

## The INSPIRE Regulations 2009

### An overview and the role of the Information Commissioner

1. The INSPIRE Regulations came into force on 31 December 2009.
2. The Regulations which derive from a European Directive (INSPIRE Directive 2007/2/EC) create a right to discover and view spatial datasets (eg map data). It is not an information request based regime. The objective behind the Directive from the European Parliament was to establish an Infrastructure for Spatial Information in the European Community (INSPIRE). This will enable the sharing of environmental spatial information among public sector organisations and will better facilitate public access to spatial information across Europe.
3. The regulations apply to all public authorities in England, Wales and Northern Ireland. The Information Commissioner is responsible for regulating certain, limited, aspects of the regulations. The Information Commissioner's responsibilities under INPSIRE are intended to mirror certain aspects of his role under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.
4. Complementary INSPIRE regulations have also been made in Scotland and these are promoted and enforced by the Scottish Information Commissioner.

### Overview

5. The regulations set out:
  - what information is covered
  - which bodies are covered
  - the obligations on those bodies covered, and
  - details of how they will be enforced.

## **What information is covered?**

6. The information covered by the Regulations is, essentially, 'spatial data' this is defined in regulation 2 as, "any data with a direct or indirect reference to a specific location or geographical area." Spatial data is also often referred to as 'geospatial data' or 'geographic information'. Regulation 2 also defines a 'spatial data set' and 'spatial data service'.

## **Which bodies are covered?**

7. The definition of public authorities covered by the INSPIRE Regulations is that used in the Environmental Information Regulations 2004 (EIR) which includes public authorities covered by the Freedom of Information Act 2000 (FOIA). A public authority that holds one or more 'spatial data sets' has obligations under these regulations<sup>1</sup>. Regulation 3 provides a comprehensive definition of what constitutes a public authority.
8. A third party (defined in regulation 2), with one or more 'spatial data sets' can apply to join the INSPIRE network. For the purposes of this note any reference to a public authority includes reference to a third party.

## **The obligations on those bodies covered.**

9. Under INSPIRE, separate metadata regulations (Commission Regulation (EC) No 1205/2008) came into force on 24 December 2008. This placed obligations on public authorities and third parties to create, over a phased period ending 24 December 2013<sup>2</sup>, full metadata for spatial data sets and data services. The metadata must include the following information: quality and validity (eg where the data comes from and its scale); who is responsible for creating, managing, maintaining and distributing the data or service; any restrictions on public access or use; and any charges for access or use<sup>3</sup>.
10. The obligations placed on public authorities and third parties under the INSPIRE Regulations 2009, are set out in

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<sup>1</sup> Parish councils, including town councils, in England and community councils in Wales have obligations under these Regulations to publish spatial data sets only if they are legally required to collect or disseminate the data contained in that data set.

<sup>2</sup> UK Location Guide 3: What Needs to Happen and When July 2011

<sup>3</sup> Defra – A guide to the INSPIRE Regulations SI 2009 No. 3157

regulation 7. It requires them to establish and operate specific services including but not limited to, 'discovery services' which make it possible to search for spatial data sets and spatial data services in particular ways; 'view services' which make it possible to view, navigate, zoom in and out etc, and; 'download services' enabling copies of spatial data sets, or parts of them to be downloaded and where practicable to be accessed directly.

### **How will the regulations be enforced?**

11. The INSPIRE regulations set out what spatial data is to be published and the form in which it is made available, as well as the grounds for restricting access to the data (regulation 9). They also state that services (discovery, view, download, transform and invoke) must be available and accessible via the internet or other appropriate means of telecommunication (regulation 7(4)(c))<sup>4</sup>.
12. There are a number of ways in which the INSPIRE regulations are enforced depending on the nature of the complaint. The types of complaint that public authorities can receive are complaints about:-
  - the application of INSPIRE technical standards
  - the way a public authority has refused access to data or services
  - charging
  - re-use
  - their data sharing arrangements from other public authorities, and
  - Judicial Review

### **The application of INSPIRE technical standards**

13. In relation to regulation 6 (metadata) and regulation 7 (network services) where a user believes a public authority has not fully met these standards they may complain directly to the public authority. The complaint must be in writing. The public authority will then consider the complaint and write back to the user with its decision and provide reasons for its determination.
14. The decision must be copied to the UK Location Coordination Unit (LCU), at Defra, with a summary of the complaint and any resulting actions, this is in order to

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<sup>4</sup> UK Location Guidance on INSPIRE Complaints and Appeals

allow the Secretary of State to enforce the technical elements of the INSPIRE Regulations<sup>5</sup>.

