

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 5 June 2025

Public Authority: Department for Energy Security and Net Zero
Address: 3-8 Whitehall Place
London
SW1A 2EG

Decision (including any steps ordered)

1. The complainant has requested from the Department for Energy Security and Net Zero (DESNZ) a copy of the scope of work for the update to noise guidance for onshore wind farms. DESNZ refused the request under regulation 12(4)(d) of the EIR – material in the course of completion.
2. The Commissioner's decision is that DESNZ has correctly applied regulation 12(4)(d) and that the public interest favours maintaining the exception.
3. The Commissioner does not require further steps.

Background

4. The current noise guidance for onshore wind farms is the 1996 'The Assessment and Rating of Noise From Wind Farms¹', otherwise known as ETSU-R-97 (ETSU).
5. ETSU is regularly used by Local Authorities across the UK for appraising planning applications for onshore wind developments.
6. Due to advances in sound measurement and turbine technology since 1996, in 2021 the government commissioned Williams Sale Partnership (WSP) to conduct a scoping review to assess whether ETSU would benefit from being updated to bring it into line with the most up to date evidence and policy and, if so, how. WSP published the outcome of the scoping review in a public report in February 2023² - Report for UK government: a review of noise guidance for onshore wind turbines (WSP Report).
7. The WSP Report concluded that, based on the available evidence, the ETSU guidance would benefit from updates in two key areas – noise limits and amplitude modulation. The WSP Report also includes recommendations on further areas of the guidance likely to benefit from updating to reflect the latest evidence addressing methods of measurement, prediction, data analysis, assessment and control for wind turbine sound and noise.
8. The government considered the recommendations in detail and in November 2023 convened a steering group comprising of policy officials and technical experts from across government and the devolved administrations. The steering group agreed to proceed with undertaking specific, targeted updates to ETSU.
9. DESNZ went through an open market procurement process to procure a consortium, led by Noise Consultancy Limited (NCL), to conduct the guidance update and draft the updated ETSU guidance.
10. DESNZ required all potential bidders to sign a Non-Disclosure Agreement to view a detailed Full Specification. This set out the specific

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/49869/ETSU_Full_copy_Searchable_.pdf

² <https://www.wsp.com/en-gb/insights/wind-turbine-noise-report>

scope of work to update ETSU that the bidders would be contracted by DESNZ to do.

11. The Commissioner understands that DESNZ intends to publicly consult on the draft updated guidance, subject to views from Ministers, and that DESNZ aims to publish the updated ETSU guidance in Autumn 2025.

Request and response

12. On 27 August 2024, the complainant wrote to DESNZ and requested information in the following terms:

"Thank you for your response re subject. In it you have stated that ETSU R 97 would benefit from targeted updates (which i fully support) and that you have contracted Noise Consultants Ltd to do the work on updating the guidance.

I would be grateful if you could provide me with the scope of work that was issued in the competitive tendering process that you will be assessing the contractors work against."

13. DESNZ responded on 22 October 2024 and refused to provide the requested information citing the following exception – regulation 12(4)(d) of the EIR. DESNZ said it understood the complainant was requesting the Full Specification of work that NCL had been contracted by DESNZ to do. DESNZ provided a link to the publicly available information on the awarded contract to NCL.³ DESNZ said that it aimed to publish updated guidance in Spring 2025.
14. On 1 November 2024, the complainant requested an internal review on the basis that the scope of work set out in the contract awarded to Noise Consultants Ltd was redacted and so unavailable to the public. He said: "I am not asking if night time noise levels will be reduced to WHO standards or detail on how better Amplitude Modulation penalties can be more clearly and fairly applied, I am only asking for the high level general nature of what tax money is being spent on. What is there to hide?"
15. Following an internal review response on 5 December 2024, DESNZ maintained its position to withhold the information on the basis of regulation 12(4)(d). DESNZ provided the complainant with a copy of the

³ <https://www.contractsfinder.service.gov.uk/notice/ff4fa849-6c1d-430b-b40a-0db44afea366?origin=SearchResults&p=1>

WSP Report and said that the WSP Report provides the public with a high level overview of what the update to ETSU will entail. It further explained: "The scope includes policy options being considered by NCL, and releasing this information in a piecemeal fashion could prejudice the outcomes of the ETSU update."

