

2009 No. 440

ENVIRONMENTAL PROTECTION

PUBLIC SECTOR INFORMATION

The INSPIRE (Scotland) Regulations 2009

Made - - - - *10th December 2009*

Laid before the Scottish Parliament *14th December 2009*

Coming into force - - *31st December 2009*

The Scottish Ministers make the following Regulations, in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act and it appears to the Scottish Ministers that it is expedient for any reference in these Regulations to—

- (a) Commission Regulation (EC) No 1205/2008 regarding metadata(b) to be construed as a reference to that Regulation as amended from time to time, and
- (b) Annexes I, II and III to Directive 2007/2/EC of the European Parliament and of the Council establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)(c) to be construed as a reference to those provisions as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the INSPIRE (Scotland) Regulations 2009 and come into force on 31st December 2009.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Freedom of Information (Scotland) Act 2002(d);

“the Directive” means Directive 2007/2/EC of the European Parliament and of the Council of 14th March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE);

“discovery service” means a service described in regulation 8(2)(a);

(a) 1972 c.68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).

(b) O.J. No. L 326, 4.12.2008, p 12.

(c) O.J. No. L 108, 25.4.2007, p 1.

(d) 2002 asp 13.

“metadata” means information describing spatial data sets and spatial data services and making it possible to discover, inventory and use them;

“Metadata Regulation” means Commission Regulation (EC) No. 1205/2008 regarding metadata;

“Scottish public authority” has the meaning given by regulation 3;

“spatial data” means any data with a direct or indirect reference to a specific location or geographical area;

“spatial data service” means a service which consists of operations which may be performed, by invoking a computer application—

- (a) on the spatial data contained in a spatial data set, or
- (b) on the metadata related to a spatial data set;

“spatial data set” means an identifiable collection of spatial data which—

- (c) are in electronic format,
- (d) relate to one or more of the themes listed in Annex I, II or III to the Directive, and
- (e) relate to—
 - (i) the United Kingdom,
 - (ii) Gibraltar,
 - (iii) the territorial sea of the United Kingdom^(a),
 - (iv) an area of the continental shelf for the time being designated by an Order in Council under section 1(7) of the Continental Shelf Act 1964^(b), or
 - (v) an area, outside the territorial sea of the United Kingdom, for the time being designated by an Order in Council under section 84(4) of the Energy Act 2004^(c);

“third party” has the meaning given by regulation 4.

(2) Other terms used in these Regulations that are also used in the Directive have the meaning they bear in the Directive.

(3) For the purposes of these Regulations—

- (a) a Scottish public authority is responsible for a spatial data set if—
 - (i) that authority holds that data set (other than on behalf of another person), or
 - (ii) another person holds that data set on behalf of that authority;
- (b) a Scottish public authority is responsible for a spatial data service if—
 - (i) that authority operates that data service (other than on behalf of another person), or
 - (ii) another person operates that data service on behalf of that authority;
- (c) a third party is responsible for a spatial data set if—
 - (i) that third party holds that data set (other than on behalf of another person), or
 - (ii) another person holds that data set on behalf of that third party; and
- (d) a third party is responsible for a spatial data service if—
 - (i) that third party operates that data service (other than on behalf of another person), or
 - (ii) another person operates that data service on behalf of that third party.

(4) In these Regulations—

- (a) any reference to the Metadata Regulation is a reference to the Metadata Regulation as amended from time to time; and

(a) See section 1 of the Territorial Sea Act 1987 (c.49).

(b) 1964 c.29.

(c) 2004 c.20.

- (b) any reference to Annex I, II or III to the Directive is a reference to that Annex to the Directive as amended from time to time.

Meaning of “Scottish public authority”

3.—(1) In these Regulations, “Scottish public authority” means—

- (a) a public authority as defined in section 3(1) of the Act, but excluding any body, person or office-holder listed in schedule 1 to that Act only in relation to information of a specified description, or
- (b) any other body or other person that is under the control of a person falling within subparagraph (a) and has public responsibilities relating to the environment, exercises functions of a public nature relating to the environment, or provides public services relating to the environment.

