

# Proactive dissemination: routinely publishing environmental information (regulation 4)

## Environmental Information Regulations

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### Introduction

1. The Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities.
2. An overview of the main provisions of the EIR can be found in [The Guide to the Environmental Information Regulations](#).
3. This is part of a series of guidance, which goes into more detail than the Guide, to help public authorities to fully understand their obligations and promote good practice.
4. This guidance explains to public authorities how to meet their obligation to progressively make information available to the public.

### Overview

- The EIR require authorities to proactively make environmental information that they hold available to the public by electronic means.
- In order to make information available to the public in a systematic way, authorities must organise their records and routinely publish them.
- This is separate from the duty to make information available in response to individual requests.
- Although the EIR (unlike FOIA) do not require authorities to operate a publication scheme, we recommend that they do so as good practice.

## What the EIR say

### 5. Regulation 4 states:

**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.

## General principles of the regulation

6. The purpose of regulation 4 is to set out public authorities' duties to make environmental information available proactively, so as to increase public awareness of and involvement in environmental issues.
7. These duties derive from the UK's international commitments:
  - the 1998 UNECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters ([the "Aarhus" Convention](#)) which specifies the obligations of public authorities as to the "collection and dissemination of environmental information";

and

  - [EU Directive 2003/4/EC](#) on public access to environmental information which Parliament implemented through the EIR. Article 7 of the Directive requires public authorities to organise and disseminate environmental information, and lists in Article 7(2) the minimum information which must be published.

## The information authorities must organise and publish

8. Regulation 4(4)(a) of the EIR states that public authorities must organise and publish, as a minimum, any information they hold that is listed in Article 7(2) of EU Directive 2003/4/EC<sup>1</sup>.

### **Article 7(2) European Directive 2003/4/EC**

The information to be made available and disseminated shall be updated as appropriate and shall include at least:

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<sup>1</sup> As the Directive stood on 31 December 2020

- (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.

9. Public authorities must also organise and publish facts and analyses they consider "relevant and important" to "major environmental policy proposals" (regulation 4(4)(b)).
10. They will have to make a reasonable judgement as to whether the latter criteria apply, bearing in mind that the Aarhus Convention and EU Directive 2003/4/EC set out principles that are in favour of disseminating environmental information. It would be good practice for authorities to record their reasoning in this regard; such as how they decide whether or not an environmental policy proposal is "major". Relevant factors might include, for instance, the cost or size of a scheme or the extent of interest shown by the public in a proposal.
11. The above requirements are a minimum and we would encourage authorities to consider publishing more information where appropriate.

12. The authority is not obliged to organise or make available:
- information that would be excepted from disclosure under regulation 12 (after application of the public interest test); or
  - third party personal data, the disclosure of which would breach the UK General Data Protection Regulations or the Data Protection Act 2018.

## How authorities should make information available

13. Public authorities must progressively make environmental information that they hold available to the public by accessible electronic means.
14. They must also “take reasonable steps” to organise the information so that it may be disseminated to the public in a proactive and systematic way. What is “reasonable” will depend on the size and functions of the organisation and the nature of the information held. Authorities should consider this as part of their records management process; guidance on good practice is available in the [Section 46 Code of Practice on Records Management](#).
15. It is good practice for public authorities to have a system in place to help them to meet their obligations under regulation 4. For instance they should:
- consider the most effective way of publicising the right to information;
  - publish the information online in a way that is easy for the public to access and use, such as including a search facility; and
  - add new information and update existing information promptly.
16. If any information is already available online elsewhere, authorities may instead provide a link to it; for example, a link to legislation on [www.legislation.gov.uk](http://www.legislation.gov.uk).
17. Under regulation 4(2), where information was collected by authorities before 1 January 2005 only in hard copy format, they are not required to organise it electronically and may make it available to the public as a hard copy.

18. The EIR do not require authorities to provide a hard copy of information if it is already publicly available and easily accessible online. However, if a member of the public cannot access information online, it is good practice for authorities to consider providing a hard copy on request.
19. Public authorities must also meet their obligations under equality legislation, such as making reasonable adjustments for people with disabilities to access information.

## Environmental information and publication schemes

### **Public authorities subject to FOIA and the EIR**

20. Public authorities subject to the Freedom of Information Act 2000 (FOIA) as well as the EIR are required to adopt the Information Commissioner's [model publication scheme](#). We have also produced [definition documents and template guides to information](#) which show the types of information we would expect authorities in different sectors to publish in their guide to information. Please also see our [guidance on using the definition documents](#).
21. In their guides to information, we expect public authorities to include at least the minimum environmental information required by the EIR. Environmental information may fall within any of the classes in the publication scheme.
22. Guides to information should also include any public registers of environmental information which public authorities maintain under another piece of legislation.

### **Public authorities subject only to the EIR**

23. For authorities that are subject only to the EIR, there is no requirement to operate a publication scheme. Instead, regulation 4 of the EIR requires public authorities to proactively disseminate information. However, we recommend that they do have a publication scheme, since not only is it good practice to have a process in place for organising information, but it will also help authorities to meet their duty under the EIR to proactively and progressively make information available.

## Datasets

24. In FOIA there are provisions relating to datasets. A dataset is a collection of factual, raw data that a public authority gathers as part of providing services and delivering its functions and that it holds in electronic form. The dataset provisions include a requirement for public authorities to make datasets that have been requested available for re-use under their publication scheme, unless it is not appropriate to do so. Making the information available for re-use means publishing it in a re-usable form with a licence that permits re-use.
25. The dataset provisions amend FOIA and not the EIR. However, in our view, if a public authority receives a request for environmental information that constitutes a dataset, and it provides the dataset in response to the request, then it should also consider making the dataset available for re-use with a specified licence under its publication scheme. For more details, please see our [guidance on datasets](#).

## Charging

26. The EIR do not allow public authorities to charge a requester for:
  - accessing lists or public registers of environmental information; or
  - viewing information at their offices or alternative premises.
27. Generally authorities should not charge for information published online.
28. However, authorities may make a reasonable charge for providing a hard copy of information. An authority that intends to charge for information may only do so if it has published a schedule of such charges, explaining the circumstances in which a charge may be made (regulation 8). For more details, read our guidance on [charging for environmental information](#).

## Other considerations

29. Additional guidance is available on our [guidance pages](#). The following guidance may be helpful:

- [What is environmental information?](#)
  - [Charging for information in a publication scheme](#)
30. Authorities may also find it useful to refer to the [EIR Code of Practice](#) (the DEFRA Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004).

## More information

31. This guidance has been developed drawing on ICO experience. Because of this, it may provide more detail on issues that are often referred to the Information Commissioner than on those we rarely see. The guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, tribunals and courts.
32. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
33. If you need any more information about this or any other aspect of freedom of information, please [contact us](#): see our website at [www.ico.org.uk](http://www.ico.org.uk).