Scope of the case

16. The complainant contacted the Commissioner on 11 December 2024 to complain about the way their request for information had been handled. He said: "I believe that the [scope] should be public now as it has serious implications to wind farms in the planning pipeline that could affect thousands of people. There is no clear indication for what wider material is being referred to and no clear case for why policy options should not be open; previously many organisations, public and private, were involved in this work, so why the secrecy now? The public will not have the ability to influence NCL's work if it is done professionally."
17. The Commissioner considers the scope of his investigation is to consider whether DESNZ was entitled to reply on regulation 12(4)(d) EIR to refuse to provide the requested information.

Reasons for decision

Regulation 12(4)(d) – Material in the course of completion, unfinished documents and incomplete data

18. Regulation 12(4)(d) of the EIR provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents, or to incomplete data. It is the first limb of this exception that DESNZ has sought to rely on in this case.
19. The exception is class-based, which means that it is engaged if the information in question falls within its scope. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception. However, regulation 12(4)(d) is subject to the public interest test.

20. The Commissioner's guidance⁴ sets out how the phrase 'material still in the course of completion' should be interpreted.
21. For this limb to be engaged, either the requested information itself must be still in the course of completion, or the requested information must 'relate to' material which is still in the course of completion.
22. With regard to 'material', this must have a physical existence; it cannot be something that does not physically exist, like a project, an exercise, or a process. An overarching project cannot engage the exception even if it is not complete, but each individual document may do if it has not yet been completed.
23. Finished or complete information that 'relates to' material in the course of completion may be covered by this limb of the exception. More specifically, the guidance explains that in order to rely on this aspect of the exception:

'You [ie a public authority] need to:

- identify the material that is actively being worked upon; and
- be able to explain why, and how, the information you wish to withhold relates to it; and
- consider whether the requested information is a separate and independent piece of work in its own right.

It is important to recognise that the exception will not automatically apply to all information that can be linked to material that is still in the course of completion. If the information is a separate, independent, and complete piece of work in its own right, the information will not fall within this limb of the exception.'

24. DESNZ is seeking to argue that the completed scope of work (called the Full Specification by DESNZ) 'relates to' material still in the course of completion.

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-124d-eir/#whatisinformation>

DESNZ's position

25. DESNZ explained to the Commissioner that NCL has been contracted by DESNZ to conduct the guidance update and to draft updated ETSU guidance for onshore wind turbines.
26. During the competitive tendering process to conduct the updates, DESNZ said it released a high-level specification, available within the public domain, with an overview of the scope of services required for the contract. The Commissioner notes that in DESNZ's initial response to the complainant it provided a link to the publicly available information on the awarded contract to NCL.⁵ The Commissioner notes that Annex 2 of the contract – called the Specification – contains six headings but the information under each, including 'Scope', has been redacted.
27. DESNZ explained that during the tendering process it required all potential bidders to sign a Non-Disclosure Agreement in order to view the Full Specification of work required.
28. DESNZ further explained in its submissions to the Commissioner that the scope of work as set out in the Full Specification is based on the recommendations made in the WSP Report. However, DESNZ stressed that the Full Specification document outlines which of WSP's recommendations DESNZ has chosen to take forward at this stage in the updated ETSU guidance and which it has not.
29. DESNZ went on to explain that DESNZ and NCL are continuing to work with experts, stakeholders and Ministers to finalise key aspects of the updated guidance. Currently the updated guidance document is still being drafted and remains unfinished. DESNZ also says it intends to publicly consult on this updated guidance, subject to views from Ministers. DESNZ explained to the Commissioner that it is now aiming to publish the updated ETSU guidance in Autumn 2025.
30. Overall, DESNZ's submissions argued that while the information withheld, (namely the Full Specification containing the scope of work NCL is undertaking), is itself complete, it 'relates to' and is being used to inform the final updated ETSU guidance, the development of which is still ongoing, and which will be subject to public consultation.