(2) But in regulation 13 “Scottish public authority” does not include the bodies or persons falling within paragraph (1)(b).

(3) These Regulations shall not apply to any Scottish public authority to the extent that it is acting in a judicial or legislative capacity.

Meaning of “third party”

4.—(1) In these Regulations, “third party” means a person who—

- (a) is—
 - (i) an individual whose address is in Scotland; or
 - (ii) a body corporate, partnership or unincorporated association whose principal office is in Scotland; and
- (b) is not a person falling within paragraph (2).

(2) A person falls within this paragraph if that person—

- (a) is a public authority in the United Kingdom;
- (b) holds a spatial data set or operates a spatial data service on behalf of such a public authority; or
- (c) holds a spatial data set or operates a spatial data service on behalf of—
 - (i) an individual whose address is in England, Wales or Northern Ireland; or
 - (ii) a body corporate, partnership or unincorporated association whose principal office is in England, Wales or Northern Ireland.

Scope of application of the Regulations: spatial data sets and spatial data services

5.—(1) In so far as a provision of these Regulations concerns a spatial data set for which a Scottish public authority is responsible, that provision applies in relation to that spatial data set only if that data set is held—

- (a) by a Scottish public authority which has produced or received that data set, or manages or updates that data set, within the scope of its public tasks; or
- (b) by another person on behalf of a Scottish public authority which has produced or received that data set, or managed or updated that data set, within the scope of that authority’s public tasks.

(2) But where multiple identical copies of the same spatial data set are held by or on behalf of various Scottish public authorities, that provision applies only in relation to the reference version from which the various copies are derived.

(3) Subject to paragraph (4), in so far as a provision of these Regulations concerns a spatial data set for which a third party is responsible, that provision applies in relation to that spatial data set

only if that data set has been linked to a network of related spatial data sets following satisfaction of the conditions specified in regulation 9(3).

(4) The proviso specified in paragraph (3) does not apply to regulation 9(2).

(5) In so far as a provision of these Regulations concerns a spatial data service, that provision applies in relation to that spatial data service only if that provision applies in relation to the spatial data set to which that spatial data service relates.

Intellectual property rights

6. Where a Scottish public authority or a third party is responsible for a spatial data set, it must not take any action under these Regulations in relation to that data set unless it has the consent of any other person who holds intellectual property rights in relation to that data set.

Metadata

7.—(1) A Scottish public authority or a third party must create metadata(a) in relation to any spatial data set or spatial data service for which that authority or third party is responsible.

(2) Metadata in relation to a spatial data set or a spatial data service must include the following information—

- (a) the quality and validity of that data set or data service;
- (b) the person responsible for the establishment, management, maintenance and distribution of that data set or data service;
- (c) any limitations on public access to that data set or data service, and the reasons for such limitations;
- (d) any conditions applying to access to, and use of, that data set or data service; and
- (e) any charges payable in relation to access to, and use of, that data set or data service.

(3) Metadata must be complete and must be kept up to date.

(4) Metadata relating to—

- (a) spatial data sets corresponding to the themes listed in Annex I or Annex II to the Directive, and
- (b) spatial data services relating to those data sets,

must be created by 24th December 2010.

(5) Metadata relating to—

- (a) spatial data sets corresponding to the themes listed in Annex III to the Directive, and
- (b) spatial data services relating to those data sets,

must be created by 24th December 2013.

Network services

8.—(1) A Scottish public authority or a third party must establish and operate the services(b) described in paragraph (2) in relation to any spatial data set or spatial data service—

- (a) for which that authority or third party is responsible, and
- (b) in relation to which metadata have been created in accordance with regulation 7 and the Metadata Regulation.

