

EIRs Guidance Series

Introduction to the EIRs



Scottish Information
Commissioner

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Glossary and abbreviations

Term used	Explanation
EIRs	Environmental Information (Scotland) Regulations 2004
Directive	Directive 2003/4/EC on public access to environmental information
FOISA	Freedom of Information (Scotland) Act 2002
Aarhus Convention	Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

Introduction

1. The Environmental Information (Scotland) Regulations 2004 (“the EIRs”) are based on EU Directive 2003/4/EC on public access to environmental information (“the Directive”). They give the public rights of access to environmental information held by Scottish public authorities. The EIRs came into force on 1 January 2005 along with the Freedom of Information (Scotland) Act 2002 (“FOISA”). They cover any information that is considered to be 'environmental information' as defined by the EIRs.
2. The EIRs build on previous access to information regimes such as the Environmental Information Regulations 1992. Those regulations gave the public the right to ask for information which “relates to the environment” held by central and local government and other bodies with responsibilities in relation to the environment.
3. In 2005, the UK ratified the United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“the Aarhus Convention”), from which the Directive was derived. The EIRs implement this Directive in Scotland. The rest of the UK has its own environmental information regulations in the form of the Environmental Information Regulations 2004.

EIRs Guidance

4. This is the first part of a series of guidance on the EIRs. The guidance aims to provide an understanding of what constitutes environmental information, which bodies are covered by the EIRs, and how to handle a request for environmental information appropriately.
5. This full series covers the following:
 - Introduction to the EIRs
 - What is environmental information?¹
 - Which bodies are covered by the EIRs?²
 - What do the EIRs require Scottish public authorities to do?³
 - Handling requests for environmental information⁴
 - An overview of the exceptions⁵
 - Differences between the EIRs and FOISA⁶

¹ <http://www.itspublicknowledge.info/Law/EIRs/WhatIsEnvironmentalInformation.aspx>

² <http://www.itspublicknowledge.info/Law/EIRs/EIRsCoverage.aspx>

³ <http://www.itspublicknowledge.info/Law/EIRs/EIRsObligations.aspx>

⁴ <http://www.itspublicknowledge.info/Law/EIRs/EIRsHandlingRequests.aspx>

⁵ <http://www.itspublicknowledge.info/Law/EIRs/EIRsExceptions.aspx>

⁶ <http://www.itspublicknowledge.info/Law/EIRs/EIRsDifferencesEIRSandFOISA.aspx>

Why Access to Environmental Information Matters

“...every person has the right to live in an environment adequate to his or her health and well-being”⁷

6. The Aarhus Convention recognises every person’s right to a healthy environment as well as their duty to protect it. It seeks to ensure that every individual lives in an environment adequate for his or her health and well-being. This applies not only to the present population but also to future generations.
7. The Aarhus Convention Implementation Guide⁸, published by the United Nations Economic Commission for Europe, states that access to environmental information ensures that *“members of the public are able to know and understand what is happening in the environment around them. It also ensures that the public is able to participate in an informed manner”*.
8. To promote this, the Aarhus Convention embraces governmental accountability, transparency and responsiveness. It sets minimum standards for citizens’ rights in the field of environmental decision-making. The UN Secretary-General described this as an ambitious venture in “environmental democracy”.
9. The Aarhus Convention has ‘three pillars’ which form the key principles behind the Convention:
 - the right to know
 - the right to participate
 - the right of access to justice.
10. Access to information is the first of these pillars and forms the basis of the EIRs. Access to information is a pre-cursor to the other pillars, as effective participation in decision-making is reliant on knowledge.
11. Access to information is an important aspect of public participation and achieving sustainable development. For citizens to be able to assert their (and future generations’) right to live in an environment adequate for their well-being, they need to have full access to information on the environment. In addition, a public that is well-informed has a lot to offer the decision-making process by contributing a wide range of opinions and views. For example:
 - improved access to environmental information in environmental decision-making enhances the quality and implementation of decisions.
 - individual citizens and non-governmental organisations have an important role in environmental protection, bringing differing views and approaches to the decision-making table.
 - environmental information can fuel environmental education and research, which have key roles in environmental protection.

⁷ Preamble to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998:

<https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

⁸ <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

INSPIRE

3. As well as FOISA, the GDPR and the Data Protection Act 2018, the EIRs interact with the Infrastructure for Spatial Information in the European Community Regulations 2009 (INSPIRE).
4. The duty under INSPIRE to make spatial data sets (sets of data linked to geographical locations) publicly available in a consistent and useable electronic format, overlaps with the duty under the EIRs to make environmental information available proactively using easily accessible electronic means. However, not all information covered by INSPIRE will be environmental information, and lots of environmental information will not qualify as a spatial data set.
5. More information about INSPIRE can be found here:
<http://www.itspubliknowledge.info/Law/INSPIRE.aspx>.

Brexit

6. As noted above, the EIRs are based on an EU Directive. It is not yet known how Brexit will affect the EIRs. However, given that the Directive is based on a United Nations Convention which the UK has ratified, it is likely that procedures enabling and conferring the right of access to environmental information will remain in place.

Document control sheet

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