### The way a public authority has refused access to data or services

15. Regulation 9 of the INSPIRE Regulations allows public authorities to limit access to spatial data sets or spatial data services in certain circumstances. Those circumstances relate to the potential application of certain exceptions/limitations which closely mirror the exceptions in the Environmental Information Regulations 2004. These include, for example, the protection of personal data, intellectual property rights and national security. If a user believes that information has been incorrectly withheld under regulation 9 they may make a complaint to the public authority. The complaint must be in writing and the public authority's response must also be in writing.
16. The UK Location Guidance on INSPIRE Complaints and Appeals, June 2011, recommends that complaints are answered within 20 working days, and only where there are exceptional circumstances within 40 working days. The Information Commissioner concurs with this recommendation and it reflects his own guidance on "Time limits for carrying out internal reviews".<sup>6</sup>
17. If the user remains dissatisfied after receiving the public authority's decision and reasoning for continuing to withhold the information under regulation 9 they may complain to the Information Commissioner's Office (ICO). Where the ICO issues a decision notice in relation to a complaint both the complainant and the public authority have the right to appeal that decision to the First Tier Tribunal (Information Rights).

### Charging

18. The INSPIRE Regulations allow, under regulation 10, for public authorities to charge users for certain services in particular circumstances.

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<sup>5</sup> UK Location Guidance on INSPIRE Complaints and Appeals

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/time\\_limits\\_internal\\_reviews.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/time_limits_internal_reviews.pdf)

19. Guidance on charging under the INSPIRE Regulations is set out in the UK Location Data Sharing Operational Guidance Part 2 – Licensing and Charging<sup>7</sup>. Users and public authorities should consider this guidance and the Regulations when making or addressing complaints of this type. Any complaints about charging, except within the context of charging for re-use, should be addressed, in writing, to the public authority. The public authority must write back with its decision and reasoning.
20. There is no right of appeal to the LCU or the ICO on the charging provision.

### **Re-use of data and information**

21. Any complaints about the re-use of data and information, including complaints about the level of charges applied, are subject to the complaints procedures as set out in the Re-use of Public Sector Information Regulations 2005 (PSI Regulations). This is conditional on the subject of the complaint being a public sector body that falls within the scope of the PSI Regulations.
22. Any complaints that fall within the scope of the PSI Regulations should be referred to the public authority in the first instance. If having received the public authority's decision the user remains dissatisfied they may make a complaint to the Office of Public Sector Information (OPSI), part of The National Archives, which has central responsibility for regulating the re-use of public sector information.

### Complaints by another public authority about their data sharing arrangements.

23. Under regulation 12(1) a public authority must enable other public authorities or relevant bodies to gain access to a spatial data set or spatial data service where it is required for the purpose of its public tasks<sup>8</sup> that may have an impact on the environment. A public authority may, however, limit access in certain circumstances as set out in regulation 12(2). This provision does not mention personal data but the Commissioner advises public authorities that

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<sup>7</sup> <http://location.defra.gov.uk/resources/data-publishing/>

<sup>8</sup> Defining 'public task':

<http://www.nationalarchives.gov.uk/documents/information-management/guide-to-drawing-up-a-statement-of-public-task.pdf>

they must still comply with the provisions of the Data Protection Act 1998 when sharing personal data. The Commissioner recommends that the ICO Statutory Code of Practice on Data Sharing is used as a tool when deciding if personal data can be shared<sup>9</sup>.

24. If a public authority unreasonably refuses access or imposes unreasonable charges or unreasonable licensing conditions the public authority wishing to access the data/service may complain in writing to the public authority. Complaints should again be in writing as should the public authority's response.
25. There is no right of appeal to the LCU or the ICO on the data sharing provision.

### Judicial Review

26. Judicial review is concerned with ensuring that public bodies have acted lawfully in arriving at decisions and taking actions and in the way they have used their statutory functions. This includes a consideration of whether they have acted reasonably and complied with the rules of natural justice.
27. There may be some circumstances where a user may wish to seek a judicial review.

## The Role of the Information Commissioner

28. The Commissioner's role in relation to the INSPIRE Regulations 2009 is limited in so far as the enforcement and appeal provisions of the Freedom of Information Act 2000 (FOIA) apply for the purposes of regulations 7(4)(c) and 9. In effect the enforcement and appeal provisions of the FOIA are imported into the INSPIRE Regulations 2009 by virtue of regulation 11.
29. This means the ICO's role is limited to the consideration of complaints concerning the application of the exceptions/limitations set out in regulation 9, including the personal data exception and the balancing of the relevant public interest test. The exceptions/limitations mirror, very closely, the exceptions in the EIR and the INSPIRE

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<sup>9</sup>[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Data\\_Protection/Detailed\\_specialist\\_guides/data\\_sharing\\_code\\_of\\_practice.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/data_sharing_code_of_practice.ashx)

regulations also require that a public authority has in place a complaints procedure and carries out a review of its initial decision when requested in writing.

### Regulation 7

30. Regulation 7 is about network services, search criteria and ease of access in relation to spatial data sets and spatial data services. Regulation 7(4) relates to the services in 7(2) which include, for example, discovery services, view services and download services.
31. R 7(4). The services specified in paragraph (2) must—
  - a. take into account relevant user requirements;
  - b. be easy to use; and
  - c. subject to regulation 9, be available to the public and accessible via the internet or any other appropriate means of telecommunication.
32. The Commissioner has no role in relation to 'user requirements'(a), or 'ease of use'(b), and is only concerned with regulation 7(4)(c) in relation to its interaction with regulation 9.

