
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 ^{M1}, and of all other powers enabling them in that behalf, hereby make the following Regulations:

Marginal Citations

M1 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 ^{M2};

“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;

[^{F1}“the data protection principles” means the principles set out in—

(a) Article 5(1) of the [^{F2}UK GDPR], and

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

[^{F1}“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^{M3};

“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);

^{F3}
...

[^{F4}“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^{M4}); 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

[^{F5}“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.

[^{F6}(3A) In these Regulations, references to [^{F7}the UK GDPR and] the Data Protection Act 2018 have effect as if in [^{F8}Article 2 of the UK GDPR and] Chapter 3 of Part 2 of that Act [^{F9}(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.

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)**
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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)

Marginal Citations

- M2** 2002 asp 13.
- M3** O.J. No. L 41, 14.2.2003, p.26.
- M4** 1998 c. 46.

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—

- (a) make the information requested available under regulation 5(1); or
- (b) comply with regulations 6, 7 or 13,

unless the fee is paid; and any such fee must be paid within a period of 60 working days beginning with the day on which the authority gave such notification.

(7) No working day from and including the day on which notice under paragraph (5) is given up to and including the day on which a fee is paid shall count for the purposes of determining any period of working days in accordance with regulations 5(2)(a), 6(2)(a) and 13(a).

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

- (a) a schedule of its fees; and
- (b) information on the circumstances in which a fee may be charged, waived or required to be paid in advance.

Duty to provide advice and assistance

9.—(1) A Scottish 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 request has been formulated in too general a manner, the authority 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 request, to provide more particulars in relation to the request; and
- (b) assist the applicant in providing those particulars.

(3) To the extent that a Scottish public authority conforms to a code of practice under regulation 18 in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with the duty imposed by paragraph (1) in relation to that case.

(4) In any case to which paragraph (2) applies, the date on which the further particulars are received by the authority shall be treated as the date of the request for the purposes of regulations 5(2)(a), 6(2)(a) and 13(a) and any period within which the authority is required to respond to that request by these Regulations shall begin on the day following that date.

Exceptions from duty to make environmental information available

10.—(1) A Scottish public authority may refuse a request to make environmental information available if—

- (a) there is an exception to disclosure under paragraphs (4) or (5); and
- (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.

(2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall—

- (a) interpret those paragraphs in a restrictive way; and
- (b) apply a presumption in favour of disclosure.

(3) Where the environmental information requested includes personal data, the authority shall not make those personal data available otherwise than in accordance with regulation 11.

(4) A Scottish public authority may refuse to make environmental information available 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 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 making available internal communications.

(5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially—

- (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 any public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided for 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 the information;
 - (ii) did not supply it in circumstances such that it could, apart from these Regulations, be made available; and
 - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

(6) To the extent that the environmental information to be made available relates to information on emissions, a Scottish public authority shall not be entitled to refuse to make it available under an exception referred to in paragraph (5)(d) to (g).

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

(8) For the purposes of this regulation, a Scottish public authority may respond to a request by not revealing whether such information exists or is held by it, whether or not it holds such information, if to do so would involve making information available which would, or would be likely to, prejudice substantially any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

(9) For the purposes of a response under paragraph (8), whether information exists and is held by the public authority is itself making information available.

Personal data

11.—(1) To the extent that environmental information requested includes personal data of which the applicant is the data subject then the duty under regulation 5(1) to make it available shall not apply to those personal data.

^{F10}(2) To the extent that environmental information requested includes personal data of which the applicant is not the data subject, a Scottish public authority must not make the personal data available if—

- (a) the first condition set out in paragraph (3A) is satisfied, or
- (b) the second or third condition set out in paragraph (3B) or (4A) is satisfied and, in all the circumstances of the case, the public interest in making the information available is outweighed by that in not doing so.]

^{F11}(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations—

- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene Article 21 of the ^{F12}UK GDPR] (general processing: right to object to processing).]

^{F13}(4A) The third condition is that any of the following applies to the information—

- (a) it is exempt from the obligation under Article 15(1) of the ^{F14}UK GDPR] (general processing: right of access by the data subject) to provide access to, and information about, personal data by virtue of provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.]

