

Internal Review Request (received 14 July 2025) - Reference: DFI/2025-0270

I write to request a formal internal review under Regulation 11 of the Environmental Information Regulations 2004 (EIR) in relation to the Department's response dated 11 July 2025 (Ref: DFI/2025-0268, DFI/2025-0269, DFI/2025-0270), regarding the Review of Old Mineral Permissions (ROMPs) under Schedule 3 of the Planning Act (NI) 2011.

This request is submitted on the basis that the Department has:

Wrongly withheld information under inapplicable or disproportionate exemptions.

Failed to comply with EIR and statutory governance duties.

Admitted to long-standing legislative and procedural omissions which raise issues of public accountability, legal risk, and environmental protection.

In light of binding case law and public law duties, I now request a full and urgent reconsideration of the Department's refusal.

1. EIR Exemptions Misapplied

Your response relies on:

Regulation 12(4)(d) (material in the course of completion),

Regulation 12(4)(e) (internal communications), and

Regulation 12(5)(b) (legal privilege/course of justice).

These exemptions are misapplied or disproportionate in the following respects:

A. Regulation 12(4)(d): Incomplete Information

The ROMPs framework has been on statute since 2011. A 14-year delay cannot plausibly constitute a "course of completion." The public has a right to understand why legally mandated environmental safeguards have not been implemented.

As per the ICO's guidance and case law (e.g., FER0822061), this exemption cannot be used to indefinitely withhold information where policy development is stalled, dormant, or strategically avoided.

B. Regulation 12(5)(b): Legal Advice

While you assert legal professional privilege, you:

Acknowledge the existence of advice on legal risks associated with implementing ROMPs.

Fail to provide a schedule of withheld documents, which the ICO requires to assess proportionality (see FER0676683).

Do not consider partial release (e.g., risk summaries or advice titles).

Provide no indication of contemporaneity, ongoing sensitivity, or litigation risk that justifies continued non-disclosure.

C. Regulation 12(4)(e): Internal Communications

This exemption has been applied too broadly. Internal communications must be identified document-by-document. Refusing to release ministerial submissions, briefings, or finalised interdepartmental correspondence – even where they do not contain legal advice – is excessive.

2. Statutory Governance Failures Admitted by the Department

Your response confirms:

No Section 75 equality screening, EQIA, Rural Needs Assessment, or Human Rights Impact Assessment has ever been conducted in relation to the Department's continued refusal to implement ROMPs.

No decision has been taken to abandon implementation, despite a known legal obligation under Schedule 3 of the 2011 Act.

This constitutes a procedural failure under:

Section 75 & Schedule 9, Northern Ireland Act 1998

The Rural Needs Act (NI) 2016

Human Rights Act 1998

The Planning (Environmental Impact Assessment) Regulations (NI) 2017

In light of these acknowledged failures, it is imperative that any decision not to commence ROMPs or to delay implementation indefinitely must itself be the subject of formal impact assessments. The Department's failure to do so may render it vulnerable to judicial review.

3. Precedent Case Law – Heightened Legal Risk

Your continued refusal to act on or disclose ROMPs-related information stands in direct tension with the following judicial authorities:

A. A5 Ruling (2025, High Court NI)

DfI was found to have failed to meet environmental and climate duties, rendering the A5 scheme unlawful. The Court emphasised the need for lawful environmental governance and transparent assessment frameworks — precisely what ROMPs is designed to ensure.

B. Derry & Strabane District Council v DfE [2023]

The High Court quashed prospecting licences issued under outdated legislation, citing absence of environmental assessment and consultation. Your own response confirms a similar failure in relation to Schedule 3.

C. Finch v Surrey CC [2023] UKSC 50

The Supreme Court held that lifecycle and downstream environmental impacts must be assessed under EIA law. ROMPs is the only legal mechanism to bring pre-1972 consents under modern EIA review. Failing to implement ROMPs denies the public the environmental protection that Finch requires.

4. Retained EU Law and Environmental Non-Regression

The failure to implement Schedule 3 and apply modern environmental standards may place Northern Ireland in breach of:

The Environmental Impact Assessment Directive, and

The non-regression principle under retained EU law (post-Brexit commitments).

The Department must consider whether its inaction:

Creates infraction risk under the UK Internal Market Act governance framework.

Exposes the Executive to challenge via the Office for Environmental Protection or international review mechanisms.

5. Formal Notice of Potential Judicial Challenge

Given the length of delay, the admitted absence of statutory assessments, and the disproportionate refusal to disclose information, I hereby place the Department on notice that, in the absence of a satisfactory review response, I reserve the right to:

Refer this matter to the ICO under EIR.

