

University of the Highlands and Islands - Statement of its “Public Task” in relation to the INSPIRE (Scotland) Regulations 2009

Purpose

1. This document sets out the University of the Highlands and Islands’ interpretation of its “public task” for the purposes of the INSPIRE (Scotland) Regulations 2009.

Scope

2. The INSPIRE (Scotland) Regulations 2009 apply to the primary copy of geospatial datasets relating to certain categories of information which are produced, received, managed or updated by a “Scottish public authority” within the scope of its “public tasks”. This discussion of the University of the Highlands and Islands “public task” is strictly limited to this specialist context and is not transferable to other spheres.

The University of the Highlands and Islands “public task” under the INSPIRE Regulations

3. After careful consideration, the University of the Highlands and Islands has concluded that, while it may be possible for a university to have a “public task” for the purposes of INSPIRE, the University of the Highlands and Islands does not currently have one.
4. In the event that the university gains public responsibilities or functions, or begins to provide public services relating to the environment under the control of a government body or public administration, then this statement will be re-examined to assess whether these new responsibilities constitute a “public task” for the purposes of INSPIRE.
5. The University of the Highlands and Islands may hold and manage relevant research datasets on behalf of others, for example academics may be commissioned to produce data on behalf of government bodies. These datasets fall within the scope of the commissioning organisation’s INSPIRE obligations and “public task”¹. In these cases, responsibility for INSPIRE compliance will lie with the commissioning organisation unless otherwise agreed contractually.
6. It should be noted that researchers may choose to make their data INSPIRE compliant, or to include it in the UK Locations programme. This does not imply that the the University of the Highlands and Islands has a “public task” under INSPIRE.
7. The remainder of this document explains why the university has reached this conclusion.

¹ INSPIRE (Scotland) Regulations 2009, s 5 (1)b

Background

8. The INSPIRE (Scotland) Regulations 2009 implement Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE). The legislation is designed to harmonise the sharing of spatial data sets across the EU to address issues regarding the availability, quality, organisation, accessibility and sharing of spatial information.
9. Subject to some exemptions, organisations affected by INSPIRE have an obligation to create metadata for certain types of spatial data, and make both data and metadata publicly available using a web-based search and viewing tool. It also requires information to be shared between public authorities.
10. Spatial data as defined by the legislation must contain co-ordinates allowing the location to be identified. Relevant spatial data is data in an electronic format relating to one of the 34 INSPIRE themes. The themes include: land use, human health and safety, environmental monitoring facilities, atmospheric conditions, meteorology, species distribution and habitats.
11. INSPIRE applies only to the reference copy of data relating to areas where the UK has or exercises jurisdictional rights (including UK territorial waters to a distance of 12 nautical miles from shore).
12. For full details of the requirements see the INSPIRE Regulations (Scotland) 2009 at <http://www.legislation.gov.uk/ssi/2009/440/contents/made> and the INSPIRE (Scotland) Regulations Amendment 2012 at <http://www.legislation.gov.uk/cy/ssi/2012/284/made> and the European Commission site at <http://inspire.ec.europa.eu/>

Discussion of “public task”

13. INSPIRE applies to “Scottish public authorities”, as defined in the Freedom of Information (Scotland) Act 2002. This includes the University of the Highlands and Islands. Therefore, the INSPIRE Regulations apply to the university.
14. However, INSPIRE only applies to relevant datasets produced, received, managed or updated by a “Scottish public authority”, which are also “within the scope of its public tasks”.²
15. The Regulations do not define “public task”. However, a number of sources are available from which an understanding of “public task” can be drawn. The

² INSPIRE (Scotland) Regulations 2009, s 5(1)a

two most significant are Directive 2007/2/EC and the Reuse of Public Sector Information Regulations 2005.

EU Directive 2007/2/EC

16. The INSPIRE Regulations enact Directive 2007/2/EC into Scots law. In the absence of a definition of “public task” in local legislation, it is possible that the terms of the Directive can shed some light on the definition of “public task”.
17. The Directive applies to relevant spatial datasets “held by or on behalf of public authorities and to the use of spatial data by public authorities in the performance of their public tasks.”³
18. The Directive does not define the term, “public task”, but uses a different definition of “public authority” from that used in the Regulations. Consideration of this definition might yield some insight into the sorts of activities that could involve a “public task” for the purposes of INSPIRE.
19. The Directive defines a “public authority” in terms of Article 2(2) of the Aarhus Convention.⁴ This definition is as follows:
 - a. any government or other public administration, including public advisory bodies, at national, regional or local level;
 - 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
 - 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).
20. This definition is also used in Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information which was implemented into Scottish legislation by the Environmental Information (Scotland) Regulations 2004.
21. In paragraphs 22 to 39, we consider definitions of a “public authority” and assess whether they apply to the university’s activities involving geospatial datasets.

