

**Scottish Executive Environment Group**

**'Access to Environmental Information' A  
Consultation: Summary of Responses**

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**Paper 2004/5**

## CONTACT

International Team  
Sustainable Development Directorate  
Environment Group  
Scottish Executive  
Victoria Quay  
EDINBURGH  
EH6 6QQ

Telephone: 0131-244-7814  
Fax: 0131-244-0195  
E-mail [EIRs.consultation@scotland.gsi.gov.uk](mailto:EIRs.consultation@scotland.gsi.gov.uk)

Further copies of this paper may be obtained from the above address. It is also available in on the Scottish Executive website at:

[www.scotland.gov.uk](http://www.scotland.gov.uk)

Consultation 2002

<http://www.scotland.gov.uk/library5/environment/paei-00.asp>

1992 regulations

[http://www.hmso.gov.uk/si/si1992/Uksi\\_19923240\\_en\\_1.htm](http://www.hmso.gov.uk/si/si1992/Uksi_19923240_en_1.htm)

1998 regulations

<http://www.hmso.gov.uk/si/si1998/19981447.htm>

1992 guidance

<http://www.defra.gov.uk/environment/pubaccess/guidance/index.htm>

Copies of this document will be made available in large print on request and summaries will also be made available in other languages by contacting the Scottish Executive at the above address or by telephoning or faxing the above numbers.

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## Introduction

1. The UK signed the UNECE Convention on Access to Information, Public Participation and Access to Justice in Environmental matters at Aarhus in Denmark in 1999 – the Aarhus Convention – which took effect from October 2001. The UK is committed to the ratification of Aarhus once all the provisions have been transposed into law across the UK. The Environmental Information Regulations 1992, implementing European Directive 1990/313/EC, set out requirements for the release of information about the environment by bodies across the UK. The UK in making the environmental information regulations recognises the different origins of international policy and the wider range of bodies encompassed within Aarhus hence the reason for maintaining a separate regime for environmental information.

2. The Freedom of Information (Scotland) Act 2002 will be fully implemented by January 2005. Article 62 of the Act provides the power for Scottish Ministers to make the new Environmental Information Regulations and the first independent Scottish Information Commissioner has now been appointed by the Scottish Parliament to oversee compliance with the Act.

3. On 2 April 2004 the Scottish Executive published a consultation paper on **Access to Environmental Information – A Consultation** (Paper 2004/5). The Consultation exercise was widely disseminated to a broad spectrum of organisations including public bodies, trade unions, NGOs, health bodies, environmental organisations, private bodies and other interested parties. A list of respondents is included with this summary at Annex A.

4. A total of 68 parties come back with a response to the consultation document and these have now been summarised under the same 7 questions set out in the consultation document along with some of the general comments put forward by respondents.

5. The **Access to Environmental Information – A Consultation** contained 3 key documents: -

- Draft Environmental Information (Scotland) Regulations 2004
- Draft Guidance on the Environmental Information (Scotland) Regulations 2004
- Draft Code of Practice on the Environmental Information (Scotland) Regulations 2004

The 3 documents listed above were put out in draft form allowing for a certain degree of change, in response to consultation however the new regime has to implement Aarhus largely by transposing Directive 2003/4/EC therefore the scope for change is limited by the parent legislation.

6. A previous consultation document on the **Proposals for a new regime on Public Access to Environmental Information** was published by the Scottish Executive in May 2002 (Paper 2002/16). Copies of this previous consultation exercise can be obtained from the Scottish Executive Library, the Stationery Office Bookshop and the Scottish Executive website at: - [www.scotland.gov.uk](http://www.scotland.gov.uk)

7. During of the consultation period 30 June 2004, on **Access to Environmental Information – A Consultation**. The Scottish Executive met with various stakeholders to allow them to discuss how the new environmental information regime would effect their organisation once the new regulations were brought into effect in January 2005.

# **Access to Environmental Information Summary of Responses to the Public Consultation Document - (Paper 2004/5)**

Most respondents were in favour of the introduction of environmental information regulations and the alignment as much as possible with the freedom of information regime although some public bodies would have preferred both regimes to have been even more aligned. The reason for retaining a separate regime for environmental information is the necessity to fulfil our international commitments. From the replies it is apparent that most organisations and public bodies already have numerous good practices in operation and are happy that these practices are open and transparent therefore do not envisage any difficulties when the regulations come into force in January 2005. The provision for enforcement and appeal procedure by the Scottish Information Commissioner was most welcome by all respondents

## **Analysis – summary of responses**

A questionnaire on the new environmental information regulations, draft guidance and draft code of practice on the regulations was included in the consultation document at page 57 for the use of consultees. The following 7 questions were asked with yes/no tick boxes against them to keep the process as simple as possible for respondents. Additional comments/issues were also welcomed.

