EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL INFORMATION REGULATIONS 2004

2004 No. 3391

1.

This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty. The draft Environmental Information Regulations 2004 have been laid before Parliament for approval by each House.

2. Description

When in force the Environmental Information Regulations 2004 (the Regulations) will make provision for the dissemination of environmental information by public authorities and for public authorities to make available environmental information in response to a request. The Regulations will not extend to Scottish public authorities. Scottish Ministers will make separate regulations in respect of those authorities.

3. Matters of special interest to the Joint Committee on Statutory Instruments

No matters of special interest have been identified.

4. Legislative background

(i) The Regulations will implement Directive 2003/4/EC (the Directive) on public access to environmental information and repealing Council Directive 90/313/EC. Directive 90/313/EEC was implemented in the UK (except Northern Ireland) by the Environmental Information Regulations 1992 (S.I. 1992/3240) as amended (S.I. 1998/1447); separate regulations were made in respect of Northern Ireland (S.R. 1993 No. 45).

(ii) The Directive was cleared by the European Scrutiny Committee on 17 July 2002 and by the European Union Select Committee on 24 July 2002.

(iii). The Regulations will be made under section 2(2) of the European Communities Act 1972 (c.68).

(iv) The handling of personal data is not covered explicitly under the Directive although Article4(2) refers to compliance with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Directive). Regulations 5(3), 12(3) and 13 relating to personal data contain similar provisions to those in section 40 of the Freedom of Information Act 2000 and are believed to be compatible with the Data Protection Directive.

(v) The time limit within which a public authority must comply with a request is stated in the Directive as one month. The Regulations refer to 20 working days in order that the period aligns with the time limit of 20 working days in section 10 of the Freedom of Information Act 2000.

(vi) There are exceptions to disclosure in regulation 12. These exceptions implement Article 4 of the Directive. The terms "international relations, public security or national defence" used in Article 4(2)(b) embrace important areas of confidentiality across the EC. The equivalent exemptions are provided in the UK's Freedom of Information Act 2000 as exemptions to disclosure under Part II of the Act for "national security, defence and public safety". Regulation 12(5)(a) thus refers to international relations, defence, national security or public safety.

(vii) Regulation 12(6) provides that a neither confirm nor deny response may be given to a request in relation to the exceptions to disclosure in regulation 12(5)(a). This is consistent with the equivalent provision of the Freedom of Information Act 2000 and is compatible with the equivalent exceptions in the Directive.

(viii) Regulation 15 contains provisions equivalent to those in section 24 of the Freedom of Information Act 2000. A minister of the Crown may certify that a refusal to disclose information is because disclosure would adversely affect national security and would not be in the public interest. If a certificate is issued, the applicant can appeal against the certificate to the Information Tribunal under the provisions of section 60 of the Freedom of Information Act 2000 as applied for the purposes of these Regulations.

(ix) Article 6 of the Directive is implemented by regulation 18 applying the enforcement and appeal provisions of Parts IV and V of the Freedom of Information Act 2000 with minor amendments. In the interests of better regulation this will ensure similar provisions for enforcement and appeals apply both for under Act and for the purposes of the Regulations.

5. Extent

The Regulations apply to the whole of the United Kingdom but they do not extend to Scottish public authorities.

6. European Convention on Human Rights.

In the view of the Secretary of State for Environment, Food and Rural Affairs, the Rt. Honourable Margaret Beckett MP, the provisions of the Regulations are compatible with the Convention rights, as defined in section 1 of the Human Rights Act 1998.

7. Policy background

These draft Regulations have been prepared to implement the Directive. The objectives of the Directive are:

(a) to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for its exercise; and

(b) to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public.

Providing additional rights to environmental information will allow the public to be better informed and more involved in decision-making in relation to the environment.

