

Response from the United Kingdom to the February 2015 questionnaire of the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

1. What obligations does your Government have to ensure the right of access to information under international, regional and national laws? Please provide, in detail, the relevant legislation that guarantees the right of access to information on hazardous substances and wastes, as well as the mechanisms, including grievance mechanisms, which may be used by individuals and groups.

The UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, (“the Aarhus Convention”) provides a right of access to information. Both the UK and the EU are parties to the Aarhus Convention. The provisions of Articles 4 and 5 of the Convention on access to information fall within the exercised shared competence of the European Union, as do the related matters covered by Article 9, Paragraph 1, of the Convention. **This response – and the responses to the other questions below - covers national measures and should therefore be read in conjunction with the response submitted on behalf of the EU and its Member States.**

In order to fulfil its obligations regarding consistency with the Convention, the EU put in place Directive 2003/4/EC on public access to environmental information (“the Directive”).

To implement this, the UK introduced the Environmental Information Regulations 2004 (SI 2004/3391)¹ (“the EIR”) which are the statutory provisions relating to public access to environmental information in England, Wales and Northern Ireland. In Scotland, separate arrangements are in place, provided for by the Environmental Information (Scotland) Regulations 2004 (SSI 2004/520)². In addition, the INSPIRE (Scotland) Regulations (SSI/2009/440 and SSI/2012/284)³ aim to improve environmental policy making through improvements to spatial data sharing, availability and use.

The Freedom of Information Act 2000⁴ (“FOIA”) (and the 2002 Scottish Act⁵) took effect on 1 January 2005, and has brought about significant changes to access to information held by public authorities⁶.

The FOIA sets out the grievance mechanisms that also apply for the purpose of the EIR. Under the EIR an applicant may request an internal review of a public authority’s decision to

¹ At <http://www.legislation.gov.uk/uksi/2004/3391/made> .

² At www.legislation.gov.uk/ssi/2004/520/pdfs/ssi_20040520_en.pdf .

³ Respectively at <http://www.legislation.gov.uk/ssi/2009/440/contents/made> and <http://www.legislation.gov.uk/ssi/2012/284/contents/made> .

⁴ At <http://www.legislation.gov.uk/ukpga/2000/36/contents> .

⁵ At <http://www.legislation.gov.uk/asp/2002/13/contents> .

⁶ See http://www.ico.org.uk/for_organisations/freedom_of_information/guide .

refuse to provide the requested environmental information, and subsequently may appeal to the Information Commissioner's Office ("the ICO") and the courts (see the response to question 7 for more detail on appeals).

In addition, the Convention collectively requires the Parties to keep under continuous review the implementation of the Convention. This is achieved through a reporting mechanism whereby each Party is requested to submit a report to each meeting of the Parties on the legislative, regulatory and other measures taken to implement the Convention, and their practical implementation. The UK's 2014 Aarhus implementation report is at http://www.unece.org/env/pp/reports_trc_implementation_2014.html . Further detail in response to these matters can be found there.

2. Please provide, in detail, the scope and characteristics of hazardous substances and wastes-related information that is or may be accessible to the public? More specifically, please explain what type(s) of information is produced, by whom, based on what criteria, and the time frame/frequency of data production including whether data collected is disaggregated by gender, age, disability status, etc.

There are many sources of environmental information available in the UK. For example:

- The Ministry of Justice publishes statistics and reports on the performance of central government in the provision of access to information.
- The Public Sector Transparency Board provides a single easy to use online access point⁷. One example of the data set emerging from this process is MAGIC - a web-based interactive map service to bring together environmental information from across government⁸.
- Extensive amounts of information relating to the environment are to be found on the web sites of the following government organisations:
 - The Department for Environment, Food and Rural Affairs (<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>) ;
 - The English Environment Agency (<https://www.gov.uk/government/organisations/environment-agency>) ;
 - The Scottish Government (<http://www.gov.scot/Topics/Environment>) ;
 - The Welsh Government (<http://new.wales.gov.uk/topics/environmentcountryside/?lang=en>); and

⁷ At www.data.gov.uk .

⁸ At <http://www.magic.gov.uk/> .

- The Department of the Environment in Northern Ireland (<http://www.doeni.gov.uk/>) .

Information on particular activities that relate to hazardous waste is available from the relevant authority - for example, the Environment Agency in its regulation of industrial activities in England under the Environmental Permitting system⁹ This information is generally available through the “What’s in your backyard?” service described in response to question 3 below.

3. Please explain, in detail, how the information on hazardous substances and wastes is made available to the general public. In addition, what actions does the Government take to disseminate this information and to raise awareness about the adverse impacts of hazardous substances and wastes on human rights? How is this information tailored to the different constituencies?

