

Annex – EIR 13 23

Abbreviations used in this Annex:

- “EISRs” means the Environmental Information (Scotland) Regulations 2004.
- “FOISA” means the Freedom of Information (Scotland) Act 2002.

What are the EISRs?

The EISRs provide for a right of access to environmental information held by Scottish public authorities. We, as a Scottish public authority for the purposes of FOISA, are also a Scottish public authority under the EISRs.

Why has my request been handled under the EISRs?

The information covered by the request falls within the definition of “environmental information” contained in Regulation 2(1) of the EISRs.

This provides that environmental information is information in any form about (among other things):

- the state of the elements of the environment, such as air and atmosphere, water, soil, land and landscape;
- factors, including energy, emissions, discharges and other releases into the environment, affecting or likely to affect the said elements; and
- measures, including policies, legislation, plans, programmes and activities, affecting or likely to affect the said elements.

Water is an element of the environment and property is built on land, which is also an element of the environment. The charging arrangements for the supply of water and the collection of waste water from a property are measures that affect such elements of the environment.

What about FOISA?

We first had to consider your request under FOISA before we could process it under the EISRs. We applied the exemption contained in Section 39(2) of FOISA, which allowed us to process the request under the EISRs.

This provides that information is exempt information under FOISA if:

- a Scottish public authority is required by the EISRs to make it available to the public; or
- a Scottish public authority is required by the EISRs to make it available to the public but does not have to because of an exemption.

Before we can use this exemption, we must apply the public interest test. We recognise there is a public interest in the requested information being made publicly available, irrespective of whether this is under FOISA or the EISRs. However, we note there is a separate and specific right of access to environmental information available to applicants under the EISRs. It is in the public interest for the correct legislation to be applied to the request.