

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 16 October 2024

**Public Authority:** Department for Energy Security and Net Zero

**Address:** 3-8 Whitehall Place  
London  
SW1A 2AW

### **Decision**

---

1. The Commissioner's decision is that Department for Energy Security and Net Zero (DESNZ) is entitled to rely on regulation 12(4)(e) of the EIR to withhold the information in scope of the request, however the public interest favours disclosure.
2. The Commissioner requires DESNZ to take the following step to ensure compliance with the legislation:
  - Disclose the information listed in the confidential annex which is in scope of the request.
3. DESNZ must take this step within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Background to request**

4. The requested information relates to the Clean Heat Market Mechanism (CHMM), a new scheme to support the decarbonisation of heat in buildings, which the previous Government had originally announced in November 2023 would be launched on 1 April 2024. However, a subsequent announcement was made on 14 March 2024 that the

Government intended to postpone the introduction of the scheme<sup>1</sup> by one year until April 2025 and launched a consultation, which ran until 9 May 2024, on this proposal.

5. A Government response to this 'addendum' consultation, which will set out the new Government's plans with respect to this policy, remains in development and has not yet been published. The new Government has yet to reach or announce a decision on how it will proceed in relation to the proposals.

## **Request and response**

---

6. On 22 March 2024, the complainant made the following request for information:

"In accordance with the FOI Act, please could you provide me with the following information:

- Any modelling carried out by or for the department relating to scrapping or delaying the implementation of the Clean Heat Market Mechanism.

- Any alternative policies drafted to prevent boiler manufacturers from increasing costs."

7. DESNZ responded to the request on 8 April 2024. It stated that it held information ("the withheld information") within the scope of part 1 of the request but refused to disclose it, citing regulation 12(4)(e) of the EIR. It stated that it did not hold information within the scope of part 2 of the request.
8. The complainant sought an internal review of DESNZ's handling of part 1 of the request on 8 April 2024. A response to this was provided on 29 April 2024. The reviewer upheld the application of regulation 12(4)(e).

## **Reasons for decision**

---

9. On the basis of their complaint to the Commissioner, this reasoning covers whether the withheld information is environmental information
- 

<sup>1</sup> <https://www.gov.uk/government/consultations/clean-heat-market-mechanism> Page 2 of 5

and, if so, DESNZ's application of regulation 12(4)(e) of the EIR to the request.

10. The withheld information concerns the effects of proposed environmental policy implementation. As such the Commissioner is satisfied that the information is environmental information under regulation 2(1)(a) and 2(1)(c) of the EIR.
11. Under regulation 12(4)(e) of the EIR, a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. This exception covers all internal communications and the sensitivity of the information is not a consideration for the exception to be engaged.
12. If information represents an internal communication, the exception will apply. For the purpose of regulation 12(4)(e), a 'communication' is meant to be interpreted broadly. It covers any information someone intends to communicate to others, including communications by letter, memo, email and spreadsheet. An internal communication is a communication that stays within the public authority. Once a communication has been sent to someone outside the authority, it is generally no longer captured under this exception.
13. In its response of 8 April 2024 to the complainant's request, DESNZ stated that the withheld information consisted of internal communications as it was communicated solely within DESNZ. It consists of written communication by way of submission from departmental officials to Ministers. The information was not disclosed further.
14. Having viewed the withheld information, the Commissioner accepts that it can be categorised as internal communications as it has been presented to Ministers and has not gone outside DESNZ. The information therefore engages regulation 12(4)(e) of the EIR.

### **The public interest test**

15. As he is satisfied that regulation 12(4)(e) is engaged, the Commissioner has gone on to consider the public interest test attached to the application of this exception, as required by regulation 12(1)(b) of the EIR. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
16. When carrying out the public interest test the Commissioner must take into account a presumption in favour of disclosure of the information which is required by regulation 12(2).

