

THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 SURVEY OF SCOTLAND'S EXPERIENCE OF IMPLEMENTING EIRS

Introduction

1. Scotland implemented the Environmental Information (Scotland) Regulations (EIRs) in 2004 and they came into force on 1 January 2005. They transpose, in relation to Scotland, the European Directive on Environmental Information 2003/4/EC (the Directive) which in turn implements the measures outlined in the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters. All UK public authorities have an obligation to implement key elements of the Aarhus Convention (equivalent legislation is also in force in the remainder of the UK) including making environmental information more accessible, being pro-active in the dissemination of environmental information and increasing public participation in environmental decision making.
2. The Scottish Government's FOI Unit take the policy lead for EIRs in Scotland and the Government's website contains guidance to assist Scottish public authorities in discharging their responsibilities under EIRs¹
3. The United Kingdom Government must report to the European Commission on the experience gained in applying the Directive, for example, on how its requirements have been transposed into national law and the practical effects of transposition.
4. We invite you to complete the attached questionnaire in order that we can report on the Scottish experience. We are seeking responses both from Scottish public authorities and also the public in order that we may fully gauge the impact of EIRs. For example, how effective have EIRs been in increasing the amount of environmental information made available to the public, what steps have authorities taken to raise awareness of EIRs and do they go far enough, are the public better informed and able to participate in environmental decision making?
5. The questionnaire serves another useful purpose. We invite the views of Scottish public authorities on how useful they have found our guidance and code on EIRs. More generally we also invite the views of authorities and the public on how useful they have found information on the Scottish Government's website about the EIRs and also the Freedom of Information (Scotland) Act 2002 (FOISA) (including the codes) and how it could be improved. For example, is it easy to navigate and read and is the guidance available helpful?

¹ <http://www.scotland.gov.uk/Publications/2005/09/12134712/47142>

6. We should be grateful for your responses by close on **16 December 2008**. Please send responses to -

The Scottish Government FOI Unit
GA(N) Victoria Quay
Edinburgh
EH6 6QQ

or email: foi@scotland.gsi.gov.uk

In your response please identify your organisation(s) (if applicable) and provide a contact name and address. If you have any questions or concerns about the process, please contact Katherine Byrne at the above addresses or by telephone on 0131 244 5189.

7. Respondees should note that information provided in response, including personal information, may be used in our report to the Commission and may be published or disclosed in accordance EIRs, FOISA and the Data Protection Act 1998. If you wish your response to be treated as confidential please make that clear and specify why. Given our legal obligations under the aforementioned legislation we cannot though guarantee confidentiality.

**Freedom of Information Unit
Scottish Government
November 2008**

Environmental Information Regulations Questionnaire

1. Experience gained

Please describe, according to your experience, the positive and/or negative impacts of the Environmental Information (Scotland) Regulations 2004 (EIRs) (for example; has there been increased involvement of stakeholders in specific environmental matters; have the EIRs facilitated the decision-making-process and implementation of the consequent decisions; or has there been an administrative burden attached to handling requests?).

2. Definitions

2.1 Have you encountered any particular difficulties relating to the interpretation and application of the definition of '*environmental information*' (regulation 2 of EIRs)?

2.2 Can the Office of the Scottish Information Commissioner provide examples of the types of bodies that have been found to be covered by para (d) of the definition of a 'Scottish public authority' (regulation 2)?

2.3 How might the meaning of a 'Scottish public authority' be further clarified?

2.4 Do you have any other observations relating to the practical application of the definitions of environmental information and Scottish public authority?

3. Access to environmental information

3.1 What arrangements do you have in place for dealing with EIRs requests? Are they answered centrally or in the area of your authority which covers the subject of the request?

3.2 How do you let members of the public know that they have a right to environmental information? Do you provide guidance or offer advice?

3.3 Please add any additional comments you may have.

4. Exceptions

4.1 Do you refer to the Scottish Government guidance document 'Access to Environmental information, Guidance for Scottish Public Authorities and Interested parties on the implementation of EIRs'

<http://www.scotland.gov.uk/Publications/2005/09/12134712/47142>

(Guidance Document) which provides detailed guidance on the application of each of the exceptions, and if so do you find it helpful?

4.2 The Guidance Document is under review. Are there any particular elements of the guidance you would like to see improved, supplemented, removed etc? Please give reasons. (We will consult further on this in due course).

4.3 Do you have any other observations relating to the practical application of exceptions?

5. Charges

5.1 Scottish public authorities may make a charge for supplying environmental information. Do you apply charges and if so on what basis (i.e. do you apply fixed charges; in what circumstances would you waive charges?)

5.2 Please explain how it has been ensured that the applicants are aware of a schedule of charges and the circumstances in which a charge may be levied or waived.

5.3 Do you have any other observations relating to charging?

6. Handling of requests for environmental information

If dissatisfied with the handling of their request for environmental information, applicants may ask the relevant Scottish public authority to carry out an internal review and may thereafter complain to Scottish Information Commissioner and ultimately the Court of Session (regulations 16 and 17). Do you have any observations on the practical application of these provisions?

7. Dissemination of environmental information

Guidance on active dissemination of environmental information is contained in paragraphs 17 to 20 of the 'Code of Practice on the Discharge of Functions by Scottish Public Authorities under the EIRs'

(<http://www.scotland.gov.uk/Publications/2006/08/14104256/0>) (the Code) and paragraphs 41 to 44 of our Guidance Document.

The Code draws attention to authorities' duty to organise environmental information with a view to active and systematic dissemination and to make it accessible by electronic means. It goes on to say that consideration should be given to making websites accessible to all and easy to use. It also says authorities should consider how to publicise their duty to make information available, e.g. as part of their general information services or through publication schemes under section 23 of the Freedom of Information (Scotland) Act 2002. The Guidance Document reiterates the guidance given in the Code but adds more detailed advice and explanation.

7.1 Do you actively disseminate environmental information? If so how do you do this? (e.g.. is it available online?)

7.2 What measures are taken to ensure that information is updated, as appropriate?

7.3 The Code is under review. Are there any particular elements of the Code you would like to see improved, supplemented, removed etc? Please give reasons. (We will consult further on this in due course).

7.4 Do you have any other observations relating to the dissemination of environmental information?

8. Quality of environmental information

8.1. Are there any quality checks on your environmental information? How do you know if it is up to date, accurate and comparable?

8.2 Have you ever received any requests about the methods used to compile environmental information? If so please give examples.

8.3 Do you have any other observations relating to the quality of environmental information made available?

9. Statistics

Where you have collected statistical data on the items below (over any period), it would be helpful to us if you could forward this data to us :-

- Number of requests made.
- Areas of work to which the requests for information relate.
- Percentage of requests handled within 20 working days.
- Percentage of requests handled within 40 working days.
- Percentage of requests where information was released.
- Percentage of requests where information was withheld. If possible please give a breakdown of the exceptions cited.

10. Scottish Government website

We invite comments on our website, in so far as it provides information on EIRs and also the Freedom of Information (Scotland) Act 2002. In particular (but please add any other comments you may have) :-

- Is the information available easy to read and helpful?
- What alternative/additional information would you find helpful?
- Are the pages easy to navigate – can you easily find what you are looking for?
- What improvements do you propose?
- Do you refer to the FOI Codes of Practice, respectively, on the discharge of functions by a public authority and records management (<http://www.scotland.gov.uk/About/FOI/18017>) and if so, do you find them helpful. The Codes are under review. Are there any particular elements of the Codes you would like to see improved, supplemented, removed etc? Please give reasons. (We will consult further on this in due course).

**Freedom of Information Unit
Scottish Government
November 2008**