Escalate to judicial review for breach of statutory duty, irrationality, and procedural unfairness.

6. Requested Review Outcomes

I request that the Department:

1. Provide a schedule of withheld information (titles, authors, dates, exemptions applied).
2. Release any finalised ministerial briefings, interdepartmental correspondence, or communications not subject to legal privilege.
3. Confirm whether any equality, rural, or rights-based assessments were ever conducted and, if not, why.

4. Disclose any communications with DAERA, DfE, or the Executive Office concerning ROMPs.
5. Confirm the Department's legislative plan for implementing Schedule 3 via a future Planning Bill.
6. Clarify whether a senior official (e.g. the Chief Planner or Permanent Secretary) stands over the refusal to implement Schedule 3.

Response (issued 09 September 2025)

You wrote to me on 14 July 2025 requesting an internal review of the handling of your Environmental Information Regulations 2004 (EIR) request for information regarding internal policy papers, Ministerial submissions, Executive briefings working group papers or interdepartmental correspondence in relation to the Review of Old Mineral Permissions (ROMPs) and any potential reform of mineral planning law, received in the Department on 16 June 2025. You had received a response on 11 July 2025, from the Chief Planner, Ms. Rosemary Daly, under the reference DFI/2025-0270.

As Departmental Information Manager, my role in carrying out an 'Internal Review' following a complaint or 'appeal', is pursuant to the Secretary of State for Constitutional Affairs' Code of Practice [which now comes under the responsibility of the Secretary of State for the Department of Justice] on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000 and, by extension, the Environmental Information Regulations. Section 39 of the Code of Practice requires "a fair and thorough review of the handling issues and of decisions taken pursuant to the [Freedom of Information] Act, including decisions taken about where the public interest lies in respect of exempt information." Under the Environmental Information Regulations, this review of the handling of your request for information is a "reconsideration", a public authority obligation contained within Regulation 11 (Representations and Reconsideration). I have no role or locus with regards to any issues arising out of the substance of any information sought or the resolution of complaints, which may be the subject matter of the information.

I have examined the information relating to your request and completed my review. I can now inform you that, having reviewed the handling of your request, the Department did fulfil its obligation under the Environmental Information Regulations 2004. I would like to take this opportunity to explain my decision.

I will again stress that, as mentioned in previous correspondence, my role in carrying out this internal review is to consider only how the Department processed your information request under EIR. I cannot address any other matters you raise in relation to the Department's role in planning matters, or any underlying dispute that you may have with DfI Planning.

As mentioned in my response to DFI/2025-0268 and DFI/2025-0269, you will note that there is a degree of overlap between those internal reviews and this internal review. Much of the information that the Department considered for disclosure in this case will also have fallen within the scope of at least one of those requests. As a result, this response will be briefer than both of those letters. I hope this will be clear from my response.

In your request for information, you had sought disclosure of:

any and all internal policy papers, Ministerial submissions, Cabinet or Executive briefings, working group papers, or interdepartmental correspondence held by the Department since 1 January 2011 which relate to:

The non-commencement of Schedule 3 (Review of Old Mineral Permissions) under the Planning Act (NI) 2011.

Any proposed, contemplated, or deferred reforms of mineral planning law and the Department's consideration of such reforms.

Correspondence with DAERA, the Department for the Economy (DfE), or the Executive Office concerning ROMPs, mineral planning reform, or pre-1972 mineral permissions.

In the Department's response you were advised that your request for information was being refused under three exceptions from the public right of access to environmental information, provided by the Environmental Information Regulations 2004. In common with the two other responses provided in the same letter the Department was satisfied that the public interest supported withholding the information you had requested.

You were informed that the Department had again determined that Reg. 12(4)(d): material in the course of completion, unfinished documents & incomplete data, Reg. 12(4)(e): internal communications and Reg. 12(b) b): the course of justice & inquiries were applicable in this case. I will again briefly discuss the rationale behind the application of these exceptions in this case.

- Reg. 12(4)(d): material in the course of completion, unfinished documents and incomplete data.

As I had advised in my internal review responses for both DFI/2025-0268 and DFI/2025-0269, the Department is applying Reg. 12(4)(d) in conjunction with Reg. 12(4)(e), as they

are closely linked to environmental policy making. The arguments made in those two responses are also applicable here.

You have made clear that you do not believe that the Department can claim, due to the passage of time, that the information it holds falling within the scope of your requests is material in the course of completion.

The Department's view is that the information clearly falls within the definition of material in the course of completion. The Department has not yet brought forward the primary and subordinate legislation required to implement ROMPs.