The UN-ECE Protocol on Pollutant Release and Transfer Registers¹⁰ requires parties to establish a register of information on releases of 91 substances to air, water and land and also on off-site waste transfers. That for the UK is at <https://www.gov.uk/uk-pollutant-release-and-transfer-register-prtr-data-sets> . This Register fulfils an EU Regulation¹¹ which is directly binding on all EU Member States and which established a European Register¹².

Within the UK, there are other web-based sources of information on emissions. For example, the Environment Agency provides a “What’s in your backyard?” environmental information service¹³ which enables members of the public to find information on hazardous substances and waste on a local basis by entering their postcode. The UK National Atmospheric Emissions Inventory¹⁴ provides comprehensive and searchable information about air pollutants.

Information that is not already published proactively can be requested from the relevant public authority, including under the EIR or FOIA.

⁹ For a description of this system, see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211852/pb13897-ep-core-guidance-130220.pdf .

¹⁰ At http://www.unece.org/fileadmin/DAM/env/pp/prtr/Protocol%20texts/PRTR_Protocol_e.pdf .

¹¹ Regulation (EC) 166/2006 – at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1424874948964&uri=CELEX:32006R0166> .

¹² At <http://prtr.ec.europa.eu/> .

¹³ At a <https://www.gov.uk/check-local-environmental-data> .

¹⁴ At <http://naei.defra.gov.uk/> .

4. Please provide examples of how information on hazardous substances and wastes has been used to:

- *monitor human rights affected by hazardous substances and wastes (e.g., rights to health, safe and healthy working conditions, water and sanitation, healthy environment, etc.);*
- *protect the human rights of individuals and groups from the adverse impacts of hazardous substances and wastes;*
- *promote other human rights (e.g., rights to health, safe and healthy working conditions, water and sanitation, healthy environment, etc.);*
- *prevent potential human rights violations caused by the improper management of hazardous substances and wastes; and*
- *hold perpetrators accountable and seek remedy for victims.*

In the UK's view, a clean and healthy environment is delivered through implementation of environmental legislation so it a matter of environmental regulation rather than human rights. Procedural rights provided by instruments like the Aarhus Convention and associated implementing legislation, like that of access to environmental information, can assist with this. Another relevant instrument is UK legislation on the Control of Major Accident Hazards¹⁵ which lays down rules for the prevention of major accidents which might result from certain industrial activities and the limitation of their consequences for human health and the environment.

5. Which businesses are required to provide information on hazardous substances and wastes (e.g., size, sector, operational context, ownership and structure)? Please explain, in detail, the obligations of these businesses, have with regard to the type of information they are obliged to provide, to whom the information is made available, and what measures may be taken if businesses fail to meet these obligations.

The European Regulation on PRTR (see question 3) applies to operators of a wide range of industrial facilities in specified sectors. Those facilities may be in private or public ownership. Each operator has to provide information on emission of any substance which are above specified thresholds. Each Member State lays down rules on penalties applicable to infringements of the provisions of the Regulation.

Under the EIR and FOIA (see question 1) public authorities are obliged to provide environmental information.

¹⁵ At <http://www.legislation.gov.uk/ukxi/1999/743/contents/made> . This will soon be updated so as to transpose the eponymous EU Directive 2012/18/EU .

6. When does the Government limit the right of access to information on hazardous substances and wastes? Are these criteria on limitation provided by law? Who has the authority to make decisions on the disclosure/non-disclosure of such information?

In the UK, the exceptions to the right of disclosure are implemented in the EIR through regulations 12 and 13. However, in the EIR, there is a presumption in favour of disclosure. Every exception listed is a qualified exception and therefore subject to the public interest test. In every particular case, the public interest served by disclosure has to be weighed against the interest served by the refusal. Member States may not refuse a request under regs 12(d) to (g) where the request relates to information on emissions into the environment (reg 12(9))¹⁶.

7. How does the Government ensure that the right of access to this information is fulfilled while also respecting the confidentiality of business information? If available, please indicate relevant cases and attach copies of relevant judgements.

In drafting the EIR the Government chose to include all of the qualified exceptions provided for under the Directive and the Convention. Exceptions are therefore available to protect sensitive and confidential business information, and the onus is on the public authority that holds the information to provide a persuasive argument in favour of maintaining the relevant exception(s) when conducting the public interest balancing exercise.

The UK ensures access rights to information through powers of enforcement given to the ICO and the Tribunals Service. The ICO examines complaints from members of the public who feel that their request for information has not been dealt with properly by the public authority. This will include cases where the applicant believes that the public authority has come to the wrong decision when weighing the public interest in disclosure. The First-tier Tribunal (Information Rights), Upper Tribunal and, ultimately, the courts give further and higher levels of appeal. The ICO has issued guidance in relation to this¹⁷.

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¹⁶ For further detail see <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/refusing-a-request/>.

¹⁷ At https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf.