

Statutory Instrument 2004 No. 3391

The Environmental Information Regulations 2004

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STATUTORY INSTRUMENTS

2004 No. 3391

FREEDOM OF INFORMATION

ENVIRONMENTAL PROTECTION

The Environmental Information Regulations 2004

Made

21st December 2004

Coming into force

1st 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^[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;

"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

(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 -

(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 -

(a) a schedule of its charges; and

(b) information on the circumstances in which a charge may be made 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 provisions referred to in paragraph (4) are -

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

Transfer of a request

10. - (1) Where a public authority that receives a request for environmental information does not hold the information requested but believes that another public authority or a Scottish public authority holds the information, 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 provisions referred to in paragraph (2) are -

- (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 (9), 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, the personal 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 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) For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

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

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

(11) 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) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

(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^[7] (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 24th 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
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, 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 may make representations to the public authority under regulation 11; and
- (b) 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), (2) and (5), 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.

(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^[8] 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.

PART 5

Enforcement and appeals, offences, amendment and revocation

Enforcement and appeal provisions

18. - (1) 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 this regulation.

(2) 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).

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

(4) For the purposes of the application 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) "Part I" there shall be substituted a reference to "Parts 2 and 3 of these Regulations";

(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) in section 50(4) of the Act (contents of decision notice) -

(i) in paragraph (a) for the reference to "section 1(1)" there shall be substituted a reference to "regulation 5(1)"; and

(ii) in paragraph (b) for the references to "sections 11 and 17" there shall be substituted references to "regulations 6, 11 or 14";

(e) in section 56(1) of the Act (no action against public authority) for the words "This Act does not confer" there shall be substituted the words "These Regulations do not confer";

(f) in section 57(3)(a) of the Act (appeal against notices served under Part IV) for the reference to "section 66" of the Act (decisions relating to certain transferred public records) there shall be substituted a reference to "regulations 17(2) to (5)";

(g) in paragraph 1 of Schedule 3 to the Act (issue of warrants) for the reference to "section 77" (offence of altering etc. records with intent to prevent disclosure) there shall be substituted a reference to "regulation 19"; and

(h) in paragraph 8 of Schedule 3 to the Act (matters exempt from inspection and seizure) for the reference to "information which is exempt information by virtue of section 23(1) or 24(1)" (bodies and information relating to national security) there shall be substituted a reference to "information whose disclosure would adversely affect national security".

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

(6) 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 under Part IV of the Act as applied to these Regulations on any of the public authorities referred to in section 53(1)(a); and in section 53(7) for the reference to "exempt information" there shall be substituted a reference to "information which may be refused under these Regulations".

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

(a) for the reference 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) subsection (2) shall be omitted; and

(c) in subsection (3), for the words, "the Minister did not have reasonable grounds for issuing the certificate" there shall be substituted the words

"the Minister or person designated by him did not have reasonable grounds for issuing the certificate under regulation 15(1)".

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

(9) A government department is not liable to prosecution in relation to an offence under paragraph 12 of Schedule 3 to the Act 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.

(10) 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.

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.

Amendment

20. - (1) Section 39 of the Act is amended as follows.

(2) In subsection (1)(a), for "regulations under section 74" there is substituted "environmental information regulations".

(3) After subsection (1) there is inserted -

" (1A) In subsection (1) "environmental information regulations" means -

(a) regulations made under section 74, or

(b) regulations made under section 2(2) of the European Communities Act 1972 for the purpose of implementing any Community obligation relating to public access to, and the dissemination of, information on the environment."

Revocation

21. The following are revoked -

(a) The Environmental Information Regulations 1992^[9] and the Environmental Information (Amendment) Regulations 1998^[10] except insofar as these apply to Scottish public authorities; and

(b) The Environmental Information Regulations (Northern Ireland) 1993^[11] and the Environmental Information (Amendment) Regulations (Northern Ireland) 1998^[12].

Margaret Beckett

Secretary of State for Environment, Food and Rural Affairs

21st December 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement 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), except in relation to Scottish public authorities (as specified in section 80(2) of the Freedom of Information Act 2000 and defined in section 3 of the Freedom of Information (Scotland) Act 2002). Separate Regulations will be made by Scottish Ministers to implement this Directive in respect of Scottish public authorities.

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. Except as provided in these definitions, expressions in these Regulations which appear in Council Directive 2003/4/EC have the same

meaning in these Regulations as they have in that Directive.

Regulation 3 applies the Regulations to public authorities and makes provision in relation to the environmental information held by public authorities. It also provides that a public authority will not be subject to these Regulations to the extent that it is acting in a judicial or legislative capacity and that the Regulations do not apply to either House of Parliament to the extent required for the purpose of avoiding an infringement of the privileges of either House. And it provides that each Government department is to be treated separately for the purposes of Parts 2, 4 and 5 of the Regulations.

