



Environmental Information Regulations 2004

Proactive Dissemination

The new Environmental Information Regulations oblige public authorities to look at the information they hold and identify that which falls within the definition of environmental information provided by the Regulations and, subject to exceptions, supply a copy of the information if so requested.

An additional but by no means lesser responsibility is to take “reasonable” steps to organise and actively disseminate environmental information (with the focus being dissemination via electronic means), on an ongoing basis.

For the purposes of disseminating environmental information a distinction can be made between those authorities who are caught by the Freedom of Information Act 2000 and therefore have a publication scheme, and those organisations which are not. This document seeks to provide guidance on the dissemination requirement for both of these types of authorities.

What do the regulations say?

4. - (1) Subject to paragraph (3), a public authority shall in respect of environmental information that it holds -

(a) Progressively make the information available to the public by electronic means which are easily accessible; and

(b) take reasonable steps to organize the information relevant to its functions with a view to the active and systematic dissemination to the public of the information.

(2) For the purposes of paragraph (1) the use of electronic means to make information available or to organize information shall not be required in relation to information collected before 1st January 2005 in non-electronic form.

(3) Paragraph (1) shall not extend to making available or disseminating information which a public authority would be entitled to refuse to disclose under regulation 12.

**(4) The information under paragraph (1) shall include at least -
(a) the information referred to in Article 7(2) of the directive;
and**

(b) facts and analyses of facts which the public authority considers relevant and important in framing major environmental policy proposals.

How will it apply?

The requirement is laid upon all bodies subject to the Regulations, without distinction as to the size or type of authority caught.

This obligation has 3 aspects; that the dissemination is active and systematic, that it is progressive, and that steps are taken to organise the information to best achieve these aims. This requires the dissemination to be ongoing, with an active consideration of any new information to be included for dissemination. The words “active” and “systematic” suggest therefore that authorities set in place a written policy for the consideration of any new environmental information it produces or obtains for inclusion within the active dissemination of information.

Regulation 4 (4) (a) refers to information from Article 7 (2) of the Directive. In effect this means that as a minimum each authority subject to the Regulations will, (where it holds such information), be obliged to include the following:

- (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 in electronic form by public authorities;**
- (d) the reports on the state of the environment referred to in paragraph 3;**
- (e) data or summaries of data derived from the monitoring of activities affecting, 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 in the framework of Article 3;**
- (g) environmental impact studies and risk assessments concerning the environmental elements referred to in Article 2(1)(a) or a reference to the place where the information can be requested or found in the framework of Article 3.**
- (h) facts and analyses of facts which the public authority considers relevant and important in framing major environmental policy proposals.**

In applying the requirements of regulation 4 it is helpful to make a distinction between those organisations caught by the Freedom of Information Act 2000, (and therefore by the publication scheme requirement of section 19), and those who are not currently caught by Freedom of Information.

Authorities Subject to Freedom of Information

Public authorities caught by the Freedom of Information Act are required, under section 19 of that Act to adopt a publication scheme which has been approved by the

Information Commissioner's Office. This varies between signing up to a model scheme (an off the rack scheme suitable for specific sectors which all carry out broadly similar functions), or creating a bespoke scheme where duties are more specific to the authority concerned, (such as Non Departmental Public Bodies).

An authority's publication scheme is a guide to the information it makes routinely available, and the authority is therefore obliged to make this information available without the usual legal requirements inherent within a normal section 1 request under the Freedom of Information Act; hence the 20 day rule is not applicable, (as information from a publication scheme should be readily available and able to be issued more quickly than under a section 1 request), and more importantly, requests do not have to be received in writing in order to be valid.

Where authorities receive a specific freedom of information request under section 1 for information which falls within their schemes, the organisation is able to claim the section 21 exemption, (information available by other means), and should guide the requester to the information requested.

Freedom of Information Act section 19(3) states that authorities must:

- (3) In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest-**
- a) in allowing public access to information held by the authority, and**
 - b) in the publication of reasons for decisions made by the authority**

It is therefore essential that an authority producing a scheme looks at all of the information it holds and makes as much as possible available through its scheme where it is appropriate to do so. This includes information which it is under an existing legal obligation to provide upon request. It makes sense therefore that the obligations laid upon authorities under the proactive dissemination requirement of the Environmental Information Regulations are considered for inclusion in the authority's publication scheme, and the Information Commissioner's Office is therefore giving consideration to amending the approval criteria for schemes to include the above "minimum" requirements as part of its criteria for approval in the next cycle of approvals. Authorities who do not make this level of information available through their schemes would need to show that they had had regard to the public interest in including this information within their scheme and explain why it was in the public interest to omit this information when next submitting their scheme for approval. In the interim, authorities may therefore wish to amend their publication schemes accordingly. It is of note however, that authorities who have taken an active approach to their publication schemes are likely to be already publishing the majority of this information in an organised format already.