(a) See Commission Regulation (EC) No. 1205/2008.

(b) See Commission Regulation (EC) No. 976/2009, O.J. No. L 274, 20.10.2009, p.9.

- (2) The services are—
- (a) discovery services—
 - (i) making it possible to search for spatial data sets and spatial data services on the basis of the content of the corresponding metadata and to display the content of the metadata, and
 - (ii) making it possible to search according to, as a minimum, the search criteria specified in paragraph (3) (used alone or in combination);
 - (b) view services making it possible, as a minimum, to display, navigate, zoom in and out, pan, or overlay viewable spatial data sets and to display legend information and any relevant content of metadata;
 - (c) download services, enabling copies of spatial data sets, or parts of such sets, to be downloaded and, where practicable, accessed directly;
 - (d) transformation services, enabling spatial data sets to be transformed with a view to achieving interoperability; and
 - (e) services allowing spatial data services to be invoked.
- (3) The matters referred to in paragraph (2)(a)(ii) are—
- (a) keywords;
 - (b) classification of spatial data and spatial data services;
 - (c) the quality and validity of spatial data sets;
 - (d) geographical location;
 - (e) conditions applying to the access to and use of spatial data sets and spatial data services; and
 - (f) the person responsible for the establishment, management, maintenance and distribution of spatial data sets and spatial data services.
- (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 10, be available to the public and accessible via the internet or any other appropriate means of telecommunication.

(5) In paragraph (2), “interoperability” means the possibility for spatial data sets to be combined, and for services to interact, without repetitive manual intervention, in such a way that the result is coherent and the added value of the data sets and services is enhanced.

Linking to a network

9.—(1) The Scottish Ministers must enable a Scottish public authority to link any spatial data set or spatial data service for which that authority is responsible to a network of related spatial data sets or spatial data services, provided that the conditions specified in paragraph (3) are satisfied in relation to that data set or data service.

(2) The Scottish Ministers must enable a third party to link any spatial data set or spatial data service for which that third party is responsible to a network of related spatial data sets or spatial data services, provided that—

- (a) the third party makes a request to that effect; and
- (b) the conditions specified in paragraph (3) are satisfied in relation to that data set or data service.

(3) The conditions are—

- (a) metadata have been created in accordance with regulation 7 and the Metadata Regulation; and
- (b) services have been established and are operated in accordance with regulation 8.

Public access to spatial data sets and spatial data services

10.—(1) Subject to paragraph (6), access by the public to a spatial data set or spatial data service by means of a service specified in regulation 8(2) may be limited only if—

- (a) a limitation is permitted or required under paragraph (2), (3) or (4); and
- (b) except in the case of a limitation under paragraph (2)(a), the public interest in limiting or placing conditions on public access outweighs the public interest in providing full access, in all the circumstances of the case.

(2) A Scottish public authority or a third party must not provide public access to personal data included in a spatial data set for which that authority or third party is responsible, if the provision of public access to that personal data otherwise than under these Regulations would contravene—

- (a) any of the data protection principles, or
- (b) section 10 of the Data Protection Act 1998^(a) (right to prevent processing likely to cause damage or distress),

and in this paragraph “personal data” and “the data protection principles” have the same meanings as in that Act.

(3) A Scottish public authority or a third party may, in relation to a spatial data set or spatial data service for which that authority or third party is responsible, limit public access to that data set or data service through a discovery service if such access would adversely affect international relations, public security or national defence.

(4) A Scottish public authority or a third party may, in relation to a spatial data set or spatial data service for which that authority or third party is responsible—

- (a) limit public access to that data set or data service through a service described in regulation 8(2)(b), (c), (d) or (e), or
- (b) limit public access to the e-commerce services referred to in regulation 11(4) which relate to that data set or data service,

if such access would adversely affect any matter specified in paragraph (5).