Part 2 of the Regulations contains provisions relating to access to environmental information.

Regulation 4 requires public authorities progressively to make available environmental information to the public by electronic means which are easily accessible. And public authorities must take reasonable steps to organize the environmental information they hold relevant to their functions with a view to the active and systematic dissemination of the information to the public.

Regulation 5 requires a public authority that holds environmental information to make it available on request, as soon as possible and no later than 20 working days after the date of receipt of the request. This requirement is subject to the remaining provisions of Part 2 of the Regulations and Part 3, which include the exceptions to disclosure under regulation 12. Regulation 5 also provides that where environmental information requested includes personal data of which the applicant is the data subject the requirement to make the information available under regulation 5 does not apply to that aspect of the request. Instead, such requests for personal data 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 makes provision for a public authority to extend the time to deal with complex and voluminous requests and to inform the applicant if it intends to rely on such an extension.

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

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

Regulation 10 makes provision in relation to the transfer of requests to another public authority or a Scottish public authority.

Regulation 11 provides that a person who has requested environmental information from a public authority may make representations to the authority if it appears that the authority has not complied with the requirements of these Regulations in relation to the request. These representations must be considered by the authority 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.

Part 3 of the Regulations contains provisions relating to exceptions to the duty to disclose environmental information.

Under regulation 12, a public authority may refuse to disclose environmental information if an exception to disclosure applies and the public authority decides that in all the circumstances the public interest in maintaining the exception outweighs the public interest in disclosing the information. In these decisions public authorities must apply a presumption in favour of disclosure. Regulation 12 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 (5)(d) to (g).

Regulation 13 makes provision for exceptions to the disclosure of environmental information which includes personal data of which the person requesting the information is not the data subject. It provides that the personal data 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 also provides that the personal data must not be disclosed if the individual who is the subject of the personal 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 must be no disclosure if the individual who is the subject of the personal data would not be entitled to have access to the data under section 7(1) of the Data Protection Act 1998 and there is no overriding public interest in disclosure.

Regulation 14 provides that a decision by a public authority to refuse a request for environmental information 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 to the authority under regulation 11 and of the enforcement and appeal provisions of the Act applied by regulation 18, under which he may appeal against the refusal to the Information Commissioner.

Regulation 15 provides that 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.

Part 4 of the Regulations contains provisions relating to a code of practice and historical records.

Regulation 16 provides that the Secretary of State may, after consultation with the Information Commissioner, issue a code of practice providing guidance to public authorities as to the practice for them to follow in connection with the discharge of their functions under these Regulations.

Regulation 17 makes provision for consultation by public authorities in relation to requests for the disclosure of information contained in historical records. And in relation to requests for the disclosure of information contained in transferred public records it makes provision for consultation by appropriate records authorities with responsible authorities.

Part 5 of the Regulations contains provisions relating to enforcement and appeals, offences, amendment and revocation.

Regulation 18 applies the enforcement and appeals provisions of the Freedom of Information Act 2000 for the purposes of the Regulations. A person who has made a request for environmental information from a public authority may complain to the Information Commissioner if he believes that the public authority has not dealt with the request, or representations to the authority about the request, in accordance with the requirements of these Regulations. The Information Commissioner has equivalent powers to enforce the requirements of these Regulations as apply under Part IV of the Freedom of Information Act 2000. These include the powers of entry and inspection and, in respect of the exercise of those powers, the offence of obstruction in Schedule 3 to that Act, as applied to these Regulations. 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. Except for prosecutions brought by the Information Commissioner, prosecutions for the offence require the consent of the Director of Public Prosecutions or, as appropriate, the Director of Public Prosecutions for Northern Ireland.

Regulation 20 amends section 39 of the Freedom of Information Act 2000. The effect of the amendment is that information which can be required to be disclosed to the public under these Regulations (or which could be required to be disclosed but for an exception in these Regulations) is exempt information for the purposes of that Act.

Regulation 21 revokes previous Environmental Information Regulations: S.I. 1992/3240, as amended by S.I. 1998/1447, except insofar as these apply to Scottish public authorities; and 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.

Notes:

[1] 1972 c. 68.[back](#)

[2] S.I. 2003/2901.[back](#)

[3] 2000 c. 36.[back](#)

[4] OJ No. L 41, 14.2.2003, p.26.[back](#)

[5] 2002 asp 13.[back](#)

[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".[back](#)

[7] 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).[back](#)

[8] 1923 c. 20 (N.I.).[back](#)

[9] S.I. 1992/3240.[back](#)

[10] S.I. 1998/1447.[back](#)

[11] S.R. 1993 No. 45.[back](#)

[12] S.R. 1998 No. 238.[back](#)

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