
Public access to environmental information

**Experience gained in
the application of
Directive 2003/4/EC**



Government of Gibraltar

Department of the
Environment

THE EXPERIENCE GAINED IN THE APPLICATION OF DIRECTIVE 2003/4/EC CONCERNING ON PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION

1. General description

Summarize the implementation of the Directive in particular at national and regional level.

The Directive was transposed into local legislation on the 8th December 2005 as the 'Freedom of Access to Information on the Environment Regulations 2005'. The regulations came into effect on the 18th January 2007.

2. Experience gained

Describe which have been, according to your experience, positive and negative impacts of the application of the Directive so far (for instance, increased involvement of civil society/stakeholders in specific environmental matters, facilitating the decision-making-process and implementation of the consequent decisions, administrative burden ...).

The Freedom of Access to Information on the Environment Regulations 2005 have provided more information to citizens on the legal rights they enjoy with regard to access to information generally and have pressed the Government to create the necessary administrative and enforcement frameworks within which this system can operate effectively.

To date, there have been no requests made for environmental information, suggesting that the public is satisfied with the level of input it can make into the policy process through the existing stakeholder and advisory consultation groups. The Ministry for the Environment has a policy of conducting workshops and engaging with non-governmental organisations and pressure groups on environmental matters it maybe that this is why we have not had any request for information under the Regulations.

As a result of the lack of requests it is difficult to say what the impact would be on any decision making process or administrative procedure.

3. Definitions (Article 2) – Regulation 2 (1) and 2(2)

3.1 Have you encountered any particular difficulties relating to the interpretation and management of the definition of '*environmental information*'?

As we have received no requests for environmental information we have not as yet encountered any particular difficulties in this regard.

3.2 According to your national/regional situation, give examples of the types of bodies that have been found to be covered by the provisions of Article 2, paragraph 2, letter b, ‘any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment..’ and letter c, ‘any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within (a) or (b)’?

The following types of bodies have been found to be covered by the provisions of Article 2:

- Any Government Department, Authority or Wholly Owned Government Company
- Any Government contracted Service provider or partly owned Government company

3.3 Do you have any other observations relating to the practical application of Article 2?

None

4. Access to environmental information (Article 3) – Regulations 5, 6, 7

4.1 What are the practical arrangements as referred to in Article 3(5) c), set up by, in particular, national and regional authorities? Please provide examples of these practical arrangements.

The implementation of the Regulations was accompanied by an exercise by the Government of Gibraltar to ensure that all officials were fully aware of their obligations under the legislation. The Department of the Environment and the Legislative Support Unit organised a training seminar for all Government departments and the various bodies to whom these Regulations apply, on the implications of the legislation and how it should be implemented.

A Guidance Package was prepared and given to all affected bodies. The Guidance Packages contained detailed information on when the legislation applies and on the procedure to be followed when a request is received.

Environmental information on various topics (e.g. air, water, waste, noise, IPPC, Emissions Trading, environmental education etc) are available on the Government and Environmental Agency's websites (www.gibraltar.gov.gi and www.environmental-agency.gi).

4.2 In which way has it been ensured that the public has adequate information of the rights they enjoy, as referred to in Article 3 (5) last paragraph?

Information for the public on their rights in regards to access to environmental information can be found on the Ministry for the Environment's website, where the seminar information is available. In addition to this, information on the legislation and its implications came out in the local press when the legislation was passed.

4.3 Do you have any other observations relating to the practical application of Article 3?

None

5. Exceptions (Article 4) – Regulation 12

5.1 Amongst the possible exceptions listed in Article 4, which ones have been retained in the implementation of Directive, to refuse access to environmental information?

All the exceptions have been retained.

5.2 Have the Member States or regions issued any guidance (such as circulars or guidelines) governing the granting of exceptions?

Information on the granting of exceptions is contained in the Guidance Package which was distributed to relevant departments and authorities during the seminar.

5.3 Have any steps been taken to ensure the accessibility of a list of criteria, as mentioned under Article 4(3), on the basis of which the authority concerned may decide how to handle requests?

Information on this is contained in the Guidance Package

5.4 Do you have any other observations relating to the practical application of Article 4?

None

6. Charges (Article 5) – Regulation 8

6.1 According to Article 5 (2) public authorities may make a charge for supplying environmental information. Have public authorities fixed charges? Please give examples of what measures public authorities have implemented on charging.

The Access to Information on the Environment Regulations provides the discretion to make a reasonable charge for providing environmental information. Charges should not be made for allowing an applicant access to public registers or for an applicant to examine the information requested.

Schedule of Charges

The Regulations clearly state that a schedule of charges must be produced. In response to this obligation, the Government of Gibraltar has decided to abide by a specific charge scheme described below.

- Man-hour costs are set at a limit of £100. Thereafter a charge will be made. The charge for man-hours is £25 per hour, irrespective of grade. The £100 limit therefore equates to 4 hours, i.e. half a working day for one officer.
- Disbursements are set at a limit of £100. Thereafter a charge will be made.
- Disbursement will include:
 - Printing or photocopying costs of 10p per page per side (A4 black & white); 15p per page per side (A3 black & white); 95p per page per side (A4 colour photocopying); £1.90 per page per side (A3 colour photocopying). Please note that these figures are based on local commercial rates.
 - Copying to different media including photographic prints, scanning to CD-ROM, etc – details to be provided when responding to the particular request.
 - Postage or other delivery charges.