(5) The matters are—

- (a) international relations, defence, national security or public safety;
- (b) 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;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of any body where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- (f) the interests or protection of the person who provided the spatial data in question where that person—
 - (i) was not under, and could not have been put under, any legal obligation to supply that data to any other person,
 - (ii) did not provide that data in circumstances such that any person is entitled apart from these Regulations to provide public access to that data, and
 - (iii) has not consented to the public being provided with access to that data; and
- (g) the protection of the environment to which the spatial data set or spatial data service in question relates.

(a) 1998 c. 29.

(6) A Scottish public authority or a third party may not limit public access to a spatial data set or spatial data service which contains information on emissions into the environment, on a ground specified in paragraph (5)(d), (e), (f) or (g).

Charges for public access

11.—(1) Except as provided by paragraph (2), a Scottish public authority or a third party must not charge the public for a discovery service or a view service which that authority or third party operates in relation to a spatial data set or spatial data service for which that authority or third party is responsible.

(2) A Scottish public authority or a third party may charge the public for a view service where that charge secures the maintenance of spatial data sets and spatial data services, especially in cases involving very large volumes of frequently updated data.

(3) A Scottish public authority or a third party may charge the public a reasonable sum for a service described in regulation 8(2)(c), (d) or (e) which that authority or third party operates in relation to a spatial data set or spatial data service for which that authority or third party is responsible.

(4) Where a Scottish public authority or a third party charges the public for a view service or a service described in regulation 8(2)(c) or (e), that authority or third party must ensure that e-commerce services are available in relation to that service.

(5) Spatial data made available through a view service may be in a form preventing their re-use for commercial purposes.

(6) In this regulation, “view service” means a service described in regulation 8(2)(b).

Enforcement and appeals in relation to public access

12.—(1) The provisions of the Act specified in paragraph (2) apply for the purposes of regulations 8(4)(c) and 10 as they apply for the purposes of the Act, but with the modifications specified in the Schedule to these Regulations.

(2) Those provisions are—

- (a) section 47 (application for decision by Commissioner);
- (b) section 48 (when application excluded);
- (c) section 49 (Commissioner’s decision);
- (d) section 50 (information notices);
- (e) section 51 (enforcement notices);
- (f) section 53 (failure to comply with notice);
- (g) section 54 and schedule 3 (powers of entry and inspection);
- (h) section 55 (no civil right of action against Scottish public authority); and
- (i) section 56 (appeal against notices)

(3) Section 63 of the Act applies to any information obtained by, or furnished to, the Scottish Information Commissioner under or for the purposes of regulation 8(4)(c) or 10.

Data-sharing between public authorities etc.

13.—(1) A Scottish public authority must, in relation to a spatial data set or spatial data service for which it is responsible—

- (a) enable any other Scottish public authority or a relevant body to gain access to that data set or data service, and
- (b) enable any other Scottish public authority or a relevant body to exchange and use that data set or data service,

where that authority or body requires that data set or data service for the purpose of its public tasks that may have an impact on the environment.

(2) But a Scottish public authority may limit sharing of the kind described in paragraph (1) when this would compromise the course of justice, public security, national defence or international relations.

(3) Subject to paragraphs (4), (5) and (6), a Scottish public authority which supplies a spatial data set or spatial data service to another such authority or a relevant body may impose conditions on the access to or exchange or use of that data set or data service, for example by doing either or both of the following—

- (a) providing that access to that data set or data service, or exchange or use of that data set or data service, is subject to terms and conditions imposed by a licence;
- (b) making a charge for the access to, or exchange or use of, that data set or data service.

(4) But any such conditions must be compatible with the aim of facilitating the sharing of spatial data sets and spatial data services among Scottish public authorities and between such public authorities and relevant bodies, and must avoid creating practical obstacles, occurring at the point of use, to such sharing.

(5) Where a Scottish public authority makes a charge as described in paragraph (3)(b), the charge must be kept to the minimum required to ensure the necessary quality and supply of spatial data sets and spatial data services together with a reasonable return on investment, and any requirement on an authority to be self-financing is to be respected.

