Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No.

FREEDOM OF INFORMATION

ENVIRONMENTAL PROTECTION

The Environmental Information Regulations 2004

Made - - - -

Coming into force - - 1st January 2005

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(**1**);

Now, therefore, the Secretary of State, being a Minister designated(**2**) 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, makes the following Regulations:

PART 1

Introductory

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

"the Act" means the Freedom of Information Act 2000(**3**);

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

(**1**) 1972 c. 68.
(**2**) S.I. 2003/2901.
(**3**) 2000 c. 36.

"appropriate records authority", in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

"the Commissioner" means the Information Commissioner;

"the Directive" means Council Directive 2003/4/EC(**4**) 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" has the meaning given by paragraph (2);

"public record" has the same meaning as in section 84 of the Act;

"responsible authority", in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

"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(**5**);

"transferred public record" has the same meaning as in section 15(4) of the Act; and

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

(2) Subject to paragraph (3), "public authority" means—

(a) government departments;

(b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding—

(i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or

(**4**) OJ No. L 41, 14.2.2003, p.26.
(**5**) 2002 asp 13.

(ii) any person designated by Order under section 5 of the Act;

(c) any other body or other person, that carries out functions of public administration; or

(d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) 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.

(3) Except as provided by regulation 12(10) a Scottish public authority is not a "public authority" for the purpose of these Regulations.

(4) The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(**6**), 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".

(5) Except as provided by this regulation, 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 paragraphs (3) and (4), these Regulations apply to public authorities.

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

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

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

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

(4) These Regulations shall not apply to either House of Parliament to the extent required for the purpose of avoiding an infringement of the privileges of either House.

(5) Each government department is to be treated as a person separate from any other government department for the purposes of Parts 2, 4 and 5 of these Regulations.

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—

(**6**) 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".

(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 1st 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 or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, 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 a standardised procedure 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 public authority may extend the period of 20 working days referred to in the provisions in paragraph (2) to 40 working days if it reasonably believes that the complexity and 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 provisions referred to in paragraph (1) are—

(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 environmental information available 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 for making environmental information available and if it does it shall, no later than 20 working days after the date of receipt of the request for the information, notify the applicant of this requirement and of the amount of the advance payment.

(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 a requirement for an 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 provisions referred to in paragraph (6) are—

(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—