Article 2(2)(a): Government or other public administration:

³ EU Directive 2007/2, paragraph 12

⁴ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (“the Aarhus Convention”)

22. The University of the Highlands and Islands is not part of the government or public administration and so its activities with regard to geospatial data do not fall within Article 2(2)(a) of the Aarhus definition.

Article 2(2)(b): Public administrative functions:

23. In a preliminary ruling the Grand Chambers of the Court of Justice of the European Community concluded that the crucial factor in deciding whether Article 2(2)(b) of the Aarhus definition was applicable was

“whether those entities are vested, under the national law which is applicable to them, with special powers beyond those which result from the normal rules applicable in relations between persons governed by private law”⁵

24. The University of the Highlands and Islands has no special powers under national law with regard to geospatial datasets.
25. Therefore Articles 2(2)(a) and 2(2)(b) are not applicable to Universities’ activities with geospatial datasets.

Article 2(2)(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):

26. The definition of a “public authority” set out in Article 2(2)(c) of the Aarhus Convention involves two factors:
- a. whether University of the Highlands and Islands has “public responsibilities or functions”, or provides “public services relating to the environment” and
 - b. if it does, whether these are carried out under the control of another Scottish public authority.

Article 2(2)(c) first clause: Public responsibilities or functions, or providing public services relating to the environment

27. When considering whether an organisation provides public services or has public responsibilities or functions for the purposes of the Environmental Information Regulations 2004, the UK Information Commissioner (ICO) has identified the following key factors:
- whether a body is publicly funded
 - whether it exercises statutory powers
 - whether it provides a public service

⁵ Judgment of the Court (Grand Chamber) of 19 December 2013, Fish Legal and Emily Shirley v Information Commissioner and Others, Case C-279-12, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62012CJ0279:EN:HTML>

- whether it takes the place of central or local government.⁶
28. Some of the University of the Highlands and Islands work with geospatial datasets is publicly funded by government departments or by research councils. However this work does not relate to statutory powers, nor does it take the place of central or local government.
 29. Further guidance on the meaning of public services is available in the *Quadrant* case. This states that public services:

*“should not be confused with performing functions which are in the public interest or for the public benefit.... many private bodies, such as private schools, private hospitals, private landlords, and food retailers, provide goods or services which it is in the public interest to provide... Usually the public service will be of a governmental nature.”*⁷
 30. Whilst the work carried out by the university with geospatial datasets can be said to be in the public interest or for the public benefit, it is not “governmental in nature”.
 31. The Scottish Information Commissioner has also produced guidance on what constitutes “public services” stating that it will include “those services provided by national or local government whether directly or not.”⁸
 32. These definitions suggest that the University of the Highlands and Islands does not provide “public services” in relation to its work with geospatial datasets.
 33. The United Nations Economic Commission for Europe Aarhus Implementation Guide includes a specific reference to when universities might have public responsibilities or functions:

“Governments often delegate monitoring responsibilities to specialized agencies, laboratories, universities or quasi-governmental institutions. These would be public authorities under article 2, paragraph (2)(b) or (c), insofar as they meet the requirements of that article.”⁹

⁶ Information Commissioner’s Office, *Policy guidance: Public Authorities for the purpose of the Environmental Information Regulations 2004* at <http://ico.org.uk/foi/b/Policy%20briefing%20notes/FOIPolicyPolicyGuidancePublicAuthoritiesforthepurposeoftheEIR.htm>, consulted December 2013. The original source of these factors is discussion of the term ‘functions of a public nature’ as used in the Human Rights Act 1998 in the case *Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v Wallbank and another (Respondents)*

⁷ *London and Quadrant Housing Trust v R (on the application of Weaver)* [2009] EWHC Civ 597, paragraph 35 (9)

⁸ Scottish Information Commissioner, Briefing on “What Bodies are covered by the EIRs? ” <http://www.itpublicknowledge.info/Law/EIRs/EIRsCoverage.aspx>

⁹ United Nations Economic Commission for Europe, *The Aarhus Convention: An Implementation Guide* (2nd Edition, 2013), p.93

34. Thus, if a government body has delegated responsibilities relating to geospatial datasets to a university, then that university might have public responsibilities or functions.