## **Public interest arguments in favour of maintaining the exception**

17. DESNZ has informed the Commissioner that it is vital that Ministers have frank and candid advice on decarbonisation progress being made. It states that the principle that public authorities should have a 'safe space' to think in private is especially relevant to this case as the information covers a variety of internal policy issues related to the decarbonisation of the UK economy, as part of a transition spanning multiple decades.
18. It is DESNZ's position that disclosure of related information would affect this 'safe space' and may also lead to a 'chilling effect' leading to less candid internal discussions which will result in less robust and effective decision-making.
19. DESNZ states that the requested information contains different options with respect to the policy and the different potential implications of those options and are therefore central to ongoing deliberations and discussions among DESNZ officials, including ministers. The high level of media, industry stakeholder and political interest in the decisions related to the CHMM during the period when the information request was received (and still) would also be expected to increase the likelihood that elements of the information if disclosed, or assumptions drawn about the context in which it might have been sought or provided, would risk being published in isolation, or to make a particular point on one side of an industry debate or other about whether and how the scheme should proceed.
20. DESNZ considers that such disclosure would potentially risk impeding Ministers' ability to reach a decision in private, and then present and defend that decision. Ministers need to reach a rounded decision on a timescale that allows for proactive rather than reactive decision-making and with due consideration of the full spectrum of written responses to the then still-open consultation, very few of which had yet been submitted at the time of the request, still less reviewed and considered. DESNZ also considers that it is possible to imagine that speculative assumptions, whether accurate or not, about whether the abandonment of the scheme was being actively considered could themselves risk making that outcome more likely to the detriment of the very significant public interest in accelerating building decarbonisation and reducing greenhouse gas emissions from heating.
21. In this vein, DESNZ has stated that, if the new Government should decide to proceed with the policy, an Impact Assessment will be published alongside the introduction to Parliament of relevant secondary legislation enacting the scheme; this will set out and allow for public scrutiny of the analysis of the expected impact on greenhouse gas

emissions of the policy at launch and in future, relative to the outcome of not proceeding.

### **Public interest arguments in favour of disclosure**

22. The Commissioner accords significant weight to the argument that public authorities should be open, transparent and accountable about important issues affecting the public.
23. DESNZ accepts that disclosure of the information could increase accountability by allowing the public to assess and influence the quality of decision making on policies such as those in relation to decarbonisation and net zero. Furthering public understanding of how the Government is dealing with these issues, and informing public debate surrounding this, through openness and transparency, are significant factors in favour of disclosure of the withheld information.
24. The complainant argues that the modelling carried out as part of this policy decision is very much in the public interest as it has a direct impact on energy bills/energy choices (whether or not to get a heat pump) and the wider national goal of meeting net zero targets. The complainant also argues that releasing data modelling does not impinge on government officials' right to have a 'safe space' to think through policy.

### **Balance of public interest arguments**

25. DESNZ states that the need for a 'safe space' is particularly relevant in considering the public interest in this case because the information requested covers a variety of live issues related to proposals for the CHMM and others, which government officials need the opportunity to continue to discuss, review and test away from external interference and distractions.
26. DESNZ considers that disclosure of related internal correspondence would affect this 'safe space'. It may also have a 'chilling effect' if the information requested is released as officials discussing this policy area – both specific policy proposals related to the CHMM, which are the subject of a present consultation, and wider considerations related to policy for the decarbonisation of heat and buildings – may be less frank in giving or seeking advice in the future if there is a possibility that this on-going thinking may be made public; this would be likely to have an adverse impact on the quality of decision making.
27. The Commissioner does not consider that 'safe space' and 'chilling effect' arguments automatically carry much weight in principle. The weight accorded to such arguments depends on the circumstances of the specific case, including the timing of the request, whether the issue is still live, and the content and sensitivity of the information in question.

28. DESNZ has made submissions to the Commissioner regarding the above arguments, which relate to the fact that the policy and decision-making processes are ongoing, therefore the need for frank and candid discussion in a safe space continue to apply. The Commissioner accepts the safe space arguments, however he is less convinced by the 'chilling effect' arguments, i.e. that there is a risk that officials will self-censor in order to avoid disclosure into the public domain. The Commissioner considers that such officials should be sufficiently robust and confident in their thinking that such self-censure would not be necessary.
29. The Commissioner is aware that Government evidently requires space to decide upon important policy issues. However, the Commissioner has had to balance the necessity for the protection of policy and decision-making processes, involving frank and candid discussions, against the public interest in transparency, the actual statutory requirement for transparency enshrined in the Climate Change Act 2008, and the fact that the topic of decarbonisation and 'net zero' continue to be of great interest, generating much ongoing public debate and discussion.
30. The Commissioner is also aware that, should the new Government decide to proceed with the policy, an Impact Assessment will be published and this will allow for public scrutiny of the expected impact of implementing the policy versus that of not proceeding.
31. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure.
32. The Commissioner considers that the public interest is very finely balanced in this case, however the fact that this information relates to policies which are highly topical and relevant, and continue to generate much public discussion and debate, together with the presumption in regulation 12(2) of the EIR, tips the balance in favour of disclosure.
33. Having considered all of the arguments advanced by both the complainant and DESNZ, the Commissioner's conclusion is that the public interest in disclosure outweighs the public interest in maintaining the exception

## **Right of appeal**

---

34. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## **Signed**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**