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## **Regulation 2 - Interpretation**

### **Regulation 2(1)**

In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

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

“appropriate record 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(d) 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 elements of the environment 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 in 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(a);

"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.

## **Regulation 2(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.

### **Regulation 2(3)**

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

### **Regulation 2(4)**

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

### **Regulation 2(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.

## **Regulation 3 - Application**

### **Regulation 3(1)**

Subject to paragraph (3) and (4), these Regulations apply to public authorities.

### **Regulation 3(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.

### **Regulation 3(3)**

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

### **Regulation 3(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.

### **Regulation 3(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 the Regulations.

## **Regulation 4 - Dissemination of environmental information**

### **Regulation 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.

### **Regulation 4(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 1<sup>st</sup> January 2005 in non-electronic form.

### **Regulation 4(3)**

Paragraph (1) shall not extend to making available or disseminating information which a public authority would be entitled to refuse under regulation 12.

### **Regulation 4(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.

## **Regulation 5 - Duty to make available environmental information on request**

### **Regulation 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.

### **Regulation 5(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.

### **Regulation 5(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.

### **Regulation 5(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.

### **Regulation 5(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 the standardised procedure used.

### **Regulation 5(6)**

Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

## **Regulation 6 - Form and format of information**

### **Regulation 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.

### **Regulation 6(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 not 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 requests; and
- (c) inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18.

## **Regulation 7 - Extension of time**

### **Regulation 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.

### **Regulation 7(2)**

The provisions referred to in paragraph (1) are –

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

### **Regulation 7(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 receipt of the request.

## **Regulation 8 - Charging**

### **Regulation 8(1)**

Subject to paragraphs (2) to (8), where the public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

### **Regulation 8(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 the examination.

### **Regulation 8(3)**

A charge under paragraph (1) shall not exceed an amount on which the public authority is satisfied is a reasonable amount.

### **Regulation 8(4)**

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 to 14, unless the charge is paid no later than 60 working days after the date on which it gave the notification.

### **Regulation 8(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 purpose 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).

### **Regulation 8(7)**



The provisions referred to in paragraph (6) are –

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

### **Regulation 8(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.

## **Regulation 9 - Advice and assistance**

### **Regulation 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.

### **Regulation 9(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.

### **Regulation 9(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.

### **Regulation 9(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.

### **Regulation 9(5)**

The provisions referred to in paragraph (4) are –

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

## **Regulation 10 - Transfer of a request**

### **Regulation 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).

### **Regulation 10(2)**

Where a request is transferred to a public authority, for the purpose of provisions referred to in paragraph (3) the request is received by that public authority on the date on which it receives the transferred request.

### **Regulation 10(3)**

The provisions referred to in paragraph (2) are –

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

## **Regulation 11 - Representation and reconsideration**

### **Regulation 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.

### **Regulation 11(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.

### **Regulation 11(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.

### **Regulation 11(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 receipt of the representations.

### **Regulation 11(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.

## **Regulation 12 - Exceptions to the duty to disclose environmental information**

### **Regulation 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.

**Regulation 12(2)**

A public authority shall apply a presumption in favour of disclosure.

**Regulation 12(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.

**Regulation 12(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 course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

**Regulation 12(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.

### **Regulation 12 (6)**

For the purpose of paragraph (1), a public authority may respond to a request by neither confirming or 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).

### **Regulation 12(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.

### **Regulation 12(8)**

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

### **Regulation 12(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).

### **Regulation 12(10)**

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

### **Regulation 12(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.

## **Regulation 13 - Personal data**

### **Regulation 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.

### **Regulation 13(2)**

The first condition is –

- (a) in a case where the information falls within any 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 the 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(a) (which relates to manual data held by public authorities) were disregarded.

### **Regulation 13(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

the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

### **Regulation 13(4)**

In determining whether anything done before 24<sup>th</sup> 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.

### **Regulation 13(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 the 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 the Act.

## **Regulation 14 - Refusal to disclose information**

### **Regulation 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.

### **Regulation 14(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.

### **Regulation 14(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).

### **Regulation 14(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.

### **Regulation 14(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.

## **Regulation 17 - Historical and transferred public records**

### **Regulation 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(a) applies,

before it decides whether the information may or may not be disclosed.

### **Regulation 17(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).

### **Regulation 17(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 the determination.

#### **Regulation 17(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 Record Act (Northern Ireland) 1923 applies,

before it determines whether the information may or may not be disclosed.

#### **Regulation 17(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 (2)(a) and (b) and (4); and
- (b) the imposition of any requirement to furnish information relating to compliance with regulation 5.

within any of paragraphs (a) to (c) of subsection (1)."