^{F15}(5)

(6) For the purposes of this regulation, a Scottish public authority may respond to a request by not revealing whether information exists or is held by it, whether or not it holds such information, if to do so would involve making information available in contravention of this regulation.

^{F16}(7) In determining, for the purposes of this regulation, whether the lawfulness principle in Article 5(1)(a) of the ^{F17}UK GDPR] would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.]

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| F10 | Reg. 11(2) substituted (25.5.2018) by Data Protection Act 2018 (c. 12) , s. 212(1), Sch. 19 para. 312(2) (with ss. 117, 209, 210, Sch. 20 para. 61); S.I. 2018/625, reg. 2(1)(g) |
| F11 | Reg. 11(3A)(3B) substituted for reg. 11(3) (25.5.2018) by Data Protection Act 2018 (c. 12) , s. 212(1), Sch. 19 para. 312(3) (with ss. 117, 209, 210, Sch. 20 para. 61); S.I. 2018/625, reg. 2(1)(g) |
| F12 | Words in reg. 11(3B) 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. 57 (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1) |
| F13 | Reg. 11(4A) substituted for reg. 11(4) (25.5.2018) by Data Protection Act 2018 (c. 12) , s. 212(1), Sch. 19 para. 312(4) (with ss. 117, 209, 210, Sch. 20 para. 61); S.I. 2018/625, reg. 2(1)(g) |
| F14 | Words in reg. 11(4A)(a) 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. 57 (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1) |
| F15 | Reg. 11(5) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12) , s. 212(1), Sch. 19 para. 312(5) (with ss. 117, 209, 210, Sch. 20 para. 61); S.I. 2018/625, reg. 2(1)(g) |

- F16** Reg. 11(7) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 312(6)** (with ss. 117, 209, 210, Sch. 20 para. 61); S.I. 2018/625, reg. 2(1)(g)
- F17** Words in reg. 11(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. 57** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

Ministerial certificates

12.—(1) The Scottish Ministers may, for the purposes of regulation 10, certify that making environmental information available would, or would be likely to, prejudice substantially national security; and such a certificate is conclusive of that fact.

(2) A certificate under this regulation may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.

Refusal to make information available

13. Subject to regulations 10(8) and 11(6), if a request to make environmental information available is refused by a Scottish public authority in accordance with regulation 10, the refusal shall—

- (a) be given in writing 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) specify the reasons for the refusal including, as appropriate, any exception under regulation 10(4) or (5) or provision of regulation 11 and how the Scottish public authority has reached its decision with respect to the public interest under regulation 10(1)(b);
- (c) state the basis on which any exception relied on under regulation 10(4) or (5) or provision of regulation 11 applies if it would not otherwise be apparent;
- (d) if the exception in regulation 10(4)(d) is relied on, state the time by which the authority considers that the information will be finished or completed; and
- (e) inform the applicant of the review provisions under regulation 16 and of the enforcement and appeal provisions available in accordance with regulation 17.

Transfer of a request

14.—(1) Where a Scottish public authority has received a request to make environmental information available and does not hold that information but believes that another public authority holds the information requested then it shall either—

- (a) transfer the request to the other authority; or
- (b) supply the applicant with the name and address of that other authority,

and inform the applicant accordingly with the refusal sent in accordance with regulation 13.

(2) Where a request is transferred, in accordance with this regulation, to a Scottish public authority, the request shall be treated as received by the receiving authority for the purposes of regulations 5(2), 6(2)(a) and 13(a) on the date that it is so received and any period within which the authority is required to respond to that request by these Regulations shall begin on the day following that date.

Records transferred to the Keeper

15.—(1) This regulation applies to environmental information, other than open information, which is contained in a record transferred to the Keeper of the Records of Scotland (“the Keeper”) by a Scottish public authority.

- (2) Where environmental information is contained in a record—
- (a) to which this regulation applies; and
 - (b) a request has been made for that information to be made available by the Keeper under regulation 5(1),

the Keeper shall, as soon as practicable after receiving the request, send a copy of it to the authority which transferred the information.

(3) That authority, instead of the Keeper, shall come to a decision as to whether the information is subject to an exception under regulation 10(1)(a) and determine any question then arising under regulation 10(1)(b).

