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A guide to the INSPIRE Regulations SI 2009 No. 3157

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Land &
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Services®



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



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Introduction

The INSPIRE Directive [2007/2/EC]¹ aims to make available consistent spatial data sets² about the environment and create services for accessing these datasets so that they can be more easily shared or combined to benefit the development and monitoring of environmental policy and practice in all Member States and across the European Community.

The INSPIRE Regulations 2009 No 3157 came into force on 31 December 2009³ and turn this Directive⁴ into law that applies in England, Northern Ireland and Wales. Complementary regulations have been made by Scotland's Parliament⁵.

During the consultation on the policy principles underpinning the drafting of these Regulations⁶ it was clear that affected data holders were looking for simple guidance about the obligations these Regulations would create. This guide aims to address that need. Other guidance is needed to help with the practical implementation of these Regulations in the context of the wider UK Location Programme (UKLP)⁷. That will be provided on an ongoing basis through the UKLP web pages see <http://location.defra.gov.uk>

Readers should note that the Regulations contain some technical terms commonly used by the geographic information community. Where appropriate these have been reproduced to retain continuity between the Regulations and this guidance.

For completeness, obligations placed on the Secretary of State by these Regulations are set out in Appendix 2.

The guide will be kept under review and may in future be amended or supplemented in response to feedback from its intended audience.

¹ <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2007:108:SOM:EN:HTML> The scope of the Directive is set out in themes listed in Annex 1

² See paragraph 6 below

³ Regulation 1

⁴ Detailed arrangements are being set out in a progressive series of Implementing Rules, such as the Metadata Regulations c.f. Footnote 20, which when adopted by the EC become regulations that have the force of law in the UK

⁵ SSI 2009 No 440

⁶ March – May 2009

⁷ UKLP – the cross-Government programme to implement INSPIRE and the UK Location Strategy
<http://www.communities.gov.uk/publications/communities/locationstrategy>

What these Regulations cover

These Regulations cover existing spatial data sets and spatial data services⁸. They do not require data owners to create new data sets. But if data owners create new data sets that are within scope of these Regulations, the Regulations will apply to those new data sets.

Who these Regulations apply to

Public Authorities in England, Wales and Northern Ireland

1. These Regulations apply to all public authorities⁹ (including for example, government departments, local authorities, the health service, police or other public bodies; those carrying out public administration functions; or those with responsibilities, functions or the role of delivering services relating to the environment).

Guidance – Public authorities

The definition of ‘public authorities’ is that used in the Environmental Information Regulations 2004 (EIR)^{G1}. Detailed guidance on this has already been published and can be found at www.defra.gov.uk/corporate/opengov/eir/guidance/full-guidance/pdf/guidance-2.pdf

This definition is wide and ultimately, whether a particular body is in scope, may be for the courts to decide. However, as a ‘rule of thumb’ if your organisation responds to requests for information under the EIR you may assume that it is also a ‘public authority’ for the purposes of these Regulations.

2. A public authority has obligations under these Regulations if it holds one or more ‘spatial data sets’. These obligations are set out from paragraph 13 below.

What about public authorities in Scotland?

3. Complementary INSPIRE Regulations defining public authorities have been made by Scotland’s Parliament.

Guidance – Working with Scottish public authorities

In terms of access to spatial data and services and data sharing as defined under these Regulations, Scottish public authorities should be treated in the same way as any other public authority^{G2}.

Third Parties

4. A third party¹⁰ with one or more spatial data sets can apply to join the INSPIRE network¹¹. In joining the network the third party will be bound, like public authorities, by the obligations in these Regulations relating to: metadata, network

⁸ See paragraph 8 below

⁹ Regulation 3

^{G1} <http://www.opsi.gov.uk/si/si2004/20043391.htm>

^{G2} See Regulation 12

¹⁰ Regulation 2

¹¹ The UK Location Information Infrastructure – see <http://location.defra.gov.uk>

services, public access to spatial data sets and spatial data services, charges for public access, public access complaints procedures and the requirements to provide information for the purposes of monitoring.

5. For the purposes of these Regulations a third party is a legal person (which may be a commercial company or an association that owns its own data) that is not a public authority; or someone holding a spatial data set or operating a spatial data service on behalf of a public authority.

