

Section and Proposed Amendment

Part 1 -PRELIMINARY AND GENERAL

Additional Text required:

2. (1) Natural and legal person definition is not included and should be specified.

PART 2 - GENERAL DUTIES OF PUBLIC AUTHORITIES

4. 1 (f) take necessary measures

PART 3 - REQUESTS FOR ENVIRONMENTAL INFORMATION

5. (1) (c) State the name of the applicant

5. (1) (d) – state the contact details, which may be an address for the receipt of electronic mail, of the applicant.

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

6. (3) (a) – (ii) access in another form or manner would be reasonable

6. (3) (c) 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.

6. (10) 'The public authority shall make all reasonable efforts to contact the third party concerned to seek consent or submissions setting out why the release of the information requested would adversely affect their interests pursuant to subparagraph (a) , (b) or (d) of regulation 7 (1), taking into account the provisions of Regulation 8.

6. (13) Where a decision is not notified to the applicant within the relevant period specified in paragraph (2) (a) or as the case may be, paragraph (2) (c), a decision refusing the request shall be deemed to have been made by the public authority concerned on the date of expiry of such period.

PART 4 - REFUSALS AND APPEALS CONNECTED WITH REQUESTS FOR ENV

7. (1) (d) - Additional inclusion required:

'Is considered vexatious or frivolous or forms part of a pattern of manifestly unreasonable requests from the same requester or from different requesters who, in the opinion of the head, appear to have made the requests acting in concert'.

Internal Review or Refusal

9 (3) (b) Where a decision is not notified to the applicant within the time period mentioned in subparagraph (a), the decision, the subject of the internal review, is deemed to have been affirmed by the public authority concerned on the date of expiry of such period.

9. (5) (d) – has been refused without providing adequate reasons

9. (5) (f) – has been inadequately answered

10. (3) (a): The Commissioner shall direct the public authority concerned to provide to the requester and to the Commissioner, in writing or such other form as may be determined by the Commissioner, a statement of reasons which complies with Regulation 9 (4) (a) or 6 (4) (c), as the case may be.

10. 3 (b): The public authority shall comply with a direction under subparagraph (a) as soon as may be, but not later than 3 weeks, after the date of its receipt.

10. (11) Subject to Regulation 11, a public authority shall comply with a decision of the Commissioner under paragraph (5) not later than 3 weeks after the date of its receipt.

PART 5 - GUIDELINES AND FEES

Fees of public authorities - 13 (1)

Fees for appeals

14. (2) (b) a recipient of a social welfare payment that is subject to a means test

14. (2) (c) a dependant of a person referred to in subparagraph (a) or (b)

Additional General Comments

The EU do not appear to publish their statistics of AIE requests received by meml

Clarifications required as to whether the FOI act may be invoked in an AIE decisic

DAFM Observation

A definition of natural and legal person should be provided to ensure that the Regulations cannot be abused by Artificial Intelligence programmes etc. Provisions should also be included which outline how a natural or legal person can be verified.

This concern stems is also echoed later in the proposed amendments which indicates that name and an email address would be sufficient to submit requests. Requests made by natural or legal persons under AIE Regulations must ensure that requestors are required to provide their name and verifiable address at a minimum. DAFM feel very strongly on this point (further information provided below under Article 5. 1(c))

Amendment required: Change necessary to reasonable.

Amendment Required:

Clear text required regarding how to make a valid AIE request in terms of what details a requester is required to provide with a request should be included as part of the amendment. The addition of the text '*providing proof of identification if required by the public authority*' would assist in this regard.

Abuse of the AIE regulations via the use of fake names by applicants frustrate the normal duties of a public authority and hinder information being provided to genuine applicants. The use of fake names can be used to circumvent manifestly unreasonable requests which DAFM have experienced. Coillte have brought a High Court case in relation to this abuse of the system and are awaiting a decision. A requirement to include a verifiable name and address must be a minimum requirement for requestors.

