

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

### **Decision notice**

**Date:** 3 February 2021

**Public Authority:** Rural Payments Agency

**Address:** PO Box 69

Reading

RG1 3YD

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Rural Payments Agency (RPA) regarding the rules relating to beneficiaries of a payment scheme.
2. The Commissioner's decision is that the Rural Payments Agency (RPA) has failed to carry out a reconsideration (internal review) of a response it provided, under the EIR, within 40 working days and has therefore breached Regulation 11 of the EIR.
3. The Commissioner requires the RPA to take the following steps to ensure compliance with the legislation.
  - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with Regulation 11 of the EIR.
4. The RPA must take these steps within 35 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 Freedom of Information Act and may be dealt with as a contempt of court.

## Request and response

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5. On 22 June 2020, the complainant wrote to the RPA and requested information in the following terms:

*"Please confirm that a Beneficiary of a BPS payment as used in CAP Payments data is legally one and the same as the Farmer making the claim and therefore the Beneficiary has to comply with the rules and regulations regarding 'Land at your (the farmer's) disposal' and the Beneficiary is responsible for meeting Cross Compliance rules on it. If they are not one and the same please clarify the difference."*

6. The RPA responded to the request on 7 August 2020. In its response it provided some information relating to the request.
7. The complainant requested a review on 10 August 2020, but the RPA had not completed its review at the date of this notice.

## Scope of the case

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8. The complainant contacted the Commissioner on 1 December 2020 to complain about the way their request for information had been handled.
9. In line with her usual practice, the Commissioner contacted the RPA on 17 December 2020 to highlight the outstanding response. She requested that the RPA complete its reconsiderations within 10 working days.
10. The complainant contacted the Commissioner on 1 February 2021 to advise that the RPA had still not completed its review.
11. The scope of the Commissioner's investigation is to determine whether the RPA has complied with Regulation 11 of the EIR.

## Reasons for decision

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12. Regulation 2(1) of the EIR defines environmental information as being information on:

*(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*

- (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
  - (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
  - (d) *reports on the implementation of environmental legislation;*
  - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
  - (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
13. The Commissioner has not seen the requested information but, as it is information relating to measures likely to affect the elements of the environment, she believes that it will be information about the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.
14. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
15. Regulation 5(2) states that such information shall be made available *"as soon as possible and no later than 20 working days after the date of receipt of the request."*
16. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
17. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the RPA has breached Regulation 5(2) of the EIR

*Reconsideration/Internal Review*

18. Regulation 11 of the EIR states that:

- (1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
- (2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
- (3) The public authority shall on receipt of the representations and free of charge—*
  - (a) consider them and any supporting evidence produced by the applicant; and*
  - (b) decide if it has complied with the requirement.*
- (4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
- (5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
  - (a) the failure to comply;*
  - (b) the action the authority has decided to take to comply with the requirement; and*
  - (c) the period within which that action is to be taken.*

19. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days, the RPA has breached Regulation 11 of the EIR.

## Right of appeal

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20. 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)

21. 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.
22. 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** .....

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**