Guidance – What about contractors who manage my data
or provide my data services?

A public authority or a third party may contract with others to hold, manage or publish their spatial data or data services for them. Obligations created by these Regulations ultimately rest with the public authority/third party data owners although for convenience they may have them discharged by others.

Spatial data sets and data services

Spatial data sets

6. The Regulations apply only to relevant ‘spatial data sets’¹² i.e. data:
- with a geographic reference (‘spatial data’¹³)
 - held by a ‘public authority’¹⁴, a third party, or others working on behalf of either;
 - in an electronic format that relates to one of the 34 INSPIRE ‘themes’¹⁵; and
 - relating to an area where the UK has or exercises jurisdictional rights¹⁶

Guidance – ‘Electronic Format’

INSPIRE is focussed on spatial objects (representations of real world phenomena) that fall within an INSPIRE theme and is available. It should be possible to transform such data using schema translation to the INSPIRE specification. A representation in electronic format of an object by coordinates would be in scope as well as an object that simply references an existing spatial object (i.e. object referencing) – whereas anything such as a textual description in an electronic format (e.g. a statutory boundary definition) or table of objects that does not include a coordinate or object reference (e.g. spreadsheet of lampposts or rights of way) would be out of scope.

INSPIRE is only interested in harmonising data that are shared with others, or have the potential to be shared; and so will not apply to internal organisational data such as staff, customer and supplier records, even if those data are in an electronic format.

¹² Regulation 2

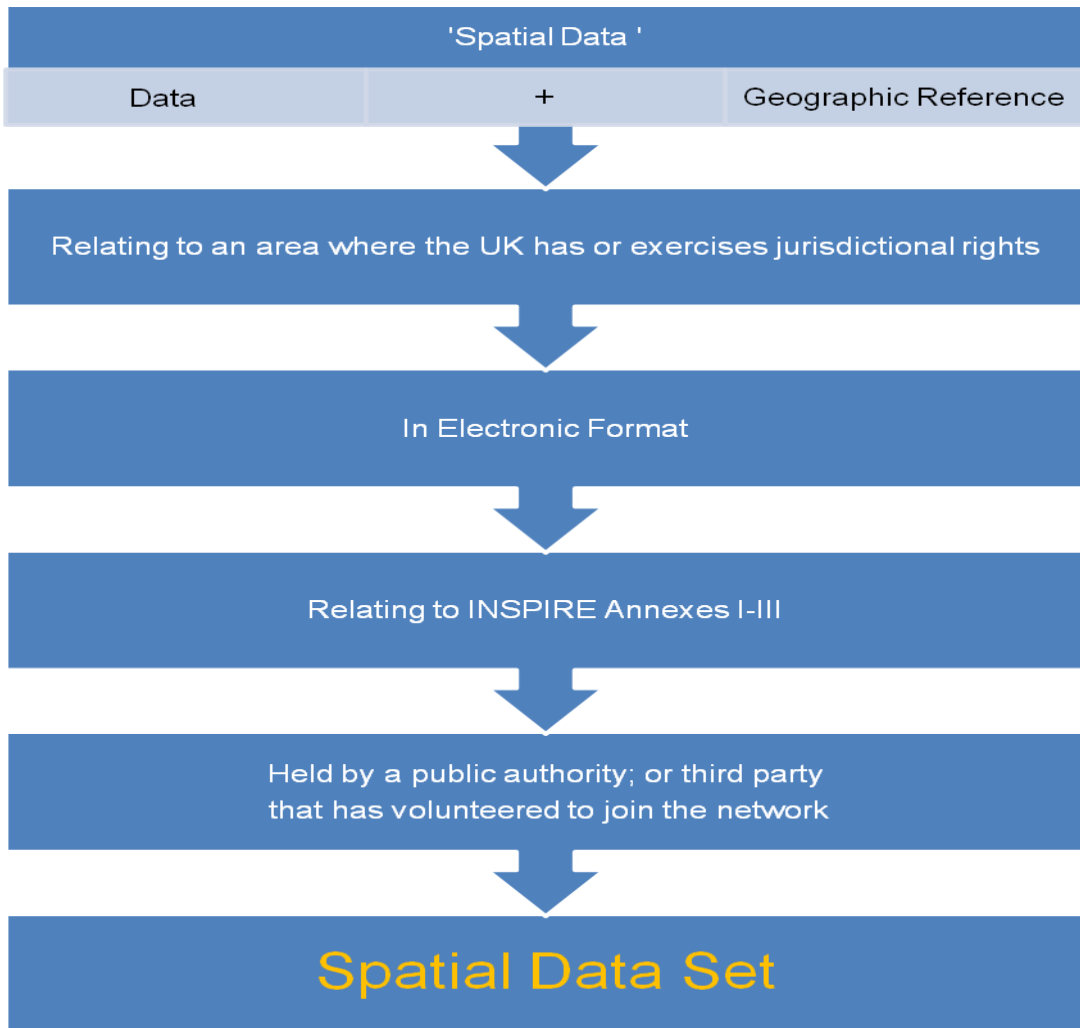
¹³ Regulation 2(3)