**Please let us know if the following subjects are adequately detailed in the Regulations and then amplified in the corresponding Guidance: -**

**Q1.** the Scottish Public Authorities to whom the duty of carrying out the regulations falls?

- 37 respondents replied 'yes'
- 2 respondents replied 'no'
- 21 gave no specific response but stated that they were generally in favour and,
- 8 did not reply to the question

**Q2.** the scope of the environmental information which will be subject to the regulations?

- 25 respondents replied 'yes'
- 8 respondents replied 'no'
- 27 gave no specific response but stated that they were generally in favour and,
- 8 did not reply to the question

**Q3.** application of the Regulations and exceptions?

- 24 respondents replied 'yes'
- 9 respondents replied 'no'
- 27 gave no specific response but stated that they were generally in favour and,
- 8 did not reply to the question

**Q4.** requirements for requests by individual/organisations and for decisions and review by authorities?

- 30 respondents replied 'yes'
- 6 respondents replied 'no'
- 25 gave no specific response but stated that they were generally in favour and,
- 7 did not reply to the question

**Q5.** requirements for public interest test

- 34 respondents replied 'yes'
- 2 respondents replied 'no'
- 24 gave no specific response but stated that they were generally in favour and,
- 8 did not reply to the question

**Q6.** enforcement and appeal to the Scottish Information Commissioner

- 34 respondents replied 'yes'
- 2 respondents replied 'no'
- 24 gave no specific response but stated that they were generally in favour and,
- 8 did not reply to the question

**Q7.** indication if previously made use of or responded to a request under the EIRs 1992/1998

- 9 respondents replied 'yes'
- 29 respondents replied 'no'
- 0 gave no specific response but stated that they were generally in favour and,
- 30 did not reply to the question

Included in the third category of '**gave no specific response but stated that they were generally in favour**' are those responses that did not use the questionnaire sheet on page 57 of the consultation document but the general impression from their reply was that they were in agreement with the updating of the Access to Environmental Information regime. A variety of organisations did however submit comments on issues of concern and how they envisaged the regulations would affect them – the majority of comments indicated that while many bodies appreciated the alignments made with the freedom of information regime it did not go far enough.

## Key issues

### Additional Resources

A few respondents felt that in order to be able to respond to requests for information, resources would be diverted from their core activities. There were concerns from a few respondents about the requirement to find additional resources, particularly if there was a need to establish and sustain a new database.

## **Charging**

Some respondents felt that the significant difference in charging between the freedom of information and the environmental information regimes should cause confusion. One organisation raised the question of whether or not it is intended that public bodies should prepare information and then potentially 'write off' the time and work involved in doing so if the payment is not made. One respondent felt that charging for access to information had often proved to be a barrier for members of the public and NGOs and indicated that there should be no charge over and above the cost of photocopying if a charge was to be levied at all. Another would like to see something on charging reflected in the Regulations when advising on the availability of 'historic records'. It was also pointed out that some information requests from certain registers are governed by Statutory Instrument which already provide for charging of fees.

## **Requests**

Numerous respondents stated concern over the difference in format of a request between the two regimes and stated that all requests should be in writing and not as permitted in the regulations to be requested orally. Concern was raised over how a Scottish public authority or an applicant could distinguish between a request under freedom of information and a request under environmental information if the subject appeared to be covered by both regimes e.g. regeneration. Apprehension was expressed on the existence of a third separate regime for gaining access to information held by public authorities namely the Data Protection Act and felt this would cause even further confusion.

It has been suggested that it would be helpful if Scottish public authorities were told to advise applicants of their rights to appeal to the Scottish Information Commissioner against the extension of the time period if the applicant considered that the delay or the extension to 40 working days was unreasonable and that this could be included in the Code of Practice.

## **Commercial Confidentiality**

Private organisations have expressed concern that the release of certain commercial information could endanger the economic interests of businesses and would like some form of protection clause to be included in the regulations to safeguard legitimate economic interests.

A few public authorities would like more guidance on what issues/factors a public authority should take into account when giving consideration to whether the information is confidential.

## **Definitions**

Difficulties were expressed in understanding the definition of what constitutes 'environmental information' and that this definition was too broad and needed to be clearer in order for public authorities to decide which piece of legislation should apply to the request.

Clarification was also sought on a number of other issues such as:-

- 'public bodies'

- ‘energy’
- ‘manifestly unreasonable’
- ‘too general’

It was felt that terms such as landscape, water and natural sites are too broad and should be more specifically defined. It was suggested that examples would be helpful to give more clarification to public authorities when considering requests for environmental information.