Authorities Not Subject to Freedom of Information

The Environmental Information Regulations will also include within their scope some authorities and organisations which are not caught by the Freedom of Information Act. Again however, the obligation to actively disseminate their environmental

information will rest with them, and again the minimum criteria provided above are applicable. In complying with this requirement it may be helpful for such organisations to follow the guidance and information provided by the Department for Constitutional Affairs and the Information Commissioner's Office as regards publication schemes when considering the means to disseminate their information. **There is however no requirement to submit such a scheme to the Office of the Information Commissioner.** It should be pointed out that for those authorities not subject to freedom of information there is no legal requirement to follow the format of publication schemes, and authorities should make their own decision as to the most appropriate method to comply with this aspect of the regulations.

Electronic Dissemination

Regulation 4(1) states that authorities need to:

- (a) Progressively make the information available to the public by electronic means which are easily accessible;**

There is therefore a need for authorities to consider making their environmental information available via the World Wide Web. This strengthens the view that, so far as authorities caught by freedom of information are concerned, information or documents falling within the classes of information in publication schemes should also be made available via the web wherever it is appropriate to do so. Whilst there are no distinctions as to how this information should be made available via the web, for those authorities who would like assistance there are many software packages able to carry out this function. The National Archives Website currently has a list of the software it has reviewed and considers suitable for freedom of information purposes. The Information Commissioner's Office is however, unable to endorse any particular package for use as we have not used or tested any of these packages.

There is no requirement to make information available via electronic means where it was collected or collated prior to 1st January 2005 unless it is information which falls within the minimum standards highlighted above. However, authorities should note that such information will be caught by a general request for information under the Environmental Information Regulations, and it may therefore prove beneficial for authorities to consider disseminating such information as a way of reducing the need to deal with individual requests.

There is an equal requirement for bodies not caught by the Freedom of Information Act to disseminate their environmental information via the web.

What is reasonable?

The Regulations make no distinction so far as the obligations laid upon authorities caught within its remit. The only distinction which may apply will rest in regulation 4 (1) (b), in the definition of the "reasonable steps" which need to be taken in order to comply with the organisation of information for active and systematic dissemination. It may be the case that it would be unreasonable for a smaller authority to go to the same lengths as a larger authority in order to comply with this aspect of the

legislation. Much would depend up the nature, activities and resources of the authority concerned.

In carrying out this function it should also be borne in mind that the requirement is only for the authority to take “reasonable steps”. Suggested factors which may have effect on this may include the nature of the information held, the size and nature of the organisation, the amount of work and cost required in re-organising the information and the organisation’s actual functions as regards the environment. This is not, of course, an all inclusive list, merely suggested factors which authorities may like to consider when deciding what course to take.

The requirement in regulation 4 (1) (b) does go further than this. It requires a consideration of the functions of the authority, of the information it creates and holds, and of any risk factors involved in the functions it carries out or the decisions it makes. It also requires consideration as to how this information may be best organised in order to provide a continued and active dissemination of information in a manner which can be reviewed and updated regularly by the authority, and which allows the public to easily understand where they need to look in order to access the information being made available. Consideration should also be given to authorities’ ability to disseminate information quickly, where it may have an impact upon the health and safety of individuals.

Good Practice Recommendations

A question arises as to what may be considered to be reasonable steps towards compliance with this section in general. Certainly all organisations should take any steps necessary to conform to the environmental information regulations code of practice and the freedom of information section.46 code of practice on records management. Authorities caught by the Freedom of Information Act should also take all steps necessary to conform to the section 45 and 46 codes of practice and the publication scheme requirements of the act.

Beyond publishing the minimum requirements as listed above, the authority should, at the least, carry out an information audit so it is aware of the environmental information it holds, and they should then actively consider whether it is appropriate to include this information within their publication scheme as part of their duties under this section. Authorities not subject to the Freedom of Information Act should carry out a similar process with a view to publishing such information in the format they best consider appropriate to meet the requirement for dissemination.