) any other person who is neither a public body nor the holder of a public office and who is under the control of a person or body falling within paragraphs (a), (b) or (c) of this definition and–

(i) has public responsibilities relating to the environment;

(ii) exercises functions of a public nature relating to the environment; or

(iii) provides public services relating to the environment; and

[[F9]"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);**]**

"working day" has the same meaning as in section 73 of the Act.

(2) For the purpose of these Regulations, environmental information is held by a Scottish public authority if it is–

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

(b) held by another person on that authority's behalf,

and, in either case, it has not been supplied by a Minister of the Crown or department of the Government of the United Kingdom and held in confidence.

[F10(3A) In these Regulations, references to **[**F11the UK GDPR and**]** the Data Protection Act 2018 have effect as if in **[**F12Article 2 of the UK GDPR and**]** Chapter 3 of Part 2 of that Act **[**F13(exemptions for manual unstructured processing and for national security and defence purposes)**]** —

(a) the references to an FOI public authority were references to a Scottish public authority as defined in these Regulations, and

(b) the references to personal data held by such an authority were to be interpreted in accordance with paragraph (2) of this regulation.**]**

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

F2 2002 asp 13.

F3 Words in reg. 2(1) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 311(2)** (with ss. 117, 209, 210, Sch. 20 para. 61); S.I. 2018/625, reg. 2(1)(g)

F4 Words in reg. 2(1) 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. 56(2)(a)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

F5 O.J. No. L 41, 14.2.2003, p.26.

F6 Words in reg. 2(1) 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. 56(2)(b)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

F7 Words in reg. 2(1) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 311(2)** (with ss. 117, 209, 210, Sch. 20 para. 61); S.I. 2018/625, **reg. 2(1)(g)**

F8 1998 c. 46.

F9 Words in reg. 2(1) 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. 56(2)(c)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

F10 Reg. 2(3A) substituted (25.5.2018) for reg. 2(3) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 311(3)** (with ss. 117, 209, 210, Sch. 20 para. 61); S.I. 2018/625, reg. 2(1)(g)

F11 Words in reg. 2(3A) 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. 56(3)(a)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

F12 Words in reg. 2(3A) 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. 56(3)(b)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

F13 Words in reg. 2(3A) 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. 56(3)(c)** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

Application

3.—(1) Subject to paragraph (2), these Regulations apply to Scottish public authorities.

(2) These Regulations shall not apply to any Scottish public authority to the extent that it is acting in a judicial or legislative capacity.

(3) Nothing in these Regulations is to be taken to limit the powers of a Scottish public authority to disclose environmental information held by it.

Active dissemination of environmental information

4.—(1) A Scottish public authority shall take reasonable steps to organise and keep up to date the environmental information, relevant to its functions, which it holds and at least the types of information listed in paragraph (2), with a view to the active and systematic dissemination of that information to the public and shall make that information progressively available to the public by electronic means unless it was collected before 14th February 2003 and is not available in electronic form.

(2) The types of information referred to in paragraph (1) are–

(a) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;

(b) policies, plans and programmes relating to the environment;

(c) progress reports on the implementation of the items referred to in sub paragraphs (a) and (b) when prepared or held by a Scottish public authority in electronic form;

(d) reports on the state of the environment;

(e) data or summaries of data derived from the monitoring of activities that affect or are likely to affect the environment;

(f) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found;

(g) environmental impact studies and risk assessments concerning those elements of the environment referred to in paragraph (a) of the definition of "environmental information" in regulation 2(1); and

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

Duty to make available environmental information on request

5.—(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

(2) The duty under paragraph (1)–

(a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and

(b) is subject to regulations 6 to 12.

(3) Any enactment or rule of law which would prevent the making available of information in accordance with these Regulations shall not apply.

(4) A Scottish public authority shall, in making environmental information compiled by it available in accordance with paragraph (1), ensure so far as practicable that that information is up to date, accurate and comparable.

(5) Where information of the kind referred to in paragraph (b) of the definition of "environmental information" in regulation 2(1) is made available, the authority shall, if the applicant so requests, provide such information as is available to it 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 procedure used.

Form and format of information

6.—(1) Where an applicant requests that environmental information be made available in a particular form or format, a Scottish public authority shall comply with that request 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) Where a Scottish public authority relies on a provision of paragraph (1) not to make the information available in the form or format requested it shall–

(a) give its reasons for that decision as soon as possible and in any event no later than 20 working days after the date of receipt of the request for the information;

(b) give its reasons in writing if the applicant so requests;

(c) inform the applicant of the review provisions under regulation 16 and of the enforcement and appeal provisions available in accordance with regulation 17.

Extension of time

7.—(1) The period of 20 working days referred to in–

(a) regulation 5(2)(a);

(b) regulation 6(2)(a); and

(c) regulation 13(a),

may be extended by a Scottish public authority by a further period of up to 20 working days if the volume and complexity of the information requested makes it impracticable for the authority either to comply with the request within the earlier period or to make a decision to refuse to do so.

(2) Where paragraph (1) applies the Scottish public authority shall notify the applicant accordingly as soon as possible and in any event no later than 20 working days after the date of receipt of the request for the information.

(3) Notification under paragraph (2) shall–

(a) be in writing;

(b) give the authority's reasons for considering the information to be voluminous and complex; and

(c) inform the applicant of the review provisions under regulation 16 and of the enforcement and appeal provisions available in accordance with regulation 17.

Charging

8.—(1) Subject to paragraphs (2) to (8), where a Scottish public authority is under a duty to make environmental information available under regulation 5(1), it may charge a fee for so doing.

(2) A Scottish public authority shall not charge a fee for allowing an applicant to–

(a) access any public registers or lists of environmental information held by it; or

(b) examine the information requested at a place which the authority makes available for that purpose.

(3) Fees charged under paragraph (1) shall not exceed a reasonable amount and in any event shall not exceed the costs to the authority of producing the information requested.

(4) A Scottish public authority may require that payment of the whole or part of a fee under paragraph (1) be made in advance of making information available.

(5) Where a Scottish public authority imposes a requirement under paragraph (4) it shall notify the applicant in writing.

(6) Where a Scottish public authority has notified an applicant that advance payment is required under paragraph (5) then that authority is not obliged to–