

Department of the Environment, Climate and Communications  
29-31 Adelaide Rd,  
Dublin 2,  
D02 X285

08/01/24

By email: [aarhus@decc.gov.ie](mailto: aarhus@decc.gov.ie)

**Re: Proposed Amendments to Access to Information on the Environmental Regulations 2007-2018  
(Draft AIE Regulations 2023)**

Dear Sir/ Madam,

Ibec welcomes the opportunity to contribute to the consultation on the Draft AIE Regulations. Ibec appreciates that the AIE Regulations provide, *inter alia*, a definition of environmental information and outlines the manner in which *public authorities* are required to deal with requests from third parties and members of the public. It must be noted that for the purposes of the AIE Regulations that many Commercial Semi-State (CSS) companies are prescribed as *public authorities*. This cohort of companies is also playing a significant role in the decarbonisation of Irish society, *via* commitments given to the Government's 'Climate Action Framework for the Commercial Semi-State Sector' and as part of this remit these companies are required to comply with the onerous obligations imposed on them by the AIE Regulations.

Feedback from Ibec members indicates that there has been a significant increase in AIE requests over the past number of years, it is understood that many companies have already allocated additional resources, but members continue to struggle due to the volume and nature of AIE requests, particularly broad-brush demands seeking **all** emails, meeting minutes, briefings, memos, correspondences etc. on a given putative AIE topic.

It would appear, that as currently proposed, some aspects of these new Draft AIE Regulations will further exacerbate the onus on obligated companies without necessarily delivering commensurate benefits to citizens seeking legitimate environmental information. Ibec therefore is proposing a number of modifications to the Draft AIE Regulations, which are detailed below, and referenced against the various 'Parts' of the legislation.

**General Duties of Public Authorities**

The proposals to expand the statutory duties will place significant additional responsibility, cost, and work on the relevant parties. The suggested changes include provisions that are very broad and leave much room for interpretation. Ibec members are concerned that without specific guidance on what the proposed proactive duties to inform the public actually means, including but not limited to what constitutes "*authorisations with a significant impact on the environment and environmental agreements*", unrealistic expectations could be inferred by the public and the Office of the Commissioner for Environmental Information (OCEI).

In addition, the Draft AIE Regulations propose to require public authorities to take *necessary measures* to organise the environmental information that is held with a view to its active and systemic dissemination to the public by information technology or other electronic means. Notwithstanding, that this provision appears mis-aligned with the '*reasonable effort*' approach contained in Article 3(4) of the Directive, this obligation is a very broad and ill-defined requirement, and *in extremis* could obligate public authorities to completely overhaul how they process, store, tag and publish this information with significant cost and resource implications. Ibec believes that this amendment is unwarranted and goes beyond what was envisaged by the Directive.

### **Requests for Environmental Information**

(6) (2)(b) \*Added\*A public authority shall, in the performance of its functions under this Regulation, have regard to any timescale specified by the applicant.

While this provision is already included in the existing Regulations, its re-insertion, allowing an applicant to specify a timescale for the response, will not fetter the existing period of up to 2 months for a public authority to prepare a response to a valid application for information on the environment. However, its continued inclusion, by definition, creates the potential for unrealistic expectations for the applicant, a scenario which is unwelcome. As noted above, AIE requests have become much broader in nature and already Ibec members experience significant challenges in responding to requests within the initial one-month timeframe.

(6) (3)(c) \*Added\*For the purposes of subparagraph (a), public authorities shall make all reasonable efforts to maintain environmental information held by, or for, the public authorities in forms or formats that are readily reproducible and accessible by information technology or by other electronic means.

When read in conjunction with the proposed revision of the General Duty on Public Authorities discussed above, specifically the obligation to "*take necessary measures to organise the environmental information*", this 'additional' provision involves disproportionate obligations on Ibec members. The Commercial Semi-State companies that are deemed public authorities *via* these Regulations operate in diverse and dynamic markets across power generation, transportation, communications, forestry etc., and while these companies do hold, what is Environmental Information under the AIE Regulations, their primary function (and statutory basis) is that of commercial enterprises, and as such these companies must have the legal right to protect their commercial interests. Placing an *a priori* onus on these companies to identify, separate, tag and flag 'environmental' information from the gigabytes of commercial data generated from day-to-day operations, is unreasonable and ultimately, unworkable.

***(6) (6) (a) \*Removed\* transfer the request to the other public authority and inform the applicant accordingly, or(6) (7) (a) \*Removed\* article 6 (1) or,***

*(6) (7) (a) \*Added\* Regulation 5(1), or (6) (8) (b) \*Added\* Where subparagraph (a) applies and a more specific request is made by the applicant, the request is treated for the purpose of paragraph (2)(a) as having been made on the date on which the more specific request was made.*

Ibec supports the inclusion of this clarification into the draft Regulations.

In addition, there is now an opportunity for the new Regulations to clarify that requests be received on working days (or be deemed to be received on the next working day following receipt), and that public holidays should not be included when calculating the time periods for responses and/or decisions.

#### **Part 4- Refusals and appeals connected with requests for environmental information.**

*7(1)(d)(i) \*Removed highlighted\* from existing 9(2)(a) is manifestly unreasonable having regard to the volume or range of information sought,*

Ibec supports this removal of the limitation linked to volume or range in defining what is 'manifestly unreasonable'. There is also now an opportunity for the new Regulations to further clarify that 'grounds for refusal' also captures frivolous and/or vexatious matters.

#### **Regulation 10 (Appeal to the Commissioner for Environmental Information)**

The amendments to subparagraph 1(b) of Regulation 10 of the Draft AIE Regulations will significantly widen the scope for appeal against the decision of a public authority by a third party. The existing Article 12 of the AIE Regulations limited such an appeal to circumstances where a party "would be incriminated by the disclosure of the environmental information concerned", whereas a third party under the proposed regulations need only hold a "reasonable" belief that their "interests would be adversely affected."

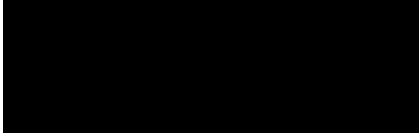
This change will undoubtedly lead to a significant increase in appeals by third parties. Ibec notes that this right of appeal permits a third party to appeal directly to the OCEI against the decision of a public authority, and pursuant to Regulation 6(11), the third party will have been notified of the intended decision in advance, as part of the consultation procedure.

Ibec believes that the amendments to the third party consultation and appeals procedures require further consideration, as their current form in the Draft AIE Regulations give rise to too many uncertainties. At a minimum, time frames for each step should be clearly outlined. The scope of internal reviews/second appeals which take place after an initial appeal to the OCEI should also be established to prevent issues being litigated twice.

*(10) (6) (7) (a) \*Added\* Where the Commissioner has varied or annulled a decision of a public authority in accordance with paragraph (5)(b), the Commissioner may require the public authority to refund the appeal fee to the applicant where appropriate.*

For Commercial Semi States that operate and earn revenues from commercial activities, and which are not public authorities that are directly funded by the taxpayer, the provision of personnel and the resourcing of AIE requirements is a significant obligation. This proposed provision will drive an increase in referrals to the OCEI and increase the regulatory burden and disimprove the commercial position of CSSs should the ability to refund OCEI appeal costs be permitted. Ibec requests that this provision be removed.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

---

A small black rectangular redaction box covering the name.

Executive Director, Lobbying and Influence

A small black rectangular redaction box covering contact information.