(4) After receiving the copy, that authority shall, within such time as will make it practicable for the Keeper to comply with these Regulations as respects the request, inform the Keeper of the decision and of any determination required by virtue of that decision as mentioned in paragraph (3).

(5) The Keeper shall, as soon as practicable after receiving representations in accordance with regulation 16, send a copy of those representations to the authority and the authority, instead of the Keeper, shall review the decision and do anything which is to be done under that regulation.

(6) After receiving the copy representations, the authority must, within such time as will make it practicable for the Keeper to comply with these Regulations, inform the Keeper of its decision and provide a statement of its reasons for so doing and it is that decision and statement which the Keeper shall notify to the applicant.

(7) Paragraphs (2) to (6) also apply to information which is contained in a record transferred to the Keeper, before 1st July 1999, by the Secretary of State for Scotland; but for that purpose references in those paragraphs to “the Scottish public authority” and “the authority” are to be construed as references to the Scottish Ministers.

(8) In this regulation, “open information” means environmental information which is transferred to the Keeper and which the transferor has authorised the Keeper to make available in the event of a request being made in accordance with regulation 5(1).

Review by Scottish public authority

16.—(1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant’s request.

(2) Representations under paragraph (1) shall be made in writing to the Scottish public authority no later than 40 working days after either the date that the applicant receives any decision or notification which the applicant believes does not comply with these Regulations or the date by which such a decision or notification should have been made, or any other action should have been taken, by the authority but was not made or taken.

- (3) The Scottish public authority shall on receipt of such representations—
- (a) consider them and any supporting evidence produced by the applicant; and
 - (b) review the matter and decide whether it has complied with these Regulations.

(4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.

(5) Where the Scottish public authority decides that it has not complied with its duty under these Regulations, it shall immediately take steps to remedy the breach of duty.

Enforcement and appeal provisions

17.—(1) The provisions of Part 4 of the Act (Enforcement) including schedule 3 (powers of entry and inspection), shall apply for the purposes of these Regulations as they apply for the purposes of the Act but with the modifications specified in paragraph (2).

- (2) In the application of any provision of the Act by paragraph (1) any reference to—
- (a) the Act is deemed to be a reference to these Regulations;
 - (b) the requirements of Part 1 of the Act is deemed to be a reference to the requirements of these Regulations;
 - (c) a Scottish public authority is deemed to be a reference to a Scottish public authority within the meaning of these Regulations;
 - (d) the code of practice under section 60 or 61 of the Act (issue of a code of practice by the Scottish Ministers) is deemed to be a reference to any code of practice issued under regulation 18(1);
 - (e) sections 29 (formulation of Scottish Administration policy), 31(1) (national security and defence), 32(1)(b) (international relations), 34 (investigations by Scottish public authorities and proceedings arising out of such investigations), 36(1) (confidentiality) and 41(b) (communications with Her Majesty etc. and honours), in section 52(1)(b) (exception from duty to comply with certain notices) of the Act is deemed to be reference to regulations 10(4)(e) and 10(5)(a), (b), (d) and (e);
 - (f) a notice under section 21(5) or (9) (review by a Scottish public authority) of the Act is deemed to be a reference to a notice under regulation 16(4); and
 - (g) the period allowed in section 21(1) of the Act is deemed to be a reference to the period specified in regulation 16(4).

Code of practice and functions of the Commissioner

18.—(1) The Scottish Ministers may issue, and may from time to time revise, a code of practice providing guidance to Scottish public authorities as to the practice which it would, in the opinion of the Ministers, be desirable for those authorities to follow in connection with the discharge of their functions under these Regulations and with the keeping, management and destruction of their records.

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

(3) Before issuing or revising any code under this regulation, the Scottish Ministers shall consult the Commissioner.

(4) The Scottish Ministers shall lay before the Scottish Parliament any code or revised code issued under this regulation.

(5) Sections 43(1) to (3) and (5) to (8) (general functions of Commissioner), 44 (recommendations as to good practice), 45 (confidentiality of information obtained by or furnished to Commissioner), 46 (laying of reports) and 63 (disclosure of information to Scottish Public Services Ombudsman or to Information Commissioner) of the Act shall have effect for the purposes of these Regulations as they have effect for the purposes of the Act but with the modifications specified in paragraph (6).

