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STATUTORY INSTRUMENTS

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**2004 No. 3391**

**The Environmental Information Regulations 2004**

**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.

(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) a public authority is a reference to a public authority within the meaning of these Regulations;
- (b) 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
- (c) 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(1) 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.

(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.