¹⁴ Parish councils (including Town Councils) in England and community councils in Wales have obligations under these Regulations to publish spatial data sets and services only if they are legally required to collect or disseminate spatial data – Regulation 4(2)

¹⁵ Annexes I – III – see Appendix 1

¹⁶ The Directive applies only to the UK, Gibraltar, the territorial sea of the UK, relevant areas of the continental shelf or areas outside the territorial sea. For full details see the meaning of “spatial data set” Regulation 2

Figure 1 Spatial Data Set



Do the Regulations apply to all copies of the same spatial data sets?

7. Where multiple identical copies of the same spatial data set are held these Regulations apply only to the 'reference version' from which other copies are derived.¹⁷

Guidance – Reference version

Many organisations may hold copies of the same river network. These all may have different attributions but only one of these will be regarded as the reference version. It would be expected that the reference version would be held by the organisation responsible for the on-going update and maintenance of those data required by INSPIRE

¹⁷ Regulation 4(2)(b)

Spatial data service

8. A spatial data service is a computer application that operates on spatial data in a spatial data set, or the spatial data set's metadata. It includes, for example, generalised services to find and view data requested by citizens or customers, or specific services that support business operations by supplying analyses of specific data sets.

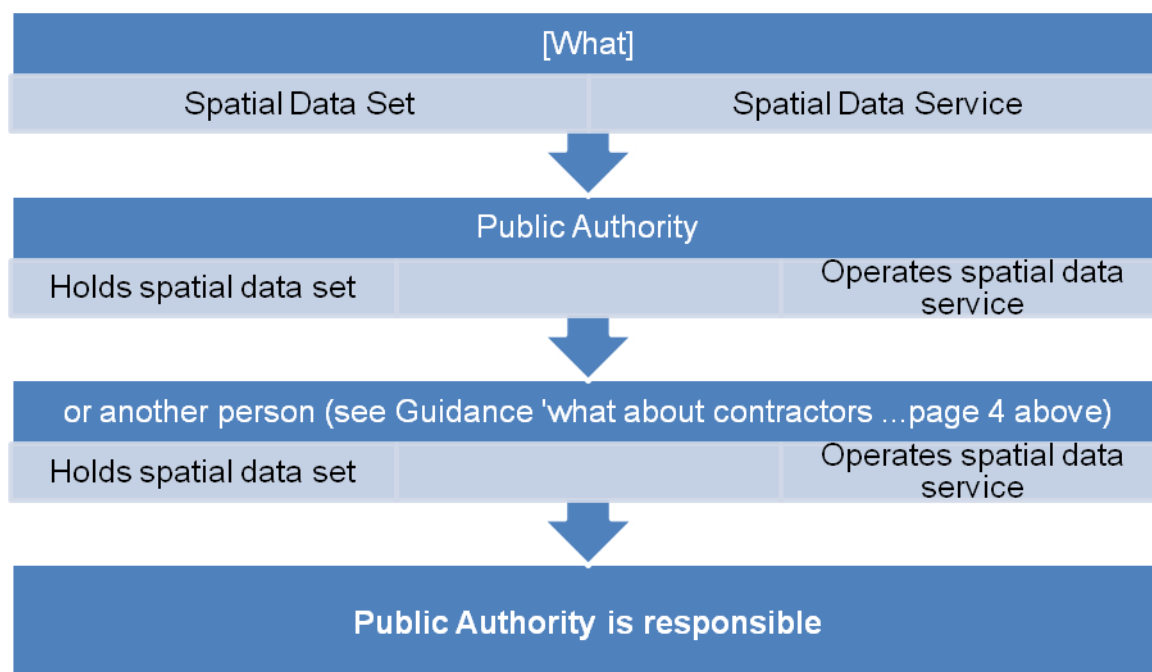
9. The provisions of these Regulations only apply to spatial data services if they apply to the INSPIRE related spatial data set¹⁸.

