

# **Guidance on INSPIRE Complaints & Appeals**

**Edition 2.0**

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# Document Control

## Change Summary

Version	Date	Author / Editor	Change Summary
1.0	18/05/11	Andrew Newman (UKLP)	First edition of guide.
2.0	15/04/13	John Dixon (Defra UK-INSPIRE)	Revision to incorporate changes made by Amending SI 2012/1672, and to update links.

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# Contents

<b>1. Background .....</b>	<b>1</b>
<b>2. Parties.....</b>	<b>2</b>
<b>3. Managing Complaints .....</b>	<b>3</b>
<b>4. Types of complaint .....</b>	<b>4</b>
Application of INSPIRE technical standards .....	4
Charging .....	5
Restricting public access to data or services .....	5
Freedom of Information Act 2000 (FOIA), Environmental Information Regulations 2004 (EIR) and Data Protection Act 1998 (DPA) .....	6
Complaints made by one public authority about another’s data sharing arrangements.....	6
Judicial Review.....	6
<b>5. Where to obtain more information .....</b>	<b>7</b>

# 1. Background

This guidance document provides information for Public Authorities who are providing INSPIRE data and Network Services. Public Authorities are required to put in place processes to handle complaints they receive about the performance of their functions under the INSPIRE Regulations 2009<sup>1</sup> as amended in 2012<sup>2</sup>.

The information in this document can also be used by Users wishing to complain about the performance of a Public Authority. It will help them understand what they can complain about and how to make a complaint.

Scotland has its own INSPIRE Regulations<sup>3</sup> which are aligned with the INSPIRE Regulations 2009. However clarification of arrangements in Scotland should be sought from the Scottish Government (contact details in section 5). It should be noted that all references to the INSPIRE Regulations in this document refer to the INSPIRE Regulations 2009 as amended in 2012 covering England, Wales and Northern Ireland.

For the avoidance of doubt, references to INSPIRE Regulations in this document do **not refer to** any EU INSPIRE Regulations or Technical Guides.

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<sup>1</sup> [The INSPIRE Regulations 2009](#)

<sup>2</sup> [The INSPIRE Amendment Regulations 2012](#)

<sup>3</sup> [The INSPIRE \(Scotland\) Regulations 2009](#) and [The INSPIRE \(Scotland\) Amendment Regulations 2012](#)

## 2. Parties

This section provides an overview of the parties involved in INSPIRE complaints.

Public Authority	Public Authorities are defined in regulation 2 of the INSPIRE Regulations. For the purposes of this guidance the term Public Authority includes third parties, who are also defined in regulation 2.
User	Any individual or organisation (including Public Authorities) accessing or using data published under the INSPIRE Regulations.
Defra UK-INSPIRE Team (UKIT)	The UKIT is responsible for coordinating, and monitoring the delivery of INSPIRE in the UK. The UKIT works closely with the devolved administrations.
Information Commissioner (ICO)	The Information Commissioner is the independent authority responsible for matters relating to access to and the protection of certain information. It is the enforcement authority for the Data Protection Act 1998 (DPA), Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

### 3. Managing Complaints

Public Authorities providing INSPIRE data and Network Services are required to have internal procedures to handle complaints they receive about the performance of their functions under the INSPIRE Regulations<sup>4</sup>.

The INSPIRE Regulations are not prescriptive about the way Public Authorities' complaints procedures are organised. They do not state how decisions should be made, who should make decisions or what form responses should take.

Most Public Authorities will already have established procedures for handling complaints under FOIA/EIR/DPA. UKIT recommends that these processes should be extended to review complaints under the INSPIRE Regulations. Experience in handling FOIA/EIR/DPA complaints will be valuable when dealing with complaints under the INSPIRE Regulations.

Users must complain in writing<sup>5</sup> and Public Authorities must respond in writing<sup>6</sup>. Electronic systems (e-mail, casework systems) may be used.

Complaints must be dealt with according to documented internal procedures. We recommend that these procedures are outlined when acknowledging receipt of a complaint.

Following investigation, the Public Authority must write to the User setting out their decision and the reasons for reaching the decision they have made<sup>7</sup>. This response provides an opportunity to help the User understand how the decision was made and why the Public Authority believes its decision is correct.

Public authorities must respond with their decision about a complaint within 'a reasonable time'<sup>6</sup>. It is recommended that complaints are acknowledged within 5 working days and answered within 20 working days, and only where there are exceptional circumstances within 40 working days. It is recommended that Users are kept informed of the progress being made in handling their complaint where there is delay.

When a User is dissatisfied with a Public Authority's decision they may be able to appeal against the decision. The Public Authorities response to a complaint must inform the User of what further rights of appeal are available to them. Appeal options for each type of complaint are described in Section 4.

Reviewing a complaint provides Public Authorities with the opportunity to revise anything it has said or done previously; lessons learnt should be drawn from complaints to improve INSPIRE delivery.

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<sup>4</sup> Regulation 13(1)

<sup>5</sup> Regulation 13(2)b

<sup>6</sup> Regulation 13(4)

<sup>7</sup> Regulation 13(3)

## 4. Types of complaint

The INSPIRE Regulations set out what spatial data is to be published and the form in which it is made available, as well as the grounds for restricting access to the data<sup>8</sup>. They also state that services (discovery, view, download, transform and invoke) must be available and accessible via the internet or other appropriate means of telecommunication<sup>9</sup>.

Users may complain about a Public Authority's performance of its functions under the INSPIRE Regulations, including:

- The application of INSPIRE technical standards,
- Charging, or
- The way a Public Authority has restricted access to data or services.