(6) Where, under EU legislation relating to the environment, a Scottish public authority is required to report a matter to an institution or body of the EU, that authority must not charge that body in relation to the provision to that body of a spatial data set or spatial data service in satisfaction of that requirement.

(7) In this regulation “relevant body” means—

- (a) a public authority in the United Kingdom (other than a Scottish public authority),
- (b) a public body in another member State,
- (c) an institution or body of the EU, or
- (d) a body established by an international agreement to which the EU and the United Kingdom are parties.

Internal complaints procedure

14.—(1) A Scottish public authority or a third party must establish an internal complaints procedure for dealing with a complaint relating to the performance of its functions under these Regulations.

(2) A complaint relating to the performance by a Scottish public authority or a third party of its functions under these Regulations—

- (a) must be pursued according to the complaints procedure established by that authority or third party under paragraph (1); and
- (b) must be made in writing.

(3) A Scottish public authority or a third party must determine a complaint within a reasonable time, and must notify the complainant of its determination without delay.

(4) Notification under paragraph (3) must be in writing and give reasons for the determination.

Enforcement and monitoring

15.—(1) The Scottish Ministers have the following functions in relation to the Directive—

- (a) enforcing the requirements of—
 - (i) regulation 7, and
 - (ii) regulation 8, except paragraph (4)(c); and

(b) monitoring the implementation and use of the infrastructure for spatial information and making the findings available to the public.

(2) The Scottish Ministers must issue guidance to Scottish public authorities and third parties which are responsible for spatial data sets or spatial data services regarding their implementation of the Directive.

(3) Guidance issued under paragraph (2) must include provision relating to the internal complaints procedure which authorities and third parties are required to establish under regulation 14.

(4) In performing their functions under these Regulations, Scottish public authorities and third parties must have regard to guidance issued under paragraph (2).

(5) Scottish public authorities and third parties must provide such information to the Scottish Ministers as they may require in order to perform the functions described or referred to in paragraphs (1) and (2).

(6) In this regulation, “infrastructure for spatial information” means metadata, spatial data sets and spatial data services; network services and technologies; agreements on sharing, access and use; and coordination and monitoring mechanisms, processes and procedures, established, operated or made available in accordance with the Directive.

JOHN SWINNEY

A member of the Scottish Executive

St Andrew’s House
Edinburgh
10th December 2009

SCHEDULE

Regulation 12(1)

MODIFICATIONS OF PROVISIONS OF THE FREEDOM OF INFORMATION (SCOTLAND) ACT SPECIFIED IN REGULATION 12(2)

1.—(1) In the provisions specified in regulation 12(2), after each reference to “Scottish public authority” or “authority” insert “or third party”.

(2) In those provisions as modified by this Schedule—

- (a) any reference to “Scottish public authority” or “authority” is a reference to a Scottish public authority as defined in these Regulations;
- (b) any reference to “third party” is a reference to a third party as defined in these Regulations; and
- (c) “the 2009 Regulations” means these Regulations.

2. In section 47—

(a) for subsection (1), substitute—

“(1) A person may make application to the Commissioner for a decision whether, in any respect specified in the application, a Scottish public authority or third party has acted or is acting in a way which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations.”;

- (b) omit paragraph (c) of subsection (2); and
- (c) omit subsections (4) to (7).

3. In section 48—

- (a) for “a request for review made to” substitute “an act of”; and
- (b) for “information requested is held”, substitute “act was carried out”.

4. In section 49—

(a) at the end of subsection (1), insert—

“; or

(c) the applicant has not exhausted the complaints procedure provided by the Scottish public authority or third party under regulation 14 of the 2009 Regulations”;

(b) in subsection (6)—

- (i) for the words from “that authority” to “Act”, substitute “a Scottish public authority or third party has acted or is acting in a way which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations”; and
- (ii) for paragraphs (a) and (b), substitute—

“(a) the steps which must be taken by the Scottish public authority or third party for rectifying the incompatibility;” and

(c) subsection (9) is omitted.