The requested information relates to an ongoing, live, policy development process. While the time taken is regrettable, this process is ongoing and there is a need for a "safe space" for Departmental officials to engage in free and frank discussions about the Department's options in this case. As I have mentioned in other correspondence, the Department's intention is, subject to Ministerial direction, to progress the necessary legislation as soon as practicable.

The Department's decision to withhold information under Reg. 12(4)(d) is reasonable with the ongoing policy and legislative development discussions within its Planning teams. I am satisfied that the public interest does support withholding the requested information at this time, using this exception, particularly when aggregated with Reg. 12(4)(e) and Reg. 12(5)(b).

- Reg. 12(4)(e): internal communications.

In this request, in addition to internal DfI communications, you had specifically asked for records held of correspondence between DfI and the Department of Agriculture, Environment and Rural Affairs (DAERA), the Department for the Economy (DfE) and The Executive Office (TEO).

The Department refused to disclose this information in its response under Reg. 12(4)(e), like Reg. 12(4)(d), it is largely concerned with information relating to policy development. It is, also like Reg. 12(4)(d), relied upon in order to protect a necessary private "safe space" for officials to discuss a range of options without fear or favour while developing policy and the early stages of its implementation.

While Reg. 12(4)(e) will not normally extend to communications involving a public authority and third parties, it does cover communications between Government Departments. In the context of this request, that means that communications between DfI and The Executive Office, the Department for the Economy and the Department of Agriculture, Environment and Rural Affairs in relation to the development of the

Department's efforts to implement ROMPs, etc., will also be subject to consideration of Reg. 12(4)(e).

The Department is still involved in an ongoing process of policy development to give effect to the requirement under the Planning Act (Northern Ireland) 2011 for the introduction of a Review of Old Mineral Permissions and associated Periodic Mineral Permission Review. The records that the Department holds of this process is the sort of information for which the Reg. 12(4)(e) exception was intended.

The timing of your request, when the processes involved in this policy development are ongoing, mean that the arguments in favour of non-disclosure are very strong. The information held relates to a "live" issue, requiring deliberation and debate both within the Department itself and with other NICS Government Departments. Although much of the information within the scope of your request would, in the future, be suitable for disclosure, that is not the case at this time.

As in the other two requests linked to this request, DFI/2025-0268 and DFI/2025-0269, I am satisfied that the public interest is best served, at this time, by withholding the information that you have requested. When applied in conjunction with the Reg. 12(4)(d) and Reg. 12(5)(b) exceptions the weight of the public interest is particularly strongly in favour of withholding the information sought in this instance.

- Reg. 12(5)(b): the course of justice & inquiries.

The third exception mentioned in the Department's response to your original request was Reg. 12(5)(b). As I have already explained, in my internal review responses for both DFI/2025-0268 and DFI/2025-0269, this exception provides a necessary protection for information that is subject to Legal Professional Privilege

As you specifically requested information relating to '*any proposed, contemplated, or deferred reforms of mineral planning law and... consideration of such reforms*', much of the information held will be subject to Legal Professional Privilege as it will constitute either direct legal advice provided to DfI or officials' discussions about that advice. There are few situations, other than when engaging in litigation, where there will more clearly be such discussions than in a case where a public authority is contemplating bringing forward legislation. There is a direct and clear overlap between this request, and the information that was requested and refused in DFI/2025-0268.

Virtually by definition, any information relating to potential changes to legislation, which has not yet been approved by the DfI Minister, and submitted to the Assembly for consideration, will be sensitive information. As a result, therefore, the Department also refused to disclose the requested information under Reg. 12(5)(b).

I have again considered the public interest in disclosure in relation to the Department's records that were withheld under this exception. I am satisfied that this information, which is subject to Legal Professional Privilege, should be withheld, both because of the broad public interest in protecting the principles underpinning Legal Professional Privilege and the specific nature of the information held.

I would stress that it is both appropriate to individually apply this exception to the requested information and, as it strengthens considerably the public interest arguments in favour of withholding this information, to aggregate the exception with Reg. 12(4)(d) and Reg. 12(4)(e).

I am satisfied, therefore, having considered the public interest arguments both for and against disclosure at this time, that the public interest is best served by withholding the information that you had requested. The requested information forms part of the official Departmental record of an ongoing, "live", process of policy development and much of the content of the records held is subject to Legal Professional Privilege.

In addition to your complaint regarding the Department's application of the three exceptions, you raised six outcomes in your request for this internal review that you wanted to achieve. I have commented on these in my response to DFI/2025-0269. However, I would like to stress that the responses provided in the case of that internal review also apply for the information falling within the scope of this request and internal review.