Public authority and third party responsibilities for spatial data sets and spatial data services

Public authorities

10. Figure 2 summarises public authorities' responsibilities for spatial data sets and spatial data services.

Figure 2 Public authorities



Third parties

11. The same relationships and responsibilities apply in the case of third parties.

What if I don't own the intellectual property for the spatial data?

12. Public authorities and third parties must not take any action in connection with these Regulations in connection with a spatial data set without the consent of the owner of the intellectual property rights to that spatial data set¹⁹. They should not for instance, copy or publish such data or make them available to the public on-line, unless they are required to do so by statute or have the rights owner's permission.

¹⁸ Regulation 4(5)

¹⁹ Regulation 5

Main obligations on public authorities and third parties

Guidance – Risks from Publication

INSPIRE creates no new risks from publication beyond those that already exist (i.e. 'business as usual'). Data owners will wish to continue managing these risks, as now, for example using disclaimers against inaccurate data, where appropriate or entering into a licensing/contract arrangement to limit liability.

Metadata

13. Separate Metadata Regulations²⁰ under INSPIRE came into force on 24 December 2008. The obligations they contain are phased in over time. Public authorities and third parties that have joined the network must create full metadata: for themes in Annexes I and II by 24 December 2010²¹; and for themes in Annex III by 24 December 2013²²; and must keep it up to date²³.

14. The detailed specification for what data owners need to produce is set out in the Metadata Regulations. In summary, metadata for spatial data sets and data services must include the following information²⁴: quality and validity [e.g. where the data comes from and its scale]; who is responsible for creating, managing, maintaining and distributing the data or service; any restrictions on public access and reasons for such restrictions²⁵; conditions on access or use; and any charges for access or use.

15. For a public authority or third party wishing to put a spatial data set or spatial data service on the network, its metadata must comply with the Metadata Regulations; and its services must operate according to the network services regulation²⁶.

Network Services

16. Public authorities and third parties that join the network who own spatial datasets and services for which relevant metadata has been created must establish and operate a number of services²⁷. These services must take into account relevant user requirements; be easy to use; and, subject to certain restrictions²⁸, be available to the public and accessible via the internet or any other appropriate means of telecommunication²⁹.

²⁰ Commission Regulation (EC) No 1205/2008 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:326:0012:01:EN:HTML>

²¹ Regulation 6(4)

²² Regulation 6(5)

²³ Regulation 6(1) and 6(3)

²⁴ Regulation 6(2)

²⁵ See Public access to spatial data sets and spatial services

²⁶ Regulation 8(3)

²⁷ Regulation 7(1)

²⁸ c.f. footnote 25

²⁹ Regulation 7(4) 'any other appropriate means of telecommunication' is not defined in the Directive

Guidance on terms 'easy to use' etc

Terms in paragraph 16– 'relevant user requirements', 'ease of use', and 'accessible by the internet or any other appropriate means of telecommunications' are not defined in the Directive or these Regulations. Where they are defined in Implementing Rules these definitions should be used. Where matters are not defined, service providers will normally have their own standards, best practice, or be using national/international standards. In such cases, those standards or best practice should continue to be applied

Information – Public Access to Services

In the UK these services may be delivered by the UK Location Information Infrastructure (UK LII) or locally by individual data publishers or through the national spatial data infrastructures in Northern Ireland, Scotland or Wales – see <http://location.defra.gov.uk>

17. The relevant network services are:
- a. Discovery services³⁰, enabling users, subject to certain limitations³¹ to search and display the contents of metadata for spatial data sets and services under one or a combination of the following criteria: keywords; classification, quality and validity; geographic location; access or use conditions; and identification of who is responsible for creating, managing, maintaining and distributing them.
 - b. View services³², enabling users as a minimum – but subject to the limitations in paragraph 21 - to display, navigate, zoom in and out, pan or overlay viewable spatial data sets and to display legend information and any relevant content of metadata.
 - c. Download services³³ enabling users to download copies of whole datasets or parts of datasets, and where practicable, accessed directly.
 - d. Transform services³⁴ enabling users to transform INSPIRE compliant spatial data sets to achieve interoperability³⁵.
 - e. Invoke services³⁶ enabling spatial data services to be invoked.