⁵ [https://www.contractsfinder.service.gov.uk/notice/ff4fa849-6c1d-430b-b40a-0db44afea366?origin=SearchResults&p=1;file:///C:/Users/heyc/Downloads/PS24055%20-%20AW4.1%20Short%20Form%20Contract%20\(REDACTED\)%20.pdf](https://www.contractsfinder.service.gov.uk/notice/ff4fa849-6c1d-430b-b40a-0db44afea366?origin=SearchResults&p=1;file:///C:/Users/heyc/Downloads/PS24055%20-%20AW4.1%20Short%20Form%20Contract%20(REDACTED)%20.pdf)

The Complainant's position

31. The complainant argued that he was frustrated with the lack of clarity from DESNZ about what was being planned in the updated guidance "for the thousands of people who may suffer as a consequence from noise inadequately controlled before construction of future turbines inshore." He further explained that he was not looking for specific details at this stage about exactly how the guidance was going to be updated but that "I am only asking for the high level general nature of what tax money is being spent on. What is there to hide?"

The Commissioner's position

32. The Commissioner has reviewed the withheld information and notes that the Full Specification annexed to the contract was prepared by DESNZ and sets out the specific scope of work which DESNZ has (and has not) asked NCL to undertake to update the ETSU guidance.
33. The Commissioner has considered the arguments put forward by DESNZ that the Full Specification sets out DESNZ's policy decisions on which WSP recommendations DESNZ wants NCL to consider when updating the guidance and which WSP recommendations have not been selected by DESNZ to be taken forward at this stage.
34. In that respect, the Commissioner accepts that, even though the Full Specification document itself is complete, it 'relates to' the revising of the ETSU guidance which is still ongoing.
35. The Commissioner is mindful of the example provided in his guidance⁶:

'An officer creates an 'aide memoire' note for a policy guidance document you are developing. The note is not intended to be a formal record but is nevertheless part of the process of developing the policy guidance document.

The note is a completed document because there is no intention of adding to it. However, it relates to the creation of the guidance document that is ongoing and you are still actively working on it.

The exception may therefore apply to the note because it relates to 'material', the guidance document, which is 'still in the course of completion'. The two documents are interlinked.'

⁶ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-124d-eir/>

36. Therefore, the Commissioner accepts DESNZ's position that the specific information that has been withheld on the basis of this exception (the Full Specification of work) 'relates to' the creation of the updated ETSU guidance document that is ongoing and that DESNZ are still actively working on it and that will be subject to public consultation.
37. In addition, the Commissioner is mindful of the case of *Highways England v Information Commissioner and Manisty*⁷ where the Tribunal said it may be helpful to consider whether there has been a 'natural break in the private thinking', or whether the authority is ready to go public about progress so far. Here, the Commissioner accepts that DESNZ is not ready to go public about its progress so far in updating the ETSU guidance. DESNZ has explained that it and NCL are continuing to work with experts, stakeholders and Ministers to finalise key aspects of the updated guidance. The guidance is therefore still being revised (on the basis of the choices DESNZ made in the Specification), the guidance has not yet been finished and published, and DESNZ plans to publicly consult about it in the near future. So it does not appear to the Commissioner that a 'natural break in private thinking' about the ETSU guidance has occurred at this stage.
38. On this basis the Commissioner accepts that the withheld information 'relates to' information which is 'still in the course of completion'. The Full Specification relates to the creation of the updated ETSU guidance document that is actively being worked on. As noted above, DESNZ has told the Commissioner that it is not aiming to publish the updated guidance until Autumn 2025.
39. As the Commissioner has concluded that the exception is engaged, he has now gone on to consider the public interest test.

