

1. Should any of the proposed updates outlined be amended? If yes, please provide details of the suggested amendment and why you consider such an amendment to be necessary.
2. Should any other 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.
3. Any other comments on the existing AIE Regulations and their implementation of the AIE Directive 2003/4/EC.

Organisation, name and contact details
<p>Department of Housing, Local Government & Heritage</p> <p>Contact: [REDACTED] – Assistant Principal Officer - T [REDACTED] Strategic & Business Support Unit — —</p> <p>An Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta Department of Housing, Local Government and Heritage Bóthar an Bhaile Nua, Loch Garman, Y35 AP90 Newtown Road, Wexford, Y35 AP90</p>
<p>1. Should any of the proposed updates outlined be amended? If yes, please provide details of the suggested amendment and why you consider such an amendment to be necessary.</p>
<ul style="list-style-type: none"> • <i>2(5) Public authorities may satisfy the requirements of this Regulation to inform the public by creating links to websites where the information may be found.</i> <p>This wording should duplicate elements of the Open Data Directive and specify application programming interfaces (APIs) as well as websites.</p> <ul style="list-style-type: none"> • 4(1)(b) and (c) - There seems to be a significant increase on the duties of public authorities with many new situations where public bodies must inform the public e.g. 4(1)(b) <i>‘inform the public where authorisations with a significant impact on the environment and environmental agreements may be requested and (c) inform the public where authorisations with a significant impact on the environment and environmental agreements may be located for review’</i>. Is there a definition for ‘significant impact on the environment that can be included in the guidelines? Ambiguous language may leave

public bodies unclear of their obligations in this regard and there is a risk of non-compliance with the AIE Regulations and increased numbers of appeals.

- Sections 6 & 7 both deal with the issue of refusals. The Department would have a concern that the option to refuse a request based on 'volume or range of information sought' has been removed. The decision maker to extend the time needed to 2 months rather than be able to refuse it altogether. While it is noted that Section 7(1)(d) does allow for the refusal of a request on the grounds that it is manifestly unreasonable or formulated in too general a manner, clarity is needed on the distinction between 7(1)(d)(i) and (ii), and the 'volume and range of information sought'.
- Under Regulation 6 consistent use of '4 weeks from date of request' or calendar month or 20 working days could be clearer than the term 'month' and 'no later than the end of that month' as these could be interpreted as the end of the calendar month or the end of the 4 weeks from date of receipt of the request. Suggest replacing month with 20 working days to align with the FOI Act or '4 weeks from date of receipt of request' or calendar month for consistency and clarity.
- *5 (1) (d) state the contact details, which may be an address for the receipt of electronic mail, of the applicant,*

Suggest a **physical address** is required arising from the influx of AIE requests to Coillte and subsequent Judicial Review taken by Coillte against the Commissioner for Environmental Information ([link to judgment](#))

2. Should any other 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

- 6(11) – Third Party Consultation. The Department would welcome a more prescriptive approach to third party consultations. Clearer guidance is required for public authorities regarding the third party timelines. The Department suggests greater alignment between the FOI third party consultation process and the AIE third party consultation process.
- 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'.*

Does this have the potential to override 6(2)(a) where it says: *'A public authority shall make a decision on a request and, where appropriate, make the information available to the applicant as soon as possible and, in any case, subject to subparagraphs (b) and (c), not later than one month after the date on which such request is received by the public authority concerned.'*

The Department would welcome clarity on the phrase 'have regard to'. Is this an obligation to abide by the timeframe of the requester? If the Department cannot meet the requester's deadline, will the Department have to provide a statement of reasons?

The Department suggests that the requester should state their reasons for their specified timeline. This information will inform and assist Decision Makers in terms of the request.

- 2(1)(a) - *environmental information*” means any information in written, visual, aural, electronic or any other material form on—
 - a. *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms and the interaction among these elements,*

Is there a definition that can be included for biological diversity and its components?

- 6(2) (c) – This Section should be revised to increase the criteria under which an extension can be requested. For example, if the material is archived both physically and electronically. The retrieval of such records, including the requirement to reactivate old email accounts, can be a lengthy process.
- 7(d) (i) – Manifestly unreasonable. Further guidance on what is determined to be ‘manifestly unreasonable’ would be welcome. For example, is there a limit to the number of hours that can be spent processing a request before it becomes unreasonable?
- 12 – Fees. The Department requests more detailed guidance on the schedule of fees for AIE requests. The current wording is ambiguous and results in increased appeals, where fees are charged. Requests for fees under AIE are being routinely overturned at Internal Review as they are deemed not to be in the public interest. More detailed guidance on the application of fees would be welcome.

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

- **Open Data Directive.** Various elements of section 2 could state “in line with the Open Data Directive”. Section 2(h)(ii) for example. The “Open by Default” concept is essentially being indicated but not explicitly identified as a Directive. Consultation with DPER’s Open Data Unit on this is suggested. Once information is released under AIE it would be a missed opportunity to not simply release it as Open Data via existing channels. This would go beyond releasing it to just the applicant.
- Will there be guidance on when authorisations, environmental reports and environmental agreements, impact studies and risk assessments can be published or made available as these can be subject to appeals / arbitration for compensation / potential legal proceedings. At what point in the decision making can / should they be published? This could be included in the AIE Regulations guidance document
- A force majeure provision should be included to enable public bodies to temporarily refuse or extend AIE requests in the event of pandemics, cyber-attacks, terrorist attacks,

natural disasters or similar unforeseen events which prevent public bodies from performing their normal duties.

- Requesters can simultaneously submit the same request to a public body under separate access regimes (FOI, AIE, Open Data, Reuse of Public Sector Data, etc.). Requesters can simultaneously submit the same request to a public body under separate access regimes (FOI, AIE, Open Data, Reuse of Public Sector Data, etc.). Processing these duplicate requests is an inefficient use of limited resources. Requesters receive different results as a result of different rules being applied to the same records. This undermines the legitimacy of one access regime over another. With an increased number of information access routes, greater alignment between the various access regimes is desirable. Further to this, it would be a more efficient use of a public bodies resources if they could assess a request which has been sent under both AIE and FOI (for example), and chose to process the request under the most appropriate access regime, of most benefit to the requester.
- Propose a single central policy unit for information access governance. The function of this unit would be to review the various access regimes to identify conflicts and ambiguity, and publish guidance notes/joint policies to harmonize responses to requests for information under the various regimes.
- Having regard to the situation faced by Coillte and the subsequent Judicial Review taken by Coillte against the Commissioner for Environmental Information reference above, the inclusion of a frivolous or vexatious exemption, similar to that found in the FOI Act 2014 may be required. Abuse of the system is rare but can cause significant disruption to the work of public bodies when it occurs.