³⁰ Regulations 7(2)(a) and 7(3)

³¹ See paragraph 18

³² Regulation 7(2)(b)

³³ Regulation 7(2)(c)

³⁴ Regulations 7(2)(d)

³⁵ Regulation 7(5) "interoperability" means the possibility for spatial data sets to be combined, and for services to interact, without repetitive manual intervention, in such a way that the result is coherent and the added value of the data sets and services is enhanced.

³⁶ Regulation 7(2)(e)

Information – Download, Transform and Invoke Services

Implementing rules are being developed to implement download, transform and invoke network services. In due course these will become Regulations adopted in Europe and when they are they will have the force of law in the UK. Subsequent EC Regulations may lead to this Statutory Instrument being updated. Information about the progress of these provisions will be published on the Location Programme website <http://location.defra.gov.uk>

The term 'invoke services' has not so far been defined but will be through the development of the appropriate implementing rule by the Commission

Public access to spatial data sets and spatial services

18. Limiting public access should only happen in circumstances where the public interest in limiting access outweighs the public interest in providing full access³⁷.

Guidance – What is the 'Public Interest'^{G2}

The term "the public interest" is not defined in either the FOIA or the EIR. However something which is "in the public interest" may be summarised as something which serves the interests of the public. The public interest test entails a public authority deciding whether, in relation to a request for information, it serves the interests of the public either to disclose the information or to maintain an exemption or exception in respect of the information requested. To reach a decision, a public authority must carefully balance opposing factors, based on the particular circumstances of the case. Where the factors are equally balanced, the information must be disclosed. Further information on this can be found at http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/fep038_public_interest_test_v3.pdf

19. The public interest test is particularly relevant in the case of public access to personal data contained in spatial data sets. Such data must not be provided³⁸ where it would contravene any of the 'data protection principles' or section 10 of the Data Protection Act 1998³⁹ (the right to prevent processing likely to cause damage or distress).

20. Public access to spatial data sets and services through discovery services provided by public authorities and third parties is limited if this would adversely affect:

- international relations,
- public security or
- national defence⁴⁰.

21. Similarly, public access to a spatial data set or service through all other network services⁴¹ and related e-commerce services may be limited by public authorities and third parties⁴² where such access would adversely affect:

³⁷ Regulation 9(1)(b)

^{G2} Guidance on Public Interest: - Final Version 1 (Updated January 2006) 3 Freedom of Information Act - Awareness Guidance No 2

³⁸ Regulation 9(2)

³⁹ http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980029_en_1

⁴⁰ Regulation 9(3)

- international relations, defence national security or public safety;
- the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- intellectual property rights;
- confidentiality of proceedings provided for by law
- confidentiality of commercial or industrial information provided for by law to protect a legitimate economic interest;
- the interests or protection of any person supplying information; or
- the protection of the environment to which the spatial data or service relates.⁴³

22. A public authority or third party cannot limit public access to spatial data sets or data services containing information about emissions into the environment on the ground of:

- confidentiality of proceedings provided for by law
- confidentiality of commercial or industrial information provided for by law to protect a legitimate economic interest;
- the interests or protection of any person supplying information; or
- the protection of the environment to which the spatial data or service relates⁴⁴

Guidance – Public Access – A final word

The spirit of INSPIRE is to make spatial data accessible; but as indicated above there can be reasons why public access may be limited. Despite these limitations, data owners may wish to consider creatively means by which as much information as possible is made available.

In making data accessible owners will need to reflect on the intellectual property rights of all the data they are proposing to release – see paragraph 12 above.

Circumstances will vary but, for example, these data may be made accessible by not disclosing its ‘sensitive’ nature, either by removing specific items all together while publishing the rest or, by stripping out attributions that highlight particular sensitivities.