Amendment Required:

Clear text required regarding how to make a valid AIE request especially in terms of what details a requester is required to provide with a request with a request should be included as part of the amendment. The addition of the text '*providing proof of identification if required by the public authority*' would assist in this regard. DAFM are also of the view that there should be a verifiable address which is linked to an individual.

The regulations need to ensure that protection is provided against the use of fake names (or potentially AI in future scenarios) frustrate the normal duties of a public authority and hinder information being provided to genuine applicants. The use of fake names can be used to circumvent manifestly unreasonable requests which DAFM have experienced. Coillte have brought a High Court case in relation to this abuse of the system and are awaiting a decision. A requirement to include a verifiable name and address must be a minimum requirement for requestors.

Amendment Required: Deletion of this text

DAFM believes that the regulations are already sufficiently clear on the point of timescale. Article 6(2)(a) notes that public authorities shall make the information available to an applicant as soon as possible, but not later than one month from the date on which the request is received. The existing timeframes are sufficient and adding another element adds an unnecessary layer of complexity to the proceedings.

Amendment required: Add 'for the public authority to provide'

Reason for amendment: What one person defines as reasonable may not be reasonable for the public authority to undertake nor in the public interest. Alternatively a definition of reasonable is required here.

Clarification Required - in respect of the term by other electronic means.

Amendment required: The public authority shall make all reasonable efforts to contact the third party concerned to seek consent or not to release their information ~~submissions setting out why the release of the information requested would adversely affect their interests pursuant to subparagraph (a), (b) or (d) of regulation 7 (1), taking into account the provisions of Regulation 8.~~

Many scenarios which could arise from this (non-response of third party; limited engagement to public body interaction). There are a number of scenarios which the public authority could find itself in relating to third party information with this amendment without sufficient provisions in place. Timeframe is also a factor to consider (raised in more detail in comment below).

Clarification required: In cases involving third party information, where the public authority is making all reasonable efforts to contact the third party concerned to seek consent (or not) in relation to the request - there is potential risk with regard to sufficient third party engagement within the timeframes.

Or, is it a case that the timeframe is overarching - and once all reasonable efforts were made, the public authority would not be dependant on the third party if no response came back after all reasonable efforts

IRONMENTAL INFORMATION

Receipt of vexatious and frivolous requests amounting to nearly 30,000 requests have been received by DAFM in 2022. This trend could continue if there are not safeguards put in place in the regulations. Not safeguarding the Exchequer is not in the public interest.

Amendment Required: There is potential that this wording could dilute the internal review mechanism. Concern that failure to issue an Internal Review is deemed to be an Affirm of the original decision, which could lead to potential scenarios where internal reviews are not being carried out by Public Authorities.

Amendment required: Deletion or expansion of this addition to the Regulations is required.

Reason for amendment: Either provide clarity on what 'inadequately answered' means or remove the terminology as it is too ambiguous. Clarity of 'adequate' is required here.

Clarification required: Will public bodies receive a copy of the appeal?

Does the Commissioner have final say over what is adequate or not? What if there is a difference of opinion between the Commissioner and the appellant

Can the Commissioner discontinue the appeal if he deems the statement of reasons to be adequate?

Amendment and/or addition Required: 'The Commissioner may extend this timeframe where he/she considers it reasonable to do so'.

3 weeks is too short a timeframe to prepare submissions. DAFM currently have agreement with the OCEI for 6 weeks, due to the volume of appeals being received.

Amendment Required: 3 weeks is too short a timeframe

Additional inclusion required:

Although not a change - additional information should be provide in terms of what constitutes a charge that is 'reasonable'.

Additional inclusion required:

If a public authority were to implement similar fees, how will the Commissioner determine these? Has proof to be supplied? If so, does this not contradict the ability of a public authority to request proof of identification/address in the first instance?

er states – this would be useful to be provided by DECC.
n making process. Mention of the FOI Act has been removed from draft regulations.