

# What is environmental information?

## **Environmental Information Regulations**

### **What is Environmental Information?**

The Environmental Information Regulations 2004 (EIR) give rights of public access to environmental information held by public authorities. This is part of a series of guidance notes to help public authorities understand their obligations and to promote good practice.

This guidance will help identify what is environmental information for the purposes of the EIR.

### **Overview**

- Environmental information is any information on – that is, about, concerning, or relating to – the various definitions contained in Regulation 2(1) of the EIR. You need to consider these definitions and the examples provided in them to understand the wide application of the EIR.
- Environmental information has the same meaning as in European Directive 2003/4/CE (the Directive).
- A principal purpose of the Directive is to provide access to information about our environment.
- The examples provided in Regulations 2(1)(a), (b) and (c) of the EIR are illustrative, not exhaustive.
- It is important for public authorities to identify environmental information correctly in order to deal with information requests.

### **Background**

The EIR have directly incorporated the definition of environmental information from European Directive 2003/4/EC on public access to environmental information. This directive closely follows, but expands upon, the definition in the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 1998.

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To deal with requests, it is important to understand the distinction between:

- environmental information, which would fall within the scope of the EIR;
- personal data of the requester, which falls under the Data Protection Act 1998; and
- all other information, which falls under the FOIA.

### **What do the Regulations say?**

Regulation 2 of the EIR provides the interpretation of terms in the EIR and in regulation 2(1) states:

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

### **What does this mean?**

#### **“Environmental information” has the same meaning as in Article 2(1) of the Directive**

The definition of environmental information has the same meaning as in the Directive, so it is more important to take into account the purpose of regulations than the rules of interpretation built into English law. Because the EIR stem from a directive to be implemented throughout Europe, their interpretation is helped by considering that their main aim is to contribute to a greater awareness of environmental matters by providing greater access to information about our environment.

Recital 10 in the introduction to the Directive includes: “The definition of environmental information should be clarified so as to encompass information in any form on the state of the environment, on factors, measures or activities affecting or likely to affect the environment or designed to protect it, on cost-benefit and economic analyses used within the framework of such measures or activities and also information on the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are, or may be, affected by any of those matters.”

Article 2(1) aims to provide that clarification. With that in mind, there is little to be gained from considering the subtle differences between, for example, “air and atmosphere” or “discharges and releases”. The examples are there to help identify what is environmental information, not to confuse.

Also, as they are only examples, there will also be other elements of the environment not mentioned in regulation 2(1)(a) and other factors not mentioned in regulation 2(1)(b). The examples are not intended in any way to limit the general definitions of environmental information.

#### **Any information in written, visual, aural, electronic or any other material form**

Information covered by EIR can be found in:

- anything written down;
- illustrations;
- sound recordings;
- any type of computer file; and
- any other material form – that is, any other form where information is held on record.

But it does not include information that does not yet exist. Public authorities are not obliged to create information, only to release information held. They may be required to manipulate databases to extract information, but not to manipulate data to create new information.

**Example:**

If an authority holds figures about river levels and climatic conditions, it may be asked to provide information it can extract from the figures, but it is not required to manipulate that information to produce flooding predictions.

**Any information on**

The use of the word “on” indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information. If information is about, relates to or concerns any of the following definitions, it is environmental information.

**(a) the state of the elements of the environment and the interaction among these elements**

There are two parts to this definition:

- the state of the elements of the environment; and
- the interaction among the elements of the environment.

The state of the elements, or components, of the environment covers quality and quantity. It will include physical, biological, and chemical characteristics. In more general terms, it is the condition of the items that make up our environment. It is not limited to current conditions but includes past and predicted future conditions.

The interaction between the elements – which will also be a factor affecting them for the purposes of regulation 2(1)(b) – recognizes that many aspects of the environment are interlinked.

**Elements of the environment such as**

This paragraph gives examples to help understanding of what is intended to be covered by “the elements of the environment”. The use of the term “such as” shows that these are examples and not an exhaustive list. There will be other components of the environment not included in these illustrations and information on their condition will be environmental information.

- **Air and atmosphere** – In many circumstances there will be no difference between air and atmosphere, but the reference to both elements suggests that air also refers to air in buildings and structures and other places where it is confined in some way. The gases and indeed solid particles that make up the atmosphere and air will also be included.

