

# Guidance to the Environmental Information Regulations 2004

March 2005



Department for Environment, Food and Rural Affairs  
Nobel House  
17 Smith Square  
London SW1P 3JR  
Telephone 020 7238 6000  
Website: [www.defra.gov.uk](http://www.defra.gov.uk)

© Crown copyright 2005

Copyright in the typographical arrangement and design rests with the Crown.

This publication (excluding the royal arms and departmental logos) may be re-used free of charge in any format or medium provided that it is re-used accurately and not used in a misleading context. The material must be acknowledged as crown copyright and the title of the publication specified.

Information about this publication and further copies are available from:

Environmental Information Unit  
Area 1E  
Defra  
3-8 Whitehall Place  
London SW1A 2HH  
Email address: [environmentalinformationunit@defra.gsi.gov.uk](mailto:environmentalinformationunit@defra.gsi.gov.uk)  
Tel: 020 7270 8885

This document is also available on the Defra website.

Published by the Department for Environment, Food and Rural Affairs

## 1. Introduction

1.1 The Government is committed to freedom of information and to greater openness and transparency. Openness is central to a modern, mature and democratic society. It strengthens government and empowers people. It can improve policy-making and the democratic process by extending access to the facts and analysis that provide the basis for the consideration of policy.

1.2 Access to environmental information has long been seen as particularly important. It is essential for achieving sustainable development.<sup>1</sup> An informed public can support effective decision-making by bringing a wide range of views into the discussion. This helps us to take account of the many potential impacts from the immediate and obvious implications, through those which may become apparent in the long term to global impacts that might easily go unrecognised.

1.3 Access to environmental information has existed in the UK for over a decade.<sup>2</sup> The introduction of replacement Regulations in England, Wales and Northern Ireland (and of similar regulations in Scotland)<sup>3</sup> enables compliance with the UK's commitments under the 1998 UNECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (the "Aarhus" Convention), and with the new EU Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.<sup>4</sup>

1.4 The EU Directive seeks to bring the provisions of Community law into line with the Convention. The objectives of the new Directive, as stated in Article 1 are:

- (a) to grant a right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of its exercise; and
- (b) to promote, as a matter of course, the widest possible systematic availability and dissemination to the public of environmental information.

1.5 In addition to implementing international and European obligations, the new Regulations, where appropriate, include provisions that align them with the Freedom of Information Act 2000 (FOIA)<sup>5</sup>. The access to information provisions of FOIA came into force on the same day as the new EIRs, on 1 January 2005. The two regimes have been streamlined as far as possible.

---

<sup>1</sup> On 7 March 2005 the Government launched its new strategy for sustainable development, Securing The Future. This takes account of international and domestic developments since the 1999 UK Strategy. Available from [www.sustainable-development.gov.uk](http://www.sustainable-development.gov.uk)

<sup>2</sup> Environmental Information Regulations 1992 (SI No 3240), as amended by Environmental Information (Amendment) Regulations 1998 (SI No 1447). Also the Environmental Information Regulations (Northern Ireland) 1993 (SR No 45).

<sup>3</sup> Environmental Information Regulations (Scotland) can be found at <http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm>. Separate Guidance on the Scottish Regulations has been issued by the Scottish Executive. <http://www.scotland.gov.uk/library5/environment/aeig-00.asp>

<sup>4</sup> Directive 2003/4/EC can be found at [http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l\\_041/l\\_04120030214en00260032.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_041/l_04120030214en00260032.pdf).

This replaces Directive 90/313/EEC on which the Environmental Information Regulations 1992 were based.

<sup>5</sup> The Freedom of Information Act 2000 covers England, Wales, and Northern Ireland, and can be found at <http://www.legislation.hmso.gov.uk/acts/acts2000/20000036.htm>. Scotland has its own Freedom of Information (Scotland) Act: <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/acts2002/20020013.htm>

23 March 2005

However, there are some differences arising from European and international obligations in relation to access to environmental information, so it was decided to maintain the separate provisions for dealing with environmental information. For example,

- requests for environmental information need not be in writing;
- a wider range of organisations are covered by the EIR, including some private organisations;
- the public interest test applies to all grounds for refusing a request for environmental information
- the exceptions themselves differ in some respects from the exemptions under the FOIA.

Environmental information is exempt from the FOIA regime under Section 39, which applies the Environmental Information Regulations 2004.

1.6 The main differences between the new Regulations and the 1992 regime are that:

- The definitions of environmental information and the bodies affected are clarified
- The time limit for response to a request is reduced to 20 working days in most cases
- A public interest test is introduced. This is the same test as applies under the FOIA
- As with the FOIA, the Information Commissioner and Information Tribunal will provide a strengthened means of review for applicants

Other changes clarify provisions in the 1992 regime.

1.7 This Guidance replaces the Guidance to the 1992 Regulations. It is not legally binding, but is intended to help organisations to comply with their legal obligations under the EIR. It is a statement on the approach public authorities will be expected to follow when applying the EIR regime.

1.8 It is also intended to help clarify the relationship of the EIR with the FOIA more generally, and with other information regimes. However only the Information Commissioner, Information Tribunal and the Courts can give authoritative decisions on interpretation of the Regulations. This Guidance is a living document and will be updated in the light of such decisions.

1.9 There is also a Code of Practice which should be read alongside this Guidance. Some extracts from the Code of Practice appear in this Guidance.