Public interest test

40. Regulation 12(1)(b) requires that, where the exception under regulation 12(4)(d) is engaged, a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.
41. Further, regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

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https://assets.publishing.service.gov.uk/media/5fa4242be90e07042243203b/2019_AACR_17ws.pdf

Public interest in favour of maintaining the exception

42. DESNZ explained that it is mindful that noise from onshore wind turbines is an emotive topic that attracts intense interest from a small but vocal group of anti-onshore wind lobbyists.
43. It noted that it endeavours to be transparent and states that all of WSP's recommendations for updating the guidance were published publicly in their 2023 Report and that a high-level specification was also made publicly available, which stated that DESNZ were seeking an organisation to undertake an update to the guidance in accordance with the recommendations made in the WSP Report. DESNZ also explained that there has been significant input from stakeholders throughout the process of updating the guidance including stakeholder engagement completed during the WSP scoping review, with local planning authorities, government bodies, industry professional associations and the Independent Noise Working Group.
44. Despite this, it explained that there is also a strong public interest in ensuring that the development of government policy is not damaged by the premature disclosure of information which would adversely impact the effective development of that policy.
45. DESNZ explained this is because the scope of the update to the ETSU guidance, as set out in the Full Specification, was decided following careful consideration of the recommendations in the WSP Report and after advice from an expert steering group. DESNZ explained that by disclosing now (via disclosure of the Full Specification/scope of work) which of WSP's recommendations the government has chosen to take forward at this time in the updated ETSU guidance, there is a risk of an increase in queries and lobbying from stakeholders seeking to influence the guidance update.
46. DESNZ further explained that disclosure would have a detrimental impact on the effective development of the policy resulting in less robust, well-considered or effective guidance, which could have an impact on the future development of onshore wind. It argued that public bodies need space and time to fully consider their policy options and formulate new policy. During the process of drafting the document, NCL and DESNZ are working with acoustic experts and leading scientists to ensure that the updated guidance balances opportunities for energy generation with the impacts of noise emissions from turbines. Therefore DESNZ considered that there is a public interest in ensuring that information relating to the planned updates to the guidance is collected together and published at an appropriate stage in the process, rather than being released in a piecemeal fashion.

47. DESNZ concluded that the public interest is met by the settled intention to publish and consult on the updated guidance in the near future, and considers that it is reasonable, in all the circumstances of the request, that the information should be withheld until that date. In DESNZ's view, given the ongoing work on the ETSU guidance, and as the public will have the opportunity to provide comment on the proposed changes to the guidance prior to publication, DESNZ believes that the public interest in maintaining this exception outweighs that of disclosure at this time.

Public interest in disclosure of the information

48. The Commissioner is mindful of the provisions of regulation 12(2) which state that a public authority shall apply a presumption in favour of disclosure.
49. DESNZ has acknowledged that there will always be some general public interest in making information held by public authorities available as it increases public participation in decision making and aids transparency and accountability.
50. DESNZ also acknowledged a considerable level of public interest in how much noise from turbines is considered acceptable and the amount of land made available for onshore wind development. It recognises the need to be transparent about the updated guidance to contribute to public understanding and to promote good decision-making by public bodies.
51. However, DESNZ argued a significant amount of information has already been made available to the public to assist them with understanding the process for updating the guidance, such as the publicly available WSP Report.
52. DESNZ has further stated that it has always had a settled intention to publish the updated guidance once the policy is no longer evolving and the updated guidance has been finalised by NCL.
53. The complainant argues that the overall scope of work being carried out by NCL should be made public owing to the serious implications for wind farms in the planning pipeline that could affect thousands of people. He argued that there was no clear case why the high level nature of the policy options being taken forward by DESNZ in the updated guidance should not be disclosed now, although the Commissioner notes that he was not asking for specifics to be made available at this time, such as the updated noise levels or for details of Amplitude Modulation penalties. He also argued that the public will not have the ability to influence NCL's work.