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- **Water** – This will include water in all its forms – vapour, ice, liquid - and is not limited by scale as long as it can still be said to be an element of the environment. It includes water underground or on the surface and water in natural settings and in man-made systems.
- **Soil and land** – Soil can be taken to be the loose mineral and organic top layer of the earth's surface in which plants could grow. Land is the solid, as contrasted to the liquid or gaseous, parts making up the earth's surface. It may well include land under the surface. There is a legal definition of land for the purposes of English law, but the regulations are referring to land as an element of the environment, not land as defined in English law.
- **Landscape** – Landscape is an area, as perceived by people, whose character is the result of the action and interaction of natural or human factors or both. Specialist guidance may give more technical definitions, but there is no real need to go beyond a common understanding of what the landscape is, whether urban or natural, rural or marine and whether attractive, everyday or degraded.
- **Natural sites, including wetlands, coastal and marine areas** – A site will not need to have been formally designated as requiring protection, for example as a Site of Special Scientific Interest, to qualify as a natural site. All sites that are recognized as examples of the landscape in its natural condition, or as sites supporting natural flora or fauna would qualify, including wetlands, coastal and marine areas.
- **Biological diversity and its components, including genetically modified organisms** – Biological diversity is the variety and variability among living organisms and the ecological complexes in which they occur. A genetically modified organism is one in which the genetic material has been altered in a way that does not occur naturally. As this example of an element of the environment extends to the components of biological diversity it would suggest that information on individual species can be environmental information, if it is about where they fit into ecosystems. However, not all biological information is environmental information. As an illustration: information on the life cycle of the badger would not fall within the definition; information on the number of badgers in a particular location may do, as information on the state of a component of biological diversity as an element of the environment.

**Example:**

Regulations to determine fishing quotas are likely to be environmental information – in the definition in regulation 2(1)(c) - as measures likely to affect or designed to protect a component of biological diversity.

**(b) factors, affecting or likely to affect the elements of the environment referred to in (a)**

A factor in this sense should simply be taken to mean something physical that has an impact or influence. An element may be a factor. For instance, water will be a factor in an incidence of flooding. A factor may also be the state of an element of the environment or involve the interaction of the elements of the environment.

Information about the factor will not be environmental information unless the factor is affecting or likely to affect a component of the environment. The effect need not be detrimental or large scale; it may be small and beneficial. "Affecting" can be assessed by reference to the balance of probabilities; "likely to affect" suggests a lower test, but it must be more substantial than a remote possibility.

**Such as**

This paragraph in the EIR then provides examples to clarify what is intended to be covered by factors affecting or likely to affect the elements of the environment. The use of "such as" indicates that these are examples and not an exhaustive list. There may be other factors not included in these illustrations and information on them will be environmental information.

- **Substances** – includes all material or matter, natural or synthetic, and will include chemicals, pharmaceuticals, hormones, antibiotics, oil, particulates, gases and liquids.
- **Energy** – can be expressed in scientific language – thermal, chemical, electrical, kinetic, potential, gravitational. It will also include the more general use of the word, as in heat, solar energy, sunlight, windpower.
- **Noise** – although noise is itself generated by energy, it is included here separately. A simple definition of noise is, "a sound, especially one that is loud, unpleasant, or disturbing".
- **Radiation** – radiation is energy radiated or transmitted as rays, waves, or in the form of particles. It can be natural or man-made.

- **Waste** – waste can be broadly interpreted to mean anything discarded, whether or not intended for further use. This would include household, industrial, agricultural and commercial waste.
- **Radioactive waste** – radioactive materials are widely used in many situations, settings and industries. Radioactive waste is produced in a wide range of establishments and activities such as hospitals, pharmaceutical industry, research, power generation, the weapons industry and warfare.
- **Emissions, discharges and other releases** – these three terms largely overlap. “Emissions” and “discharges” indicate the direct or indirect, accidental or deliberate, release of substances, heat, radiation or noise into the air, water or land. “Release” suggests liberation, or a change of state from confined to unconfined.

**(c) measures (including administrative measures), and activities affecting or likely to affect the elements and factors referred to in (a) and (b), as well as measures or activities designed to protect those elements;**

Information about a measure or activity is environmental information if the measure or activity:

- affects or is likely to affect the elements of the environment;
- affects or is likely to affect a factor affecting or likely to affect an element of the environment; or
- is designed to protect the elements of the environment.

The effect need not be detrimental or large scale; it may be small and beneficial. “Affecting” can be assessed by reference to the balance of probabilities; “likely to affect” suggests a lower test, but it must be more substantial than a remote possibility.

Although there are a number of examples in the EIR to help identify measures, there are no examples of what would be an activity. There would appear to be no reason to limit the normal use of the word. “Information on activities likely to affect the elements of the environment” suggests a very broad category of environmental information.