It was agreed by Ministers in November 2003 that when making the Regulations to implement the Directive, the Regulations and the Freedom of Information Act 2000 should be aligned as far as practicable. The Freedom of Information Act 2000 provides for a general right of access to information held by public authorities. Once the Freedom of Information Act 2000 is fully implemented in 2005, people will have two new statutory rights under the Act when they make a written request for information to a public authority. The rights are: to be told if the information is held and to have that information communicated to them.

The Regulations will strengthen the existing rights to access environmental information. This will be particularly evident in the following changes from the 1992 Regulations (as amended):

(a) Information may only be withheld if an exception to disclosure applies and the public interest in not disclosing the information outweighs the public interest in disclosure. Information relating to emissions may only be withheld under a limited number of the exceptions to disclosure

(b) Enforcement powers are given to the Information Commissioner

(c) There is a 20 working day deadline for responding to requests (subject to a possible extension to 40 days for voluminous and complex information), compared to the current limit of 2 months

8. Impact

The Regulations will have little additional impact on public authorities that must also meet the requirements of the Freedom of Information Act 2000. There will also be little impact on other bodies covered by the Regulations, as such bodies are similar to those covered in the 1992 Regulations.

A Partial Regulatory Impact Assessment (RIA) was prepared to accompany the consultation on the draft regulations in Autumn 2002. This identified no significant costs as almost all costs would otherwise be incurred under the 1992 Regulations or under the Freedom of Information Act 2000. It was therefore agreed with the Better Regulation Unit that no further RIA was required.

We do not expect significant public interest in these Regulations, although the public is anticipating the implementation of the Freedom of Information Act. The Department of Constitutional Affairs will be publicising the Freedom of Information Act in the Autumn.

9. Contact

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Transposition Note

TABLE SHOWING BY PARALLEL TEXT ANALYSIS HOW MAIN ELEMENTS OF DIRECTIVE 2003/4/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 28 JANUARY 2003 ON PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION AND REPEALING COUNCIL DIRECTIVE 90/313/EEC HAVE BEEN IMPLEMENTED BY THE ENVIRONMENTAL INFORMATION REGULATIONS 2004 (S.I. 2004/****)

Provision of Directive	**Provision of Regulations**	**Comment**
Article 2: Definitions.	Regulations 2 and 3.	
Article 3: Access to environmental information. Paragraphs (1) and (2)(a) – the duty to make available environmental information and the timescale to comply.	Regulation 5.	
Article 3: Access to environmental information. Paragraph (2)(b) – extension of time to comply with request	Regulation 7.	
Article 3: Access to environmental information. Paragraph (3) – requests formulated in too general a manner.	Regulation 9(2).	
Article 3: Access to environmental information. Paragraph (4) – form and format of information.	Regulation 6.	
Article 3: Access to environmental information. Paragraph (5) – assistance to the public.	Regulations 9 and 16.	
Article 4: Exceptions to the duty to make available environmental information.	Regulations 8(4) and (5) (advance payment required) and 12 to 14.	1. To the extent that the information requested is the personal data of the applicant then by Regulation 5(3) that information is not covered by these Regulations and falls to be dealt with under section 7 of the Data Protection Act 1998 (c.29).

		2. Regulation 12(3) provides that to the extent that the information requested is the personal data of a person other than the applicant, then those personal data shall not be disclosed otherwise than in accordance with the provisions of regulation 13. Those provisions are equivalent to those in section 40(2) to (6) of the Freedom of Information Act 2000 (c.36). These limited circumstances in which personal data may be disclosed are provided for in compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Directive).
Article 5: Charges	Regulation 8.	
Article 6: Access to justice.	Regulations 11 and 18.	Regulation 18 applies the enforcement and appeal provisions in Parts IV and V of the Freedom of Information Act 2000 with modifications.
Article 7: Dissemination of environmental information.	Regulation 4.	
Article 8: Quality of environmental information.	Regulations 5(4) and (5).	
Article 10: Implementation. Required by Member States by 14 February 2005.		These Regulations were made on **** 2004 and come into force on 1 January 2005.

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