5. In section 50(1)—

- (a) for sub-paragraphs (i) and (ii) of paragraph (b), substitute “for the purpose of determining whether a Scottish public authority or a third party has acted or is acting in a way which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations” and
- (b) for “to compliance with this Act or to conformity with the code of practice”, substitute “or to the purpose specified in paragraph (b),”.

6. In section 51—

- (a) in subsection (1), for “failed to comply with a provision of Part 1 of this Act” substitute “acted in a way which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations”;
- (b) in subsection (2)(a), for the words after “provision” substitute “of the 2009 Regulations with which the Commissioner is satisfied that the actions of the authority or third party are not compatible and the reasons for reaching that conclusion”; and
- (c) omit subsection (5).

7. In section 53(1)(a), for “(6)(b)” substitute “(6)(a)”.

8. In section 55(1), for the words after “in respect of” substitute “action which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations”.

9. In Schedule 3—

- (a) for paragraph 1(1), substitute—

“(1) If a sheriff is satisfied by evidence on oath supplied by the Commissioner that there are reasonable grounds for suspecting that a Scottish public authority or a third party—

- (a) has acted or is acting in a way which is not compatible with regulation 8(4)(c) or 10 of the 2009 Regulations;
- (b) has failed or is failing to comply with so much of a decision notice as requires steps to be taken; or
- (c) has failed or is failing to comply with an information notice or an enforcement notice,

and that evidence of such actions or such a failure to comply is to be found on any premises specified as part of that evidence, the sheriff, subject to paragraph 2, may grant to the Commissioner such warrant as is mentioned in sub-paragraph (2).”; and

- (b) in paragraph 7, for “which is exempt information by virtue of section 31(1)” substitute “to which public access may be limited under regulation 10(5)(a) of the 2009 Regulations on the ground that such access would adversely affect national security”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2007/2/EC (O.J. L 108, 25.4.2007, p. 1) (“the Directive”) which concerns the creation and operation of national and Community infrastructures relating to spatial information for the purposes of Community environmental policies and other policies or activities which may have an impact on the environment.

Certain provisions of the Directive are dependent on the adoption by the European Commission of further implementing rules, and where those rules have not yet been adopted, those provisions are not implemented in these Regulations.

These Regulations apply in relation to Scottish public authorities and certain third parties.

Regulation 2 contains definitions, including a definition of “spatial data set” which refers to the spatial data themes listed in Annex I, II or III to the Directive.

Regulation 3 defines “Scottish public authority” and regulation 4 defines “third party”.

Regulation 5 provides for the scope of application of the Regulations to spatial data sets and spatial data services.

Regulation 7 requires authorities to create and update metadata relating to their spatial data sets and services, by dates specified in that regulation.

Regulation 8 provides that authorities must establish and operate network services, including discovery and view services, in relation to their spatial data sets and services, and regulation 9 provides for the linking of such services to a network.

Regulation 10 permits certain limitations on the right of public access to spatial data sets and services through the services described in regulation 8, and regulation 11 relates to charging for the provision of those services.

Regulation 12 and the Schedule make provision in connection with applications to the Scottish Information Commissioner concerning public access under regulation 10.

Regulation 13 relates to data-sharing among Scottish public authorities for the purposes of public tasks relating to the environment, and to sharing between public authorities and public bodies in the rest of the UK or in other member States, or EU or international bodies.

Regulation 14 requires authorities to establish an internal complaints procedure for dealing with complaints relating to the performance of their functions under these Regulations.

Regulation 15 gives the Scottish Ministers certain enforcement and monitoring functions. They are required to issue guidance to authorities and third parties regarding their implementation of the Directive.

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