The examples in the EIR of “measures (including administrative measures)” are policies, legislation, plans, programmes, and environmental agreements. Measures will include steps taken to ensure an effect (past, present or future), and the methods, processes or instruments used. Administrative measures are specifically mentioned, but the interpretation of measures is not restricted to those of an administrative nature. Measures will also include regulatory, economic and voluntary tools, such as Acts of Parliament, local

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by-laws, taxes, prosecutions, charges, and voluntary agreements. Policies are not restricted to environmental policies, but will also take into account development, economic, transport, health and any other policies if they are likely to affect the environment.

As “information on” covers information about, concerning, or relating to, this definition extends not only to the written measures, but also to their application. Information held on record as a result of following processes required by a measure is also likely to be information on an activity.

### **Example:**

Information about payments received by individual verderers under the Countryside Stewardship Scheme and legal advice obtained by the Verderers of the New Forest on the Countryside Stewardship Scheme were environmental information as information on a measure that affects or is likely to affect an element of the environment.

ICO Decision Notice [FER0148337](#) confirmed in [Rudd v Information Commissioner and The Verderers of the New Forest \(EA/2008/0020, 29/09/2008\)](#)

### **(d) reports on the implementation of environmental legislation;**

This covers, for instance, any reports reviewing or monitoring the operation, performance, success or failure of environmental legislation. Information in this definition is also likely to fall within the definition in (c). It mainly provides clarification or further explanation of that part of the EIR.

In adopting the Aarhus convention for its own institutions the European Commission explained environmental legislation as:  
“legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of ... policy on the environment ...: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems...”

### **(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);**

This definition also further clarifies the definition in (c). Including economic and financial information in the definition in the Aarhus Convention stems from the recognition that it is important to integrate environmental and economic considerations in decision-making. This section is qualified by referring back to paragraph (c) measures and activities; so they are the economic and financial aspects taken into account when framing and

operating these measures and activities. It ensures that the definition of environmental information extends not only to environmental measures and activities, but also to any of their economic aspects.

**(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).**

In contrast to the definitions in (a), (b) and (c), the definition in (f) refers to specific fields. It can be broken down into two main areas:

- the state of human health and safety (including the contamination of the food chain where relevant to the state of human health and safety) and conditions of human life; and
- the state of cultural sites and built structures.

But these specific fields fall within the definition of environmental information only where, or to the extent that:

- they are or may be affected by the state of the elements of the environment; or
- through those elements, they are or may be affected by factors, measures or activities affecting or likely to affect the elements of the environment.

This qualification is not the same as the ones used previously. The earlier qualification referred to "affecting or likely to affect", whereas this refers to "as they are or may be affected by". This test will not require as much certainty. As long as some link is indicated, there need only be a possibility of an effect occurring. But the link must be "by the state of the elements of the environment" or "through the elements of the environment".

**Example:**

As there was a possible link between an outbreak of E. coli infection and the disposal or treatment of waste and contamination of the water supply, a report covering this was environmental information.

[Watts v Information Commissioner \(EA/2007/0022, 6/07/2007\)](#)

"Health and safety" refers to a collective state of human health and safety. This will include information on diseases, medical conditions and risks to human safety caused or affected by a component of the environment, a factor, measure, or activity. Special mention has been made of the contamination of the food chain, which follows concerns over environmental

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factors affecting our food. "Conditions of human life" will cover, for example, information on housing, poverty, employment, social welfare, heating, access to clean water, sanitation, and healthcare where these are or may be affected by the environment.

Cultural sites will include places that have a historical, literary, educational, or artistic value, and religious, ethnic, or social significance. It will cover modern as well as historical, and urban as well as rural locations. The reference to built structures allows a focus on particular buildings, as well as other infrastructure. Built infrastructure will include roads, railway lines, pylons, bridges, canals and tunnels.

### **Extension by regulation 5(5) of the requirement to provide information covered by the definition in 2(1)(b)**

Public authorities need to be aware of the requirement in Regulation 5(5) of the EIR. This requires a public authority, when providing environmental information, to supply further information about measurement and analysis methods. This requirement applies only when a request is made for this information and only to the extent the authority can assist. Authorities are also obliged to inform the applicant where further information on measurement procedures – including methods of analysis, sampling and pre-treatment of samples – used in compiling the information can be found. As an alternative, where a standardised procedure has been used, authorities should inform the requester where details of this procedure can be found.

### **More information**

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

The Department for Environment, Food and Rural Affairs is the government department responsible for oversight of the implementation of the EIR and has further guidance on its [webpages](#).

If you need any more information about this or any other aspect of freedom of information, please contact us.

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Website: [www.ico.gov.uk](http://www.ico.gov.uk)