Balance of the public interest test

54. The Commissioner has considered the arguments put forward by DESNZ and the complainant both in favour of disclosure and maintaining the exception.
55. With regard to the public interest in favour of disclosing the information, the Commissioner understands there is significant interest in onshore wind farms. Disclosure of this type of information could improve the public's understanding and such information would therefore provide the public with an understanding that goes beyond the high-level specification that was made available as part of the public open market competition, which outlined that the guidance would be updated according to the recommendations made in the WSP report.
56. However, the Commissioner believes that there are occasions when a 'safe space' is needed by public authorities to allow them to formulate policy, debate live issues and reach decisions without being hindered by external comment. In addition, the weight of the safe-space arguments depends on the progress or finished nature of the documents. The safe space argument does carry some weight here.
57. The safe space argument DESNZ has presented relates to the continued safe space needed to revise the ETSU guidance by implementing the updates it has selected from the WSP Report as set out in the Full Specification document. The Commissioner agrees that DESNZ should have a 'safe space' to finish ongoing work relating to the updated guidance without interruption, undue pressure and interference from the public or other external sources.
58. It is possible that disclosure of the Full Specification document would make it difficult to finalise the guidance document in a timely manner. As the process of drafting the updated ETSU guidance is still ongoing, the Commissioner is persuaded that disclosure of the Full Specification/scope of work setting out exactly which recommendations from the WSP Report have and have not been taken forward by DESNZ would increase the likelihood of lobbying by stakeholders and/or the number of queries from interested parties making it more difficult and time-consuming to finalise the guidance. Further, resource would be taken up responding to requests to officials running the updated guidance process or in dealing with targeted public scrutiny on the policy decisions made by DESNZ with regard to the guidance update. NCL and DESNZ will be diverted in having to deal with explaining matters of concern and correcting potentially inaccurate reports and conclusions reached by the public and media.
59. Support for this approach is found in Commissioner's guidance, as cited above, where it says:

- "If the effort involved in correcting a misleading impression (for example, in answering a large volume of queries from the public) would be so great that it would actually hinder you from completing the work of which the unfinished or incomplete information is a part, this may be a public interest argument for maintaining the exception."
60. The Commissioner is persuaded that it would be counterproductive if disclosure may result in the updating process taking significantly longer to complete or being more burdensome on Ministers, officials and NCL. This is because more advice, explanation and assurance could be required thus compromising the effectiveness and efficiency of the updating process, resulting in less objective guidance in relation to onshore wind turbines due to lobbying from differing interested parties.
61. Further, the Commissioner recognises that as onshore wind farms and wind turbine noise is a sensitive topic, it is necessary for officials to manage the release of such important updated information responsibly. Disclosing details in the Full Specification relating to live matters may also distract public debate away from the substantive issues, such as noise levels, and cause unnecessary alarm. In the circumstances of this case, the Commissioner also accepts there is likely to be speculation and incorrect conclusions drawn as to differences between WSP recommendations and the Specification selected by DESNZ. This would not be in the public interest.
62. The Commissioner's guidance on regulation 12(4)(d) also makes it clear that a key factor in assessing the public interest is the extent to which the information would inform public debate. He acknowledges there is a public interest in disclosing information that gives a fuller picture as to the decisions that have been reached. However, having reviewed the withheld information, he does not consider that disclosing the Full Specification would significantly enhance the public debate on updated ETSU guidance and wind farms, especially when the updated ETSU guidance has not yet been finalised.
63. With regard to the complainant's argument that the public interest favours disclosing the information as the public will not have the ability to influence NCL's work, the Commissioner notes that DESNZ has told the Commissioner that it intends to publicly consult on the updated guidance once it has been finalised, subject to views from Ministers. This means the public is likely to be able to provide views on the proposed changes to the guidance prior to publication. Withholding the Full Specification now will not therefore impact upon public participation. The public consultation will therefore go some way to satisfying the public interest that disclosure would otherwise serve.
64. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, for the reasons given above,

the exception has been applied correctly. At the time of the request the Commissioner's decision is that DESNZ has correctly withheld the requested information under regulation 12(4)(d).

Right of appeal

65. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

66. 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.
67. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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