### **Active Dissemination**

Universities have conveyed their concerns in their responses to the consultation that the requirement in section 15(1)(b) to make information available to the public by electronic means would cause them difficulties given that reports etc received by them from external consultants are in hard copy paper form and would cost too much to convert them into electronic format.

One respondent made the suggestion that the reference to active dissemination could be strengthened by additional guidance on making the information not just accessible but also intelligible and by giving examples. Another suggestion was to advise the public bodies covered by the freedom of information regime to consider whether their publication schemes contain sufficient information on the environment or whether more information should be made available through their existing schemes.

### **Exceptions**

Many thought the differences between ‘exemptions’ in the freedom of information regime and the ‘exceptions’ in the environmental information regime caused confusion and that it would be helpful if the same word could be used in both pieces of legislation. A couple of respondents would like to include an exemption for environmental information, the disclosure of which would likely to endanger the physical or mental health and safety of an individual, along the lines of section 39(1) in the Freedom of Information (Scotland) Act 2002.

### **Public Interest Test**

It was suggested that the differences in the public interest test between the freedom of information and environmental information regimes will cause confusion particularly in relation to mixed requests and specifically in situations where absolute exemption potentially applies under the freedom of information regime.

## **General comments**

General concern was expressed on the following:-

- In practice the new environmental information regulations may discourage private companies from sharing information which is necessary in preparing Emergency Plans and consequently endanger public safety.
- No robust penalties, only a reprimand from the Scottish Information Commissioner

- An indication of how long the recorded information should be kept
- Staff training
- How to determine 'prejudice substantially' and 'adversely affect'
- How do you determine what is 'manifestly unreasonable'
- Guidance and Code should stress need for quality as well as promptness of information
- Where a Ministerial veto is exercised it is made public with copy of certificate lodged with the Scottish Information Commissioner
- No monitoring or reporting requirements
- Need a definition of 'a judicial or legislative capacity'
- Should adapt the Code under section 60 rather than introduce a separate Code for environmental information

## Next stage in the process

A more in depth analyses of all the responses will be undertaken by the Scottish Executive during the lead up to finalising the Environmental Information (Scotland) Regulations 2004, Guidance and the Code of Practice which accompanies the Regulations.

Officials will then report to Scottish Executive Ministers on key issues before any final decision is made.

Copies of full responses from those bodies who have given their consent will be made available shortly on the SE website.

A list of all those who responded to the consultation document is attached at Annex A

**‘ACCESS TO ENVIRONMENTAL INFORMATION’ – A CONSULTATION  
PAPER 2004/5**

**List of Respondents**

1. Aberdeen College
2. Aberdeenshire Council
3. ACPOS
4. Angus Council
5. Argyll & Bute Council
6. British Energy plc
7. Chief Inspector of Constabulary
8. Communities Scotland
9. Council for Scottish Archaeology
10. COSLA
11. Crofters Commission
12. Deer Commission for Scotland
13. Dumfries and Galloway Council
14. Dumfries and Galloway College
15. East Ayrshire Council
16. East Dunbartonshire Council
17. Fisheries Research Services
18. Forestry Commission
19. Friends of the Earth
20. Glasgow City Council
21. GTC Scotland
22. Grampian Fire Brigade
23. Heriot Watt University
24. Highlands and Islands Enterprise
25. HMIAS
26. HMIE
27. HM Inspector of Constabulary
28. Inverclyde Council
29. Learning Teaching Scotland
30. Loch Lomond & the Trossachs National Park
31. National Archives of Scotland
32. NHS Lothian
33. NHS Ayrshire and Arran
34. Nirex
35. North Ayrshire Council
36. Orkney Islands Council
37. Ordnance Survey
38. Perth & Kinross Council
39. Registers of Scotland
40. Renfrewshire Council
41. Royal Environmental Health Institute of Scotland
42. RSPB
43. Scottish Association of Meat Wholesalers

44. Scottish Beekeepers Association
45. Scottish Consumer Council
46. Scottish Enterprise
47. Scottish Environment Protection Agency
48. Scottish Funding Councils
49. Scottish Information Commissioner
50. Scottish Legal Aid
51. Scottish Natural Heritage
52. Scottish Power
53. Scottish Qualifications Authority
54. Scottish Rural Property and Business Association
55. Scottish Water
56. SESA
57. South Ayrshire Council
58. South Lanarkshire Council
59. Stow College
60. Tayside Fire Brigade
61. The Law Society of Scotland
62. The Scottish Agricultural College
63. The University of Edinburgh
64. University of Aberdeen
65. University of Dundee
66. University of Glasgow
67. Universities of Scotland
68. University of St Andrews