- (6) In the application of any provision of the Act by paragraph (5) any reference to—
- (a) the Act is deemed to be a reference to these Regulations;
 - (b) a Scottish public authority is deemed to be a reference to a Scottish public authority within the meaning of these Regulations;
 - (c) the code of practice under section 60 of the Act (issue of a code of practice by the Scottish Ministers) is deemed to be reference to any code of practice issued under paragraph (1);

- (d) the code of practice under section 61 of the Act (code of practice as to the keeping, management and destruction of records) is deemed to be a reference to a code of practice under paragraph (1); and
- (e) section 1(1) of the Act is deemed to be a reference to regulation 5(1).

Offences

19.—(1) Where—

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

any person to whom this paragraph applies who alters, defaces, blocks, erases, destroys or conceals any record held by the Scottish 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, is guilty of an offence.

(2) Subject to paragraph (4), paragraph (1) applies to the Scottish public authority and to any person who is employed by, is an officer of or is subject to the direction of, that authority.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Paragraph (2) applies to—

- (a) a member of the staff, or a person acting on behalf of, the Scottish Parliament or the Scottish Parliamentary Corporate Body;
- (b) a member of the staff of the Scottish Administration,

as it applies to any other person, but none of those bodies is liable to prosecution under these Regulations.

[^{F18}Time limit for proceedings

19A.—(1) Proceedings for an offence under regulation 19(1) committed on or after 31st May 2013 may be commenced within the period of 6 months beginning with the date on which evidence that the prosecutor believes is sufficient to justify the proceedings came to the prosecutor's knowledge.

(2) No proceedings for an offence referred to in paragraph (1) may be commenced more than 3 years—

- (a) after the commission of the offence; or
- (b) in the case of a continuous contravention, after the last date on which the offence was committed.

(3) In the case of a continuous contravention, the complaint may specify the entire period during which the offence was committed.

(4) A certificate signed by or on behalf of the prosecutor stating the date on which the evidence referred to in paragraph (1) came to the prosecutor's knowledge is conclusive as to that fact (and such a certificate purporting to be so signed is to be regarded as being signed unless the contrary is proved).

(5) Section 136(3) Criminal Procedure (Scotland) Act 1995 applies for the purposes of this regulation as it does for those of that section.]

F18 Reg. 19A inserted (31.5.2013) by The Environmental Information (Scotland) Amendment Regulations 2013 (S.S.I. 2013/127), regs. 1(1), **2(2)**

Application of the Act

20. Section 39(2) and (3) of the Act shall apply to these Regulations as they apply to regulations made under section 62 of the Act.

Revocation of Regulations

21. The Environmental Information Regulations 1992 ^{M5} and the Environmental Information (Amendment) Regulations 1998 ^{M6} are hereby revoked so far as they have effect in relation to Scottish public authorities.

Marginal Citations

M5 S.I. 1992/3240.

M6 S.I. 1998/1447.

St Andrew's House,
Edinburgh

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement 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 (O.J. No. L 41, 14.2.2003, p.26) (“the Directive”), as regards Scottish public authorities (as defined in regulation 2). They provide for the making available of environmental information held by those authorities.

Regulation 2 sets out definitions of expressions used in these Regulations either directly or by reference to the definition of expressions used in the Freedom of Information (Scotland) Act 2002 or the Directive. Except as so provided, expressions which also appear in the Directive have the same meaning in these Regulations as they have in the Directive (regulation 2(4)). Regulation 2(2) defines the circumstances in which environmental information is “held” by a Scottish public authority.

Regulation 3 applies these Regulations to Scottish public authorities, provides that it will not apply to such authorities, however, to the extent that they act in a judicial or legislative capacity and further provides that nothing in these Regulations limits any other power of such authorities to disclose environmental information held by them.

Regulation 4 imposes a general duty on Scottish public authorities to take reasonable steps to organise and keep up to date environmental information relevant to their functions with a view to its active and systematic dissemination to the public. Regulation 4(2) sets out the principal kinds of information which should be made available in this way.