⁴¹ i.e. view, download, transform or invoke

⁴² Regulation 9(4)

⁴³ Regulation 9(5)

⁴⁴ Regulation 9(6)

⁶³ <http://www.opsi.gov.uk/si/si2005/20051515>

Information – Re-use of Public Sector Information (RoPSI)

The re-use of public sector information is subject to the Re-use of Public Sector Information Regulations 2005⁶³. The aim is to increase transparency, to ensure fairness and to encourage the re-use by the private and public sectors of information held by public sector bodies so as to stimulate economic growth, citizen engagement and improvements to public service delivery.

Re-use covers the use of public sector information for a purpose other than that for which it was originally created, normally through new commercial products and services. Public sector bodies must publish lists of their information assets and their standard terms and conditions for re-use, may not discriminate, may not enter into exclusive arrangements and may not charge more than a reasonable amount for licences. Public sector bodies that allow re-use of their information are regulated by the Office of Public Sector Information, which investigates complaints and supervises their licensing activities.

The Re-use Regulations are complementary to the Inspire Regulations. Any licensing of the re-use of public sector spatial data will be subject to the Re-use Regulations.

Data Sharing between public authorities

23. Where a public authority or other relevant body⁴⁵ requires access to or use of a spatial data set or service for the purposes of its public task that may have an impact on the environment⁴⁶, the public authority responsible for that data/service must normally permit access and use⁴⁷. However, the public authority responsible for that data/service may limit data sharing⁴⁸ when it would compromise the course of justice, public security, national defence or international relations.

24. The public authority supplying a spatial data or service to another public authority or relevant body may impose conditions on its access, exchange or use, for example, in the form of a charge, a licence (or both), subject to the following:⁴⁹

- such conditions must be compatible with the aim of sharing spatial data sets and services and must avoid practical obstacles at the point of use;⁵⁰
- charges must be kept to the minimum to ensure necessary quality and supply of data sets and services together with a reasonable return on investment; and any requirement on an authority to be self-financing is respected⁵¹
- a UK public authority must not charge a European Community body for spatial data sets or services where it is under a European Community environmental reporting obligation.⁵²

⁴⁵ i.e. a Scottish public authority; a public body in another member state; an Community institution or body; a body established by international agreement to which the EC and UK are party Regulation 12(7)

⁴⁶ Regulation 12(1)

⁴⁷ Data Protection obligations will still apply – see

http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/pinfo-framework.pdf

⁴⁸ Regulation 12(2)

⁴⁹ Regulation 12(3)

⁵⁰ Regulation 12(4)

⁵¹ Regulation 12(5)

⁵² Regulation 12(6)

Charging for Public Access

Guidance - Charging

The INSPIRE Regulations will operate within the existing Government framework on charging for information and nothing in them is intended to depart from existing policy.

25. Public authorities and third parties must not charge members of the public for discovery services⁵³

26. The public generally should not be charged for view services except where that charge secures the maintenance of spatial data sets and spatial data services, especially in cases involving very large volumes of frequently updated data⁵⁴. Public authorities and third parties may charge the public a reasonable sum for all other services.

27. Where charges are made for view or other network services these services must have an 'e-commerce'⁵⁵ based charging arrangement.

Guidance – 'e-commerce'

These Regulations do not define the term e-commerce. Most public authorities and third parties will already have e-commerce arrangements these should be used when providing data or services to users.

28. Spatial data made available through a view service can be in a form that prevents its commercial re-use⁵⁶.

Internal complaints procedure

29. A public authority or third party data owner must set up an internal complaints procedure⁵⁷. to receive written complaints from members of the public about any aspect relating to the performance of their functions under the Regulations. For instance, complaints about the way they have provided (or restricted access to) data or services under INSPIRE, charged for it, dealt with the technical standards set by INSPIRE or handled personal data. Public authorities may receive written complaints from other public authorities about their data sharing arrangements.

30. If a written complaint is received it must be dealt with according to the public authority's/third party's internal complaints procedure. The body complained to must come to a decision within a reasonable time and write to the complainant about it, setting out their reasons for reaching the decision they have.⁵⁸

Guidance to Public Authorities on Internal Complaints Procedures

Public authorities may receive complaints about public access and data sharing matters. They may already have established arrangements for handling access complaints under, for example, Freedom of Information and while data sharing (or technical compliance) complaints might be handled by the same arrangements, these Regulations are not prescriptive on that point.