This charge scheme will be reviewed on an annual basis in line with the philosophy of the regulation which states that charges must at all times be reasonable.

Officers handling environmental information should exercise some discretion should the exceedence be minimal. The applicant requesting information should be advised of the fee payable as previously discussed and they will then have the option of either curtailing the amount of information being sort, capping the man hours to be expended, capping the disbursements or agree to pay the requested amount.

6.2 Please explain how it has been ensured that the applicants are aware of a schedule of charges and circumstances in which a charge may be levied or waived.

Upon receipt of a request, a public or affiliated entity is entitled to solicit an advanced payment of a charge for making environmental information available. If it does it shall, no later than 1 month after the date of receipt of the request, notify the applicant of this requirement and the exact amount that the advanced payment entails. The applicant will be sent a letter informing them of the costs of their request accompanied by a schedule detailing how these costs were calculated.

6.3 Do you have any other observations relating to the practical application of Article 5?

None

7. Access to justice (Article 6) – Regulations 11, 16 and 18

7.1 What kind of review procedure is provided for an applicant in cases mentioned in Article 6(1)? Please specify the appointed authority or independent body?

Under Regulation 11 of the Freedom of Access to Information on the Environment Regulations 2005, applicants may make representations to a public authority. These representations must be made in writing no later than 2 months after the date on which the applicant feels the public authority has failed to comply with its requirements.

The public authority must then, at no charge:

- Consider the representations and any supporting evidence produced by the applicant
- Decide whether the original request had been dealt with in accordance with the regulations
- Notify the applicant of the outcome as soon as possible and no later than 2 months after the receipt of the representations

Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification shall include a statement of –

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

7.2. What kind of procedure is provided for an applicant in cases mentioned in Article 6(2)? Please specify three institutions entitled to review.

If they are dissatisfied with the outcome of their representation, members of the public have a further right of appeal to the Gibraltar Regulatory Authority (GRA). The GRA will review the facts of the case and make an independent assessment of the public interest test. Should the GRA come to the conclusion that the information should be released, it will issue an enforcement notice which will set out the steps which the public authority must take and the date by which they must be taken. This may lead to the disclosure of some or all of the information requested.

7.3 Is the decision issued by the institution referred to in question 7.2 final? If not, please specify what kind of procedures could follow this one to get a final decision?

The decision of the GRA may be appealed in the Magistrate's Court.

7.4 Do you have any other observations relating to the practical application of Article 6?

None

8. Dissemination of environmental information (Article 7) – Regulation 4

8.1 Which measures have been taken to ensure that public authorities organise the environmental information, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunications and/or electronic technology?

Environmental information is regularly added to the Government website when work or information is available and complete. This includes details of seminars which have been held and electronic copies of reports, guidance documents and newsletters. In addition to this, copies of informational newsletters are distributed bi-annually as an insert in a local newspaper. Other non-governmental bodies publish relevant information on their own websites in the form of reports and statistics (e.g. Environmental Agency www.environmental-agency.gi ; Gibraltar Air Quality www.gibraltairquality.gi)

8.2 What are the measures taken to ensure that information is updated, as appropriate?

Regulation 5 (4) of the Freedom of Access to Information on the Environment Regulations requires that, where information is made available by a public authority, it shall be up to date, accurate and comparable, so far as the public authority reasonably believes. Information posted online is periodically reviewed and updated by the relevant authority. Historical records are by

definition non-current and the information they contain is likely to be out of date, however, that does not undermine their value.

8.3 Is there an obligation to report on the state of the environment, next to the national, also at regional and local levels and if so, according to which timetable?

Article 7(3) of the Directive obliges Member States to take the necessary measures to ensure that national and, where appropriate, regional or local reports on the state of the environment are published at regular intervals not exceeding four years. These provisions are transposed via the Regulations under regulation 4 (4) (a) (iv) which specifically refers back to Article 7(3). Annual reports on the state of the environment are produced by the Ministry for the Environment, in collaboration with the Department of the Environment and the Environmental Agency. The reports are posted on the Ministry's website.

8.4 What mechanisms are used to publicize these reports?

These reports are published on the Ministry for the Environment's website www.gibraltar.gov.gi

8.5 Do you have any other observations relating to the practical application of Article 7?

None

9. Quality of environmental information (Article 8) – Regulation 5 (4) and (5)

9.1. What are the measures taken to ensure that any information that is compiled by public authorities or on their behalf is up to date, accurate and comparable?

It is the responsibility of each public authority to ensure the accuracy of the information that it publishes or is responsible for. Regulation 5 (4) of the local legislation requires that, where information is made available by a public authority, it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

9.2. To ensure that information is comprehensible, accurate and comparable, the method used in compiling the information is important. Have you received any request about the method used? Please give any other information you consider useful.

No such requests have been received.

10. Statistics

Where statistical data has been collected on the items below, it would be useful to forward this data to the Commission.

- **Number of requests made.**
- **Areas to which the requests for information relate.**
- **Percentage of requests handled within the one-month period and those within the extended term.**
- **Percentage of requests accepted/refused; in the case of refusal, please give a breakdown by exemption cited in support of the refusal.**
- **Number of procedures introduced according to Article 6.1 and 6.2 of the Directive; average duration and average cost of the procedures; percentage failures and successes at the end of the procedures.**

As noted at the beginning of this report, to date no requests for environmental information have been received therefore there are no statistics available at this time.