

EIRs Guidance Series

What do the EIRs require Scottish public authorities to do?



Scottish Information
Commissioner

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Glossary and abbreviations

Term used	Explanation
EIRs	Environmental Information (Scotland) Regulations 2004
FOISA	Freedom of Information (Scotland) Act 2002
The Commissioner	Scottish Information Commissioner

Introduction

1. This is the fourth 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.
2. The full series covers the following:
 - Introduction to the EIRs¹
 - What is environmental information?²
 - Which bodies are covered by the EIRs?³
 - What do the EIRs require Scottish public authorities to do?
 - Handling requests for environmental information⁴
 - An overview of the exceptions⁵
 - Differences between the EIRs and FOISA⁶

What authorities need to do

3. The EIRs require Scottish public authorities to do a number of things. These are set out in the table on the next page.
4. Additional guidance on some of these, for example on the requirement to actively disseminate information, is set out below.
5. More detailed guidance on matters such as responding to requests for environmental information can be found elsewhere in this guidance series.

¹ http://www.itspublicknowledge.info/Law/EIRs/EIRs_Introduction.aspx

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

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

REQUIREMENT	REFERENCE
Actively disseminate information, particularly by electronic means	regulation 4(1)
Make environmental information available to any person who requests it within 20 working days (40 working days if the request is voluminous and complex)	regulations 5(1) and 7(1)
Publish a schedule of charges and information on when a fee may be charged, waived or required to be paid in advance	regulation 8(8)
Provide reasonable advice and assistance to someone who has made, or wants to make, a request for environmental information	regulation 9
Refuse requests only in line with the exceptions available, giving reasons and details of how to seek a review and appeal	regulations 10, 11, 13, 16, and 17
Transfer requests for environmental information if the authority doesn't hold the information, but another does	regulation 14
If asked to do so, carry out a review of a decision not to make environmental information available	regulation 16

Active dissemination of environmental information

6. Where a Scottish public authority is also subject to the Freedom of Information (Scotland) Act 2002 (FOISA), the requirement to actively disseminate information can be met in part by the authority's publication scheme in terms of section 23 of FOISA. (The EIRs don't require authorities to have a publication scheme, but every authority which is subject to FOISA is also subject to the EIRs.)
7. Section 23 of FOISA makes no distinction between environmental and non-environmental information in publication schemes. Therefore, the Commissioner expects authorities to publish environmental information in their publication schemes.
8. However, the reference to "active dissemination" in regulation 4 means more than just recording information which is already available. The use of this terminology indicates a clear intention to promote and develop dissemination. Scottish public authorities are encouraged to make information more easily available by means of websites, telecommunications and electronic technology.
9. Regulation 4 lists the types of information which are expected to be made available in this way:
 - (a) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;
 - (b) policies, plans and programmes relating to the environment;
 - (c) progress reports on the implementation of the items referred to in (a) and (b) when prepared or held by a Scottish public authority in electronic form;
 - (d) reports on the state of the environment;

- (e) data or summaries of data derived from the monitoring of activities that affect or likely to affect the environment;
 - (f) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found;
 - (g) environmental impact studies and risk assessments concerning those elements of the environment referred to in paragraph (a) of the definition of “environmental information” in regulation 2(1); and
 - (h) facts and analyses of the facts which the authority considers relevant and important in framing major environmental policy proposals.
10. The EIRs do not require information to be made available in electronic format if it is dated prior to 14 February 2003 (unless it was already available in that form), although it would be good practice to make it available where possible.
 11. Regulation 4 also requires authorities to make information “progressively” available to the public by electronic means. Developments in information technology are constantly changing the way in which information is created, stored and transferred, and the use of this term takes account of these possible changes in technology.
 12. Where there is a requirement under any other legislation for a Scottish public authority to maintain an accessible register containing environmental information, these registers must be kept up to date and accurate and “comparable” (regulation 5(4)). Access to such registers must be free (regulation 8(2)(a)).
 13. Under regulation 6(1)(b), a public authority must comply with a request unless the information is already available and easily accessible to the requester in another form or format. Remember that if you only provide information by electronic means, it may not be accessible to members of the public who do not have access to the internet. So, authorities should make arrangements for providing information in a hard copy to anyone who cannot access it by electronic means. Authorities might also have to do this to comply with the Equality Act 2010.

Schedule of charges

14. A public authority may charge a reasonable fee for making environmental information available. However, the authority cannot charge a fee for allowing an requester to access any public register or lists of environmental information held by it (regulation 8(2)(a)). Equally, the authority cannot charge an requester to examine the information requested at a place which the authority makes available for that purpose (regulation 8(2)(b)).
15. Regulation 8(8) specifically requires the authority to publish and make available to requesters a schedule of its fees (regulation 8(8)(a)) and information on the circumstances in which a fee may be charged, waived or required to be paid in advance (regulation 8(8)(b)). A public authority which has not published a schedule of charges cannot make a charge under the EIRs.

16. The Commissioner has published separate, detailed guidance on charging for environmental information.⁷

Duty to provide advice and assistance

17. Regulation 9(1) provides that a Scottish public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to requesters and prospective requesters.
18. Appropriate assistance can include:
- assisting in defining the information required;
 - providing the outline of the different types of information that meet the terms of the request (noting however, that the requester is under no obligation to state why they want the information);
 - providing access to detailed catalogues and indexes, where these are available, to help the requester ascertain the nature and extent of the information held by the authority.
19. Regulation 9(3) of the EIRs says that, if an authority complies with the code of practice under regulation 18 in relation to the provision of advice and assistance, it will be taken to have complied with regulation 9(1). The code in question is the Scottish Ministers' Code of Practice on the Discharge by Scottish public authorities under FOISA and the EIRs. The current version of the code is dated 1 December 2016.⁸
20. The Commissioner has published a self-assessment toolkit for public authorities on advice and assistance.⁹

⁷ http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Fees_and_charging/ChargingEIRs.aspx

⁸ <http://www.gov.scot/Resource/0051/00510851.pdf>

⁹ <http://www.itspublicknowledge.info/ScottishPublicAuthorities/Self-AssessmentToolkit/Self-AssessmentToolkitIntroduction.aspx>

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