Regulation 5 imposes a duty on Scottish public authorities holding environmental information to make it available when requested to do so by an applicant. Subject to other provisions of these Regulations such requests should be complied with no later than 20 working days (as defined in regulation 2(1)) after the date of receipt of the request. Such information should be up to date, accurate and comparable (regulation 5(4)). In the case of certain matters affecting or likely to affect the elements of the environment, information relating to sampling and analysis should also be provided if requested (regulation 5(5)).

Regulation 6 provides for requests for environmental information to be provided by Scottish public authorities in a particular form or format when it is reasonable to do so.

Regulation 7 provides for circumstances in which the period of 20 working days for response to a request may be extended by a further period of 20 working days.

Regulation 8 provides for a power to charge fees for making information available except in cases referred to in regulation 8(2) and subject to a restriction as to amount (regulation 8(3)). Provision is also made for payment of fees in advance (regulation 8(4)). Authorities must publish a schedule of fees and related information (regulation 8(8)).

Regulation 9 obliges Scottish public authorities to provide advice and assistance to applicants and prospective applicants. Provision is also made to extend time for response to requests to make information available where these requests are formulated in too general a manner (regulation 9(2)).

Regulation 10 provides for the circumstances in which a Scottish public authority may refuse a request to make environmental information available where an exception applies under paragraph (4) or (5) and it is in the public interest. Exceptions must be interpreted restrictively and there must be a presumption in favour of disclosure. Personal data (as defined in regulation 2(3)) may only be made available in accordance with regulation 11. Provision is made for environmental information on emissions to be available despite exceptions in regulation 10(5) (d) to (g) (regulation 10(6)), the separation of excepted information from that which is not (regulation 10(7)), withholding of information on the existence or holding of information

(regulation 10(8) and (9)) and the extension of certain exceptions to protect the interests of UK public bodies (regulation 10(10)).

Regulation 11 describes the circumstances in which environmental information which is personal data may be made available.

Regulation 12 makes provision for certificates to be issued by the Scottish Ministers where they consider that making environmental information available would, or would be likely to, prejudice substantially national security.

Regulation 13 requires Scottish public authorities which refuse a request to make information available to provide written reasons and other particulars of their decisions no later than 20 working days after the date of receipt of the request.

Regulation 14 makes provision for the transfer of requests or the provision of information about the holder when the Scottish public authority to which a request has been made does not hold the information. Provision is also made as to the time for response to such a transferred request once it is received (regulation 14(2)).

Regulation 15 makes provision in relation to requests to the Keeper of the Records of Scotland. It imposes certain duties on the Keeper in relation to environmental information which is contained in a record transferred to the Keeper. The regulation does not apply to “open information” as defined in regulation 15(8).

Regulation 16 makes provision for representations to a Scottish public authority by an applicant who considers that the authority has not complied with the regulations. The authority must review the case and notify the applicant of its decision no later than 20 working days after the date of receipt of representations. If the authority decides that it has not complied it must immediately take steps to remedy the breach.

Regulation 17 applies provisions of Part 4 of the Freedom of Information (Scotland) Act 2002 (“the Act”) to analogous provisions of these Regulations. The provisions of the Act relate inter alia to powers of the Scottish Information Commissioner to consider applications by applicants dissatisfied by decisions following review by a Scottish public authority and to issue notices and rights of appeal to the Court of Session.

Regulation 18 provides for a code of practice to be issued by the Scottish Ministers as to desirable practice by Scottish public authorities in connection with the discharge of their functions under these Regulations and with the keeping, management and destruction of their records. It also makes provision for functions of the Scottish Information Commissioner under the Act to apply in relation to these Regulations (with modifications) as they apply under the Act.

Regulation 19 makes provision for an offence related to interference with records with the intention of preventing their disclosure under the Regulations.

Regulation 20 provides that, for the purposes of the Act, these Regulations be treated in the same way as regulations made under section 62 of the Act.

Regulation 21 revokes the Environmental Information Regulations 1992 and the Environmental Information (Amendment) Regulations 1998 so far as they have effect in relation to Scottish public authorities.

Changes to legislation:

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