



Access to environmental information: the importance of the European framework

Introduction

The Environmental Rights Centre for Scotland (ERCS) aims to increase people's awareness of their rights relating to the environment. One of the most basic of these is the right to obtain environmental information held by public bodies.

This is the second in a series of ERCS information sheets on that right. Our [first sheet](#) explained how to obtain environmental information. This one explains why environmental information is treated differently from other types of information, by examining the background to the right in international policy and law, and why that should continue to be relevant in Scotland post-Brexit. The key points are:

- The original right of access to environmental information stems from a 30-year-old European Union (EU) law, pre-dating general 'freedom of information' legislation in the UK and Scotland.
- The current right is based primarily on the Aarhus Convention.
- From 2021, Brexit could lead to changes to the right of access to environmental information held by UK-wide public bodies, but the power to legislate on access to information held by Scottish public bodies is devolved to the Scottish Parliament.

The need for access to information held by public bodies

Public bodies are set up by law and funded by the public purse to do things for the public interest. The law gives them powers and duties to regulate the activities of private individuals and organisations on behalf of the general public, so they should always act with openness and transparency. A legal right of access to information held by such bodies, including information about what they are doing in our name, gives citizens a guarantee that public bodies are acting as the law intended them to.

In 2000, the Westminster Parliament passed the [Freedom of Information Act](#), creating for the first time a general right in the UK for members of the public to obtain information held by public bodies, but it does not apply to Scottish public bodies because these are covered by the [Freedom of Information \(Scotland\) Act 2002](#): the new Scottish Parliament was free to pass its own legislation on access to information, because information law is not [reserved to Westminster under the Scotland Act 1998](#).

The first UK legislation on access to environmental information

There is a particular public interest in making information about the environment accessible to the public, because the environment cannot speak for itself. This may explain why the first general right for the public to obtain environmental information was granted in UK law (including Scots law) in 1992, nearly ten years before the right to obtain any other type of information held by public bodies.

Like most UK environmental law, this legislation had its origins in a directive by the European Economic Community – the predecessor of the EU. This was [Directive 90/313/EEC on Freedom of Access to Information on the Environment](#), which articulated the bold principle that

“access to information on the environment held by public authorities will improve environmental protection”,



and obliged all member states to ensure that “*public authorities are required to make available information relating to the environment to any natural or legal person at [their] request and without [their] having to prove an interest*”.

The UK Government duly transposed this directive into UK law via the [Environmental Information Regulations 1992](#) (UK Statutory Instrument (SI) 1992/3240) – which applied throughout the UK but have now been [superseded](#) – see below.

The current legislation on access to environmental information

In 1998, the United Nations Economic Commission for Europe (UNECE)– which is separate from the EU, and of which the UK remains a member state – made the [Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters](#) (known as the ‘Aarhus Convention’ after the city in Denmark where it was agreed).

The preamble to the Convention expresses the principles that

“every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations”

and that

“to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters”.

The EU is a signatory to the Aarhus Convention, and incorporated its more wide-ranging access-to-information provisions into EU law by making a new [Directive 2003/4/EC on Public Access to Environmental Information](#) (which also repealed the original 1990 Directive mentioned above).

The UK and Scottish Governments introduced separate secondary legislation to implement the 2003 Directive and replace the 1992 Regulations: respectively, the [Environmental Information Regulations 2004](#) (UK SI 2004/3391) and the [Environmental Information \(Scotland\) Regulations 2004](#) (Scottish SI 2004/520). This means that the Aarhus right of access to environmental information held by all public bodies in the UK is firmly embedded in UK and Scots law – for now.

The impact of Brexit on access to environmental information

The UK left the EU on [31 January 2020](#), in accordance with the amended EU (Withdrawal) Act 2018. As it stands, that Act provides that all UK and Scottish secondary legislation that was made to implement EU law – including the two current sets of Environmental Information Regulations – remains [in full force during the transition period](#), which is due to end on 31 December 2020. From the end of that period, each item of such legislation will continue in effect until it is individually amended or repealed.

The UK will still be legally bound by the Aarhus Convention, but without the [strong enforcement mechanisms of the EU](#), there will be fewer consequences for deviating from it, so it may become harder, even for people in Scotland, to obtain environmental information from UK-wide public bodies.



However, the Scottish Government has promised that it will [keep Scots law aligned with EU law](#) for the foreseeable future, so the strong principles behind the European framework should continue to guide responses by Scottish public authorities to requests for environmental information.

For further information contact info@ercs.scot.

Web addresses of useful resources:

Scottish Information Commissioner: <http://www.itspublicknowledge.info/Law/EIRs/EIRs.aspx>.

UNECE information about the Aarhus Convention: <https://www.unece.org/env/pp/introduction.html>.