35. The University of the Highlands and Islands does not have any delegated monitoring, or other environmental responsibilities in relation to relevant geospatial datasets.

Article 2(2)(c) second clause: Control of another public authority

36. Even if an organisation provides public services or has public responsibilities or functions, to be a “public authority” under Article 2(2)(c) of the Aarhus Agreement, it must also deliver these under the control of another “public authority”.

37. In the *Fish Legal* case, the Grand Chamber of the European Court discussed the meaning of the term, “control”, concluding that it applies to circumstance where the relevant body does “not determine in a genuinely autonomous manner the way in which they provide those services since a public authority covered by Article 2(2)(a) or (b) of the Directive is in a position to exert decisive influence on their action in the environmental field”¹⁰.

38. The University of the Highlands and Islands currently does not use geospatial datasets in a context where a public authority covered by Article 2(2)(a) or (b) of the Aarhus Agreement is in a position to exert decisive influence on their action in this field.

39. Therefore the University of the Highlands and Islands currently has no functions, responsibilities or services relating to geospatial datasets which meet the definition set out in Article 2(2)(c) of the Aarhus Convention.

University of the Highlands and Islands “public task” under EU Directive 2007/2

40. As the university’s work with geospatial datasets does not fall within the tasks implied by the INSPIRE Directive’s definition of a “public authority” it cannot have a “public task” under this legislation.

41. The INSPIRE (Scotland) Regulations 2009 enact the Directive into Scots law. In the absence of a definition of “public task” in the Regulations, it is considered unlikely that the university can have a “public task” for the purpose of the Regulations when it does not have one for the purpose of the Directive.

¹⁰ The judgement of 19 December 2013 of the EU Grand Chamber of Court in Case C-279/12 *Fish Legal versus Information Commissioner*

Reuse of Public Sector Information Regulations 2005

42. The Reuse of Public Sector Information Regulations 2005 require “public authorities” to make the information they hold available for reuse. These Regulations apply to public sector bodies but exclude educational and research establishments, including the higher education sector.¹¹
43. The Regulations also make use of the term “public task”, as they apply to information where the activity of supplying it falls within the scope of an authority’s public task.¹² Although the Regulations do not apply to the higher education sector, they may help to provide some insight as to the interpretation of “public task”.
44. The Reuse Regulations do not define “public task”. However, The National Archives (TNA) has produced guidance on defining a body’s “public task” for the purpose of the Reuse Regulations.
45. According to this guidance, information produced as part of a “public task” is likely to have one or more of the following characteristics:
- it is essential to the public service for which the public sector body is responsible
 - it explains the policy of the public sector body
 - it sets out how the law must be complied with
 - citizens consider the information to be key to their relationship with the public sector or with this body
 - there is a statutory requirement to produce or issue the information
 - it is established custom and practice that the public sector body produces or issues the information
 - it enjoys authoritative status by virtue of being issued by the public sector
 - the public body is the only source for the information
 - its creation and maintenance is funded through taxation rather than revenues or private investment.¹³
46. These characteristics do not map to the activities the University of the Highlands and Islands carries out with geospatial datasets. For example, the university is not responsible for public services, does not set policy and has no statutory obligations relating to geospatial datasets.
47. This again reinforces the conclusion that the University of the Highlands and Islands does not currently have a public task for the purposes of the INSPIRE Regulations

Conclusion

¹¹ The Reuse of Public Sector Information Regulations 2005 s 5.(3)b

¹² The Reuse of Public Sector Information Regulations 2005 s 5.(1)

¹³ National Archives Guidance on Public sector information Directive and Regulations at <http://www.nationalarchives.gov.uk/information-management/legislation/directive-and-regulations.htm>

48. Both the definition of “public authority” used in EU Directive 2007/EC and the guidance available to authorities subject to the Reuse of Public Sector Information Regulations 2005 suggest that the University of the Highlands and Islands does not currently have a “public task” for the purposes of the INSPIRE Regulations.
49. The University of the Highlands and Islands will monitor relevant guidance, legislation and case law, and will re-assess this position if there are developments which affect the university’s current understanding of the position.

Complaints procedure

50. Individuals or public authorities concerned about the university’s implementation of INSPIRE should submit complaints in writing to the Chief Operating Officer and Secretary, 12b Ness Walk, Inverness, IV3 5SQ .
51. Where the complaint involves a refusal to grant full public access to a particular spatial data set or service, the university will respond within 20 working days. The complainant has the right to refer the matter to the Scottish Information Commissioner if they remain dissatisfied.