

Environmental Information Regulations

Charging for environmental information

The Environmental Information Regulations 2004 (EIR) give rights of public access to environmental information held by public authorities. The EIR were passed in order to implement the EC Directive on public access to environmental information (Directive 2003/4/EC 28 January 2003) (the Directive). This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice.

This guidance will explain, and help public authorities comply with, the charging regime laid out in Regulation 8 of the EIR, and in particular what constitutes a reasonable amount.

The charging regime under the Freedom of Information Act 2000 is different and is subject to its own Fees Regulations ([See our guidance: Using the Fees Regulations](#)).

Overview

- The EIR allow public authorities to charge for making environmental information available, but any such charge must be reasonable.
- In general a reasonable charge is one that covers the actual costs incurred by the public authority in producing the information.
- No charge can be made for inspection of the information or for accessing public registers or lists of environmental information.

What do the EIR say?

Regulation 8(1) states that a public authority may charge for making environmental information available. (For more information on what constitutes environmental information, see our guidance: [What is environmental information?](#))

There are two important qualifications to this:

- Regulation 8(2) specifies that no charge can be made for accessing public registers or lists of environmental information or for examining the information requested at the place which the authority makes available for that purpose.

- Regulation 8(3) states that a charge may not exceed an amount that the public authority is satisfied is a reasonable amount.

When is a charge prohibited?

As mentioned, Regulation 8(2) sets out two circumstances in which no charge can be made:

(a) Access to public registers or lists of environmental information

The intention of this provision is to help members of the public access environmental information by allowing them to see, free of charge, what information is held by a public authority.

One way to do this is for authorities to provide public registers and lists of environmental information which are easy to access and simple to use. They should also provide clear instructions on how to access the information listed. Charging for helping in this way would be incompatible with promoting the right to access environmental information.

Not all public authorities will have public registers or lists of environmental information. However, providing this information will enable an authority to help meet the obligation set out in Regulation 4 to proactively and progressively disseminate the environmental information that they hold. This can be achieved by including the lists and registers in an authority's guide to information. (Our website provides full details of the [publication scheme](#).)

The Department for Environment, Food and Rural Affairs (DEFRA) provides some useful information on [public registers of environmental information](#).

(b) Inspection of the information 'in situ'

A public authority may provide facilities for applicants to inspect the information. This may be either by visiting the authority's offices or alternative premises, for example a library or other information point. No charge can be made for this, although, if an applicant subsequently requires a copy of the information, the authority can charge the cost of providing the information in a permanent form, for example the cost of photocopying.

Reasonable amount

The EIR give public authorities the discretion to charge a reasonable amount for making environmental information available, for example to recover the cost of photocopying.

Although Regulation 8(3) does not offer any assistance as to what is meant by the word reasonable, the Directive provides some guidance that "as a general rule, charges may not exceed actual costs of producing the material in question." In [David Markinson v Information Commissioner \(EA/2005/0014; 28 March 2006\)](#), the leading case to date on charging for environmental information, the Information Tribunal indicated that this will comprise the costs of producing copies of the information requested. The Tribunal concluded that:

- an authority must satisfy itself that a charge is reasonable. It must do this by only taking into account relevant considerations and ignoring any irrelevant ones.
- for example, the cost of paper and printing is a relevant factor and can be included in the charge. However, the cost of staff time in identifying, locating and retrieving the information is an irrelevant factor and cannot be included. As these staff costs must be disregarded when the information is inspected by the applicant (in accordance with Regulation 8(2)(b)), it is unreasonable to include them when calculating the cost of copying the same information.

Further support for this is provided by the following:

- The [DEFRA Code of Practice on the discharge of obligations of public authorities under the Environmental Information Regulations 2004](#) which states at paragraph 28 that:

"When making a charge, whether for information that is proactively disseminated or provided on request, the charge must not exceed the cost of producing the information..."

- DEFRA has also issued [detailed guidance on the EIR](#) which states at paragraph 6.26 that "[A reasonable charge] should not exceed the cost of providing the information, for example, the cost of photocopies."
- In complying with requests made under the FOIA, the Fees Regulations state that charges cannot be made for the time taken to locate, retrieve, or extract the information, but

charges can be made to cover disbursements such as the cost of paper when photocopying or printing the information, as well as the cost of postage.

Example

In determining the actual costs of photocopying, relevant considerations will include the number and size of the sheets to be copied and the lease charge on the photocopying machine.

In the Markinson case the Tribunal ordered the authority to adopt the guide price of 10p per A4 sheet as the cost of photocopying. This gives an indication of the level of photocopying charge to adopt and an authority would have to demonstrate a good reason for exceeding it. However, an authority would still have to consider the actual costs incurred in any particular case as the cost of reprographics will change over time.

Further examples of factors that should **not** be taken into account when deciding on a reasonable charge are:

- Sole reliance on charges made by other public authorities.
- Out of date charges adopted by other public authorities or historical charges.
- The real or perceived importance of the information (for example a legal document).
- The impact on the revenue or workload of a public authority.

Commercial charges

An authority can impose a market-based charge where the information is provided on a commercial basis and the charge is necessary to ensure such information continues to be collected and published.

This comes from the Directive and is referred to in the guidance issued by DEFRA.

The DEFRA Code of Practice indicates that it will be authorities such as trading funds that are entitled to levy such charges.

Example

The Ordnance Survey is a government department and so a public authority for the EIR, but as a trading fund it is able to use income from the goods and services it provides in order to meet outgoings and invest in its business. One of its main functions is the collection and supply of information (much of which will be environmental) to both the public and private sectors. Pricing of the information is permitted to be set at rates which reflect the commercially competitive market that the Ordnance Survey operates within.

General considerations

- Any charge should be compatible with encouraging transparency and should not provide an obstacle to accessing information. The intention of the EIR is to promote access to environmental information, and our view is that authorities should not profit from the provision of this information.
- Section V of the Code of Practice, on charging, states that charges should be reasonable and in accordance with the detailed guidance issued by DEFRA.

Schedule of charges

The EIR require all public authorities to publish and make available to applicants a schedule of charges and information on the circumstances in which a charge may be made or waived.

As a matter of good practice, public authorities should consider including in the schedule the following:

- Standard costs involved in the supply of information, such as the charge per sheet of photocopying and the charge for providing information on a CD-ROM.
- A list of priced publications.
- Any concessions offered to applicants such as pensioners and those receiving benefits.
- Circumstances where the supply of information is conditional on advance payment.

The schedule of charges required by the EIR will complement the requirement of the new model publication scheme for details of

charges to be published. This is an area that the Commissioner will be monitoring in future.

Payment

Regulation 8(4) allows a public authority to require advance payment of a charge for making environmental information available.

Where a public authority decides it requires an advance payment it must notify the applicant of this within 20 working days of receipt of the information request, together with the amount of payment required. The period from the day of this notification to the day the payment is received does not count towards the time limit for responding to the request.

The applicant then has 60 working days following issue of the notification to make the payment. If payment is not made within this period, the authority is not obliged to proceed with the request.

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us.

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