⁵³ Regulation 10(1)

⁵⁴ Regulation 10(2)

⁵⁵ Regulation 10(4)

⁵⁶ Regulation 10(4)

⁵⁷ Regulation 13(1)

⁵⁸ Regulation 13(2)-(4)

Enforcement and appeals in relation to public access

31. Where a complainant is not satisfied with the decision of the public authority or third party in respect of a complaint about general access to data or services or handling personal data, (s)he may refer the matter to the Information Commissioner⁵⁹; further appeal under the Act is available to the Information Tribunal and Higher Courts.

Guidance – Role of the Information Commissioner

For further information on the role of the Information Commissioners in England, Wales and Northern Ireland see <http://www.ico.gov.uk/>

Coordination and Monitoring

32. The Regulations place a number of obligations on the Secretary of State and on public authorities and third parties in respect of coordination and monitoring. Annex 2 provides more information about the responsibilities of the Secretary of State that are discharged by the Coordination Unit.

33. Public authorities and third parties must 'have regard to' guidance issued to them about internal complaints procedures.⁶⁰

Guidance –What does 'have regard to' mean?

The regulations say public authorities and third parties must 'have regard to' guidance issued to them. This doesn't say they must follow it, "come what may", but they should follow it unless there is a very strong reason not to.

34. Public authorities must also provide information requested of them to enable the reporting and monitoring functions placed on member states by the European Commission to be fulfilled.⁶¹

⁵⁹ Regulation 11 The Information Commissioner has no role in connection with appeals about user requirements and ease of use (Regulation 7) or charging (Regulation 10)

⁶⁰ Regulation 14(6)

⁶¹ Regulation 14(7)

INSPIRE Themes

ANNEX I

SPATIAL DATA THEMES REFERRED TO IN ARTICLES 6(A), 8(1) AND 9(A)

1. Coordinate reference systems
2. Geographical grid systems
3. Geographical names
4. Administrative units
5. Addresses
6. Cadastral parcels
7. Transport networks
8. Hydrography
9. Protected sites

ANNEX II

SPATIAL DATA THEMES REFERRED TO IN ARTICLES 6(A), 8(1) AND 9(B)

1. Elevation
2. Land cover
3. Orthoimagery
4. Geology

ANNEX III

SPATIAL DATA THEMES REFERRED TO IN ARTICLES 6(B) AND 9(B)

1. Statistical units	12. Natural risk zones
2. Buildings	13. Atmospheric conditions
3. Soil	14. Meteorological geographical features
4. Land use	15. Oceanographic geographical features
5. Human health and safety	16. Sea regions
6. Utility and governmental services	17. Bio-geographical regions
7. Environmental monitoring facilities	18. Habitats and biotopes
8. Production and industrial facilities	19. Species distribution
9. Agricultural and aquaculture facilities	20. Energy resources
10. Population distribution — demography	21. Mineral resources
11. Area management / restriction / regulation zones and reporting units	

Other Provisions of the INSPIRE Regulations

Regulation 8 – Linking to a Network

1. The Coordination Unit acts on behalf of the Secretary of State to link public authorities and third parties that apply to join to the network (UKLII). This is done whenever spatial data conforms to the metadata Regulations and spatial data services comply with Regulation 7, network services.

Regulation 14 – Coordination and Monitoring

2. The Coordination Unit acts on behalf of the Secretary of State as the point of contact between the European Commission and the UK on matter of relating to the implementation of INSPIRE.⁶² In practice it will do this in close co-operation and agreement with the devolved administrations. The Coordination Unit undertakes functions including:

- a. Enforcing regulations in respect of metadata (particularly the registration of metadata) and network services;⁶³
- b. Monitoring the spatial data infrastructure and making the results available publicly and to the Commission;⁶⁴
- c. Issuing guidance (in collaboration with the devolved administrations) to public authorities and third parties about implementation of the Directive;⁶⁵ and on internal complaints procedures.⁶⁶

⁶² Regulation 14(2)

⁶³ Regulation 14(3)(a)

⁶⁴ Regulation 14(3)(b)

⁶⁵ Regulation 14(4)

⁶⁶ Regulation 14(5)