

# Access to Information on the Environment (AIE) Regulations 2007-2018

Written and submitted by [REDACTED]  
[REDACTED]

## Summary:

The submission consider three main points as follows:

- 1) Article 5(a) of the Regulations regarding raising awareness among the public on the right to access to environmental information,
- 2) the timeframes of appeals made to the Commissioner and appeals made to the courts on a point of law and
- 3) Article 15 of the Regulations regarding appeal fees.

Article 5(a) of the Regulations obliges state authorities to raise awareness among the public to their right of access to environmental information. Many state authorities have not been proactive in adhering to this regulation.

As highlighted by the Aarhus Convention Compliance Committee (ACCC), there is no statutory obligation to take a decision made by the Office of the Commissioner for Environmental Information (OCEI) within a certain timeframe.

As per the fees relating to the appeals process to the Commissioner, it is recommended that these fees be abolished or substantially reduced, in order to ensure that the principle of public participation is not undermined by these fees.

## Section 1: Article 5

*“A public authority shall—*

*(a) inform the public of their rights under these Regulations and the Directive and provide information and guidance on the exercise of those rights”*

Academics in the field of environmental law have noted that public awareness of these Regulations is very limited. If one has substantial interest in the law and the environment, then one may be aware of this right. Even those engaged with environmental activism are not widely aware of this particular right and its importance. If a citizen was highly educated and involved with the law through education or their profession, then it would be more likely that they may become aware of this right. However, this would be the case for a privileged sector of Irish society. It is clear that those in society who are at the margins would remain largely ignorant to the importance of such a right.

This article of the Regulations needs to be considered by the State and how best to ensure that the goal of this article is achieved. Whether that be enshrined in primary legislation or introducing an accountability measure which ensures that public authorities are proactive in their dissemination

of environmental information, including raising awareness of rights, to the public. The expression of this important right should not be exclusive to the most privileged in Irish society.

## Section 2: Timeframes of appeals to the Commissioner and related reviews to the Courts

The views expressed by the ACCC regarding Ireland's lengthy process for appealing decisions made under the AIE regulations highlight a great shortcoming of Ireland's transposition of EU and international law. The process of appealing to the Commissioner is lengthy and any subsequent appeals to the High Court are not compatible with international human rights standards.

I draw your attention to the best practice for appeals as outlined by the European Environment Agency:

“To be effective, the appeals process should be timely, transparent, affordable, independent, comprehensive, and result in a binding decision.”<sup>1</sup>

It is evident as per the recommendations made by the ACCC that Ireland's process of appealing decisions made for AIE requests and any related reviews in the High Court are not conducive to upholding the environmental rights enshrined in the Aarhus Convention.

In Articles 12 and 13, there are no specifications laid out which would oblige either the Commissioner or the Courts to give a decision on an appeal in a reasonable timeline. Such delays are often attributed to an under resourced and understaffed office of the Commissioner and courts system. Yet, such delays severely undermine this right of access. Under the Freedom of Information Act 2014, appeals made on decisions for requests must be determined with a 4-month period. A provision which would create similar obligations on the Commissioner should be considered by the State. Resourcing will inevitably be an issue of contention for any government department, however, resourcing the bodies who ensure access to vital environmental information, especially in light of the environmental crisis, should take priority for the State.

## Section 3: Article 15

The charging of fees under Article 15 of the Regulations may be considered a “prohibitively expensive” cost which may exclude both individuals and organisations from participating in their right to access environmental information. Academics in the field of environmental law and environmental advocates have cited the charging of fees as a deterrent in applying for appeals. The reduced fee for appeals for those in possession of a medical card does not consider the resources of NGOs and any other community organisation with limited resources. NGOs and community organisations are more likely to make multiple requests for information and the cumulative cost of needing to make multiple appeals would put significant strains on under resourced groups. These

---

<sup>1</sup> European Environment Agency (2016) Access to environmental information: key elements and good practices. *EU European Environmental Agency*. Published 20 April 2016. Available [here](#).

fees push those on the margins of society out further by charging a fee for their right to appeal decisions made by public authorities regarding the dissemination environmental information.

This article of the Regulations needs to be reconsidered as the right to participate is greatly undermined by the charging of such fees. As far back as 2008<sup>2</sup> and 2009<sup>3</sup>, the Commissioner has commented in their Annual Report that the fees for appealing a decision discourage appeals. While the fee of €50 may be considered reasonable, it is completely dependent on the individuals' means. Considering that those in lower-socio economic brackets feel the greatest burden of the climate crisis, to charge this fee only serves to further exclude such people from their rights assured by the Aarhus Convention.

The issue of fees needs to be re-examined with the consideration of individuals' rights assured under the Aarhus Convention as well as considering the resources of NGOs who may make frequent requests. As mentioned in the previous section, resourcing of government departments will be contentious. However, the State should consider if they want to continue to undermine environmental rights in light of citizens calling out for greater environmental protection in recent years. To cause more barriers to participation will only leave the State more vulnerable to litigation as citizens and NGOs attempt to enforce their right of access to this information.

---

<sup>2</sup> Information Commissioner, *2008 Annual Report* (Office of the Information Commissioner 2009) 77.

<sup>3</sup> Information Commissioner, *2009 Annual Report* (Office of the Information Commissioner 2010) 58.