### Regulation 9

#### The public interest test

33. Regulation 9 sets out the limitations on access by the public to spatial data sets or spatial data services. These are the exceptions/limitations set out below and with the exception of the personal data exception are all are subject to consideration of the public interest test<sup>10</sup>, similar to that in both the FOIA and the EIR. That is, in order to limit access the public interest in limiting public access must outweigh the public interest in providing full access, in all the circumstances of the case.
34. Clearly, this reflects the FOIA/EIR public interest tests which state that, in all the circumstances of the case the public interest in maintaining the exemption/exception outweighs the public interest in disclosing the information.

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<sup>10</sup> Regulation 9(1)(b)

## The exceptions/limitations

35. A public authority or third party may limit access to spatial data sets or spatial data services available through a **discovery service** if such access *would adversely affect*:
- international relations
  - public security, or
  - national defence<sup>11</sup>
36. Similarly, a public authority or third party may limit access to spatial data sets or spatial data services available through all the other network services **view services, download services, transformation services and invoke services**<sup>12</sup> and **e-commerce services**<sup>13</sup> if such access *would adversely affect*:
- international relations, defence, national security or public safety;
  - the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
  - intellectual property rights;
  - the confidentiality of proceedings of that or any other public authority or third party where such confidentiality is provided by law;
  - the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
  - the interests or protection of the person who provided the spatial data in question where that person –
    - was not under a duty to supply that data
    - did not provide it in circumstances which other than under these regulations allowed for its disclosure
    - has not consented to its disclosure
  - the protection of the environment to which the spatial data set or spatial data service in question relates<sup>14</sup>
37. Similarly to regulation 12(9) under the EIR, under the INSPIRE regulation 9(6) a public authority or third party can not limit public access to spatial data sets or spatial data services which contains information on emissions into the environment, on a ground specified in paragraphs 5(d)

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<sup>11</sup> Regulation 9(3)

<sup>12</sup> Regulation 9(4)(a)

<sup>13</sup> Regulation 9(4)(b)

<sup>14</sup> Regulation 9(5)



to (g), ie the final four main bullet points in the preceding paragraph.

### Complaints Resolution

38. As with his current responsibilities under the FOIA and the EIR, the Commissioner will consider appropriate INSPIRE complaints by virtue of section 50 of the FOIA.
39. INSPIRE regulation 11 makes provision for virtually all of the enforcement and appeal provisions in the FOIA to apply for the purposes of regulations 7(4)(c) and 9 as they apply for the purposes of the FOIA. The only provisions which do not apply relate to section 53 (Ministerial Veto) and section 60 (Appeals against national security certificate).
40. This along with the fact that the exceptions/limitations under the INSPIRE Regulations 2009 closely mirror the EIR exceptions indicates that a similar approach to casework as currently undertaken in EIR cases should be the starting point for case-officers.
41. Where the Commissioner decides that a public authority has incorrectly applied an exception/limitation he will issue a decision notice which will order steps requiring the public authority to comply with regulation 7(4)(c), ie to make the information available to the public.
42. In those cases where a decision notice is issued the right of appeal provided by section 57 of the FOIA will be available to both the user/complainant and the public authority.

### What is the Information Commissioner not able to consider?

43. As indicated in the overview section above the Information Commissioner does not have jurisdiction to consider the following issues in relation to the INSPIRE Regulations.
  - The application of INSPIRE technical standards.
  - Charging.
  - Re-use.
  - Complaints by another public authority about the data holder's data sharing arrangements.

44. These aspects of the INSPIRE Regulations are outside of the Information Commissioner's remit and he is therefore unable to adjudicate on any of these matters.
45. Whilst it is not for the Information Commissioner to adjudicate on the data sharing provisions under the INSPIRE Regulations, in his role as Data Protection regulator he may be open to expressing a view on the data sharing arrangements of public authorities.

#### Other considerations

46. Recognising that, depending on the nature of a complaint, there are a number of different avenues for pursuing complaints under the INSPIRE Regulations, the Information Commissioner will work with the LCU and OPSI to ensure that appropriate complaints are transferred to the right regulator.
47. The Commissioner presently has a protocol in place with OPSI in relation to their respective responsibilities in relation to access to information and the re-use of information<sup>15</sup>. The Commissioner is currently reviewing this protocol with OPSI and he also exploring whether a similar arrangement with the LCU is needed. In the meantime, all parties are committed to sharing information about caseloads on a regular basis and sharing good practice and expertise when necessary.

### Further information

The Information Commissioner's Office  
[www.ico.gov.uk](http://www.ico.gov.uk)

Information on the INSPIRE Directive can be found at:  
<http://inspire.jrc.ec.europa.eu/>

You can contact the LCU via the website, at this page:  
<http://location.defra.gov.uk/resources/contact-us/>

Office of Public Sector Information  
[standards@nationalarchives.gsi.gov.uk](mailto:standards@nationalarchives.gsi.gov.uk)

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<sup>15</sup> <http://www.nationalarchives.gov.uk/information-management/legislation/directive-and-regulations.htm>