Public Authorities may also receive written complaints from other Public Authorities about their data sharing arrangements<sup>10</sup>.

### Application of INSPIRE technical standards

The INSPIRE Regulations and associated EU Implementing Rules<sup>11</sup> define detailed technical standards for metadata, data and network services to be met by Public Authorities. If a User believes that a Public Authority has not fully met these standards, for example, has not properly applied a data specification, they may complain.

The User must complain directly to the Public Authority in writing. The Public Authority will consider the complaint and write to the User with a decision.

To enable the Secretary of State to ensure compliance with the technical elements of the INSPIRE Regulations the decision must be copied to the UKIT with a summary of the complaint and any resulting actions<sup>12</sup>.

Users/Public Authorities will require a 'technical' appreciation of the mandated standards to make/resolve this type of complaint.

There is no right of appeal to the UKIT or ICO on technical standards.

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8 Regulation 9

9 Regulation 7(4)(c)

10 Regulation 12

11 These Implementing Rules can be found on the [INSPIRE website](#)

12 This information is requested under Regulation 14(7)

## Charging

The INSPIRE Regulations allow Public Authorities to charge Users for data/services in certain circumstances<sup>13</sup>.

Detailed guidance on charging under the INSPIRE Regulations, and more general government policy is set out in the *Data Sharing Operational Guidance Part 2 - Licensing and Charging*<sup>14</sup>. Users and Public Authorities should consider this guidance, and the INSPIRE Regulations when making/resolving this type of complaint.

If a User believes a charge for re-use of data is unreasonable they may make a complaint under the PSI Regulations<sup>15</sup>.

If having received the Public Authority's written decision, the User remains dissatisfied they are advised to make a complaint to the Office of Public Sector Information (OPSI) at The National Archives.

Detailed guidance on how to make/determine complaints under the PSI regulations can be obtained from OPSI.

There is no right of appeal to the UKIT or ICO on the charging provision.

## Restricting public access to data or services

Regulation 9 of the INSPIRE Regulations allows Public Authorities to restrict public access to data for a number of reasons, for example, the protection of personal data, intellectual property rights or national security. If a User believes that some or all of the information has been unreasonably withheld under regulation 9 they may make a complaint.

The User must complain directly to the Public Authority in writing.

If, having received the Public Authority's written decision, the User remains dissatisfied with the reasons given for withholding information under Regulation 9 they may refer the matter to the ICO. If dissatisfied with the ICO's decision an appeal may be made to the First Tier Tribunal (Information Rights). The First Tier Tribunal (Information Rights) hears appeals made against Information Commissioner's Decision Notices.

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13 Public Access - Regulation 10; Between public Authorities Regulation 12(3)-(6)

14 UK Location Data Sharing Guidance can be found at [http://data.gov.uk/location/guidance\\_and\\_tools](http://data.gov.uk/location/guidance_and_tools)

15 [The Re-use of Public Sector Information Regulations 2005 No. 1515](#)



## **Freedom of Information Act 2000 (FOIA), Environmental Information Regulations 2004 (EIR) and Data Protection Act 1998 (DPA)**

It may be possible for a User to complain about a Public Authority refusing to disclose data under the FOIA/EIR. Detailed guidance on how to make complaints under FOIA/EIR can be obtained from the ICO at <http://www.ico.gov.uk>. Guidance for Public Authorities on FOIA is also provided by the Ministry of Justice (MoJ) at <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners>.

The INSPIRE Regulations recognise<sup>16</sup> that spatial data may in some occasional circumstances include personal data. If a User wishes to complain about the disclosure/processing of his/her personal data a complaint should be made under the DPA. Detailed guidance on how to make complaints under DPA can be obtained from the ICO at <http://www.ico.gov.uk>. Guidance for Public Authorities on the DPA is also provided by MoJ at <http://www.justice.gov.uk/guidance/dataprotection.htm>.

### **Complaints made by one public authority about another's data sharing arrangements.**

Public Authorities must enable each other to gain access to and use the data they hold, for the purposes of each other's public tasks where that may impact on the environment<sup>17</sup>. Public Authorities may make such data available under licence and/or charge a fee<sup>18</sup>.

If a Public Authority unreasonably fails to make data available or imposes onerous licensing conditions or unreasonable charges, the Public Authority wishing to use the data may complain in writing to the Public Authority. Complaints should be managed in the same way as complaints made by any other user.

### **Judicial Review**

Judicial review is concerned with ensuring that bodies exercise their statutory functions observing the substantive principles of public law (such as complying with the rules of natural justice) and that the decision-making process itself has been undertaken lawfully.

A User may seek a judicial review in certain circumstances. Guidance on Judicial Review can be found at <http://www.judiciary.gov.uk/>.

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<sup>16</sup> Regulation 9

<sup>17</sup> Regulation 12(1)

<sup>18</sup> Regulation 12(3)–(6)

## 5. Where to obtain more information

Further advice, the latest information, and additional resources for data publishers and data Users can be obtained at: <http://data.gov.uk/location>.

Information on the INSPIRE Directive can be found at:  
[inspire.jrc.ec.europa.eu/index.cfm](http://inspire.jrc.ec.europa.eu/index.cfm).

You can contact the UKIT via the website, at this page:  
[http://data.gov.uk/location/contact\\_points](http://data.gov.uk/location/contact_points).

If you are looking for information specific to Scotland, Wales or Northern Ireland, please contact the relevant office using the details at:  
[http://data.gov.uk/location/contact\\_points](http://data.gov.uk/location/contact_points).