

1. What, in your opinion, are the positive benefits of the AIE Regulations?

There are many positive benefits of the AIE Regulations that must be maintained in any reform or review of the existing regulations, most notably:

- Broad definition and interpretation of what constitutes environmental information
- Limited grounds for refusal and exemptions
- No fee from making requests
- No fee for internal review
- Broad inclusion of State entities (including semi-state bodies)

All of the above aspects ensure that there is a broad level of access to environmental information available to the general public, media, academics, researchers and political entities.

2. Should any specific part of the Regulations be amended? If yes, please provide details of the suggested amendment and why you consider such an amendment to be necessary. Please note you must include the article of the AIE Regulations to which you are referring:

There are many aspects of the regulations that should be altered or adjusted to ensure greater access to environmental information, as well as ensure compliance with both the EU Directive, and more importantly, with the provisions and principles of the Aarhus Convention.

Article 3 - Interpretation Article

There is a need for greater clarity on what constitutes a “public authority”, in particular there is a need to clearly state in the regulations that subsidiaries of semi-state authorities are subject to the provisions within the AIE Regulations. In recent years, Bord na Mona (this finding is based on a request I sent in 2020) and ESB (based on requests from Right To Know) have refused requests for environmental records from subsidiaries of these companies.

There is a need to bring the Council of State and official of the President back within the scope of the AIE Regulations. This change can be made pending the legal decision in the ongoing Right To Know case in the High Court.

This section should also include a link to a living database to include all authorities that are subject to AIE with the corresponding contact details.

Article 4 - Scope Article

I recommend that the Article 4(2)(a) is removed or amended to clarify that Local Authorities cannot refuse access to planning-related records on the basis that the records are viewable at the office of the local authority in question. If the records are not available online, then any AIE request for access to them should be granted and records released electronically by email.

This is not an appropriate form of access to environmental information in line with the Aarhus Convention, especially when one is making requests to local authorities that are not geographically close to the requester.

In addition, even where the local authority office is located within close distance to the requester, planning records are often long documents and cannot possibly be read within the designated time period to view the records in person.

Article 5 - A public authority shall

Article 5(1) should be amended to include a sub-clause to ensure that public authorities shall maintain a disclosure log similar to that used for Freedom of Information. To my knowledge, only the Department of the Environment maintains a disclosure log (publicly at least).

Article 6 - Request for environmental information

I recommend the removal of the need to supply an address in Article 6(1)(c).

I recommend that Article 6(2) is maintained in its current form.

Article 7 - Action on a request

There is a need to clarify in Article 7(2)(a) and (b) if the one-month period outlined includes or excludes public holidays and weekends. Various public authorities, in requests that I have made, have interpreted this time period differently.

I recommend removal of Article 7(7)(b) that makes reference to the Freedom of Information Act.

Article 8 - Grounds that, subject to article 10, mandate a refusal

I recommend removal of the section of Article 8(a)(iv) that makes reference to the Freedom of Information Act.

Article 9 - Discretionary grounds for refusal of information

There is a need to clarify what constitutes a request that is “manifestly unreasonable” in Article

9(2)(a) as the parameters of this is currently unclear and open to interpretation by individual public authorities. In addition, public authorities should have to specify how they have come to the reasoned opinion that the request is manifestly unreasonable (most likely achievable through a detailed search and retrieval analysis procedure).

Article 10 - Incidental provisions relation to refusal of information

No recommendations.

Article 11 - Internal review of refusal

I recommend that there is no change to Article 11. Any more to include fees for appeals would not accord with the Directive and Convention.

Article 12 - Appeal to Commissioner for Environmental Information

There is a need to set a specific deadline for the OCEI to decide an appeal case. I would recommend up to a maximum of two months. This need is supported by the provisional findings of the ACCC that the Irish State has failed to ensure that the appeals, and associated reviews in the Courts, are conducted in a "timely manner" that is necessary to meet with the standard required under the Convention's requirements on access to justice.

Article 13 - Appeal to high court on a point of Law

No recommendations.

Article 14 - Guidelines

No recommendations but comments on need for clearer and more frequent guidelines in section 3 below.

Article 15 - Fees

I recommend including a provision sub-clause that, whereby the OCEI makes a decision in favour of the appellant, the public authority reimburse the fee.

3. Any other comments on the existing AIE Regulations and their implementation of the AIE Directive 2003/4/EC?

There is a clear need for more detailed and regular guidance documents for public authorities (as per Article 14) to ensure that AIE requests are dealt with in a uniform manner. Currently there is a very clear that the regulations are being interpreted in an ad hoc manner by different Departments, Local Authorities, agencies and State bodies leading to some very poor decision making not in line with the Regulations, Directive, or Convention.

There is also a need for more stringent penalties and complaint mechanism (beyond the OCEI) where the requester feels that their AIE request is not being handled in an appropriate manner by the authority in question. I have experienced several instances where my requests were handled inappropriately, including one instance where a Local Authority told me that records existed and would be put on the authority's website instead of being released to me. It then transpired that the authority never received the records in question that were related to an planning issue with a local quarry. This is a significant issue, however, at present the only remedy is to seek an appeal of the decision to the OCEI, which is costly, time-consuming and would not satisfy my concerns over the decision-making process in this case.

There is also a need for greater State investment and funding of the OCEI so that it can deal with appeals in a timely and appropriate manner. This need is supported by [the current case before the ACCC](#) and the provisional findings of the ACCC that the Irish State has failed to ensure that the appeals, and associated reviews in the Courts, are conducted in a "timely manner" that is necessary to meet with the standard required under the Convention's requirements on access to justice.

All public authorities falling under AIE should have a dedicated and simply email address for AIE requests (e.g. [aie@.....ie](#)), as well as a dedicated webpage with details. Many authorities still do not have a dedicated page with contact details for sending AIE requests.