

Draft of

REGULATIONS

entitled

European Communities (Access to Information on the Environment) Regulations 2023

To be made by the Minister for
the Environment, Climate and
Communications.

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I, _____, Minister for the Environment, Climate and Communications in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving full effect to Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003¹, hereby make the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Communities (Access to Information on the Environment) Regulations 2023.

Interpretation

2. (1) In these Regulations—

“applicant” means any natural or legal person requesting environmental information pursuant to these Regulations;

“Commissioner” means the holder for the time being of the office of Commissioner for Environmental Information established under article 12(1) of the Regulations of 2007;

¹ OJ No. L 41, 14.02.2003, p. 26

“Directive” means Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003¹ on public access to environmental information and repealing Council Directive 90/313/EEC;

“electronic means” means through such electronic systems as a public authority have available for the purposes of these Regulations;

“environmental information” means any information in written, visual, aural, electronic or any other material form on one, or more, of the following:

- (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;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment, referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;

- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c);

- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are, or may be, affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

“environmental information held by a public authority” means environmental information in the possession of a public authority that has been produced or received by that authority;

“environmental information held for a public authority” means environmental information that is physically held by a natural or legal person on behalf of that authority;

“Minister” means the Minister for the Environment, Climate and Communications;

“personal data” has the meaning given to it in Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016² on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

² OJ No. L 119, 04.05.2016, p. 1

“public authority”, subject to paragraph (2), means—

- (a) government or other public administration, including public advisory bodies, at national, regional or local level,
- (b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment, and
- (c) any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within paragraph (a) or (b),

and includes the following:

- (i) a Minister of the Government;
- (ii) the Commissioners of Public Works in Ireland;
- (iii) a local authority for the purposes of the Local Government Act 2001 (No. 37 of 2001);
- (iv) a harbour authority within the meaning of the Harbours Act 1946 (No. 9 of 1946);
- (v) the Health Service Executive established under the Health Act 2004 (No. 42 of 2004);

- (vi) a board or other body (other than a company established under the Companies Acts or the Companies Act 2014 (No. 38 of 2014)) established by or under statute;

- (vii) a company, established under the Companies Acts or the Companies Act 2014, in which all the shares are held—
 - (I) by or on behalf of a Minister of the Government,
 - (II) by directors appointed by a Minister of the Government,
 - (III) by a board or other body within the meaning of paragraph (vi),
or
 - (IV) by a company to which subparagraph (I) or (II) applies, having public administrative functions and responsibilities, and possessing environmental information;

“Regulations of 2007” means the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007);

“website” means an internet website (including part of such a website)—

- (a) to which access is readily available by members of the public, and

(b) where anything published is readily available for inspection by members of the public.

(2) In these Regulations, public authority does not include any of the following:

(a) the President;

(b) the Office of the Secretary General to the President;

(c) the Council of State;

(d) any Commission for the time being lawfully exercising the powers and performing the duties of the President;

(e) any body or institution when acting in a judicial or legislative capacity.

(3) A word or expression that is used in these Regulations and that is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Scope

3. (1) These Regulations apply to environmental information other than, subject to paragraph (2), information that, under any statutory provision apart from these Regulations, is required to be made available to the public, whether for inspection or otherwise.

(2) Notwithstanding—

- (a) section 38 of the Planning and Development Act 2000 (No. 30 of 2000) and any regulations made thereunder,
- (b) sections 10 and 31 of the Air Pollution Act 1987 (No. 6 of 1987) and any regulations made thereunder, and
- (c) sections 6 and 89 of the Environmental Protection Agency Act 1992 (No. 7 of 1992) and any regulations made thereunder,

environmental information held by, or on behalf of, a public authority shall be made available in accordance with these Regulations.

PART 2

GENERAL DUTIES OF PUBLIC AUTHORITIES

General duties of public authorities

4. (1) A public authority shall—

- (a) inform the public of their rights under these Regulations and provide information and guidance on the exercise of those rights,
- (b) inform the public where authorisations with a significant impact on the environment and environmental agreements may be requested,
- (c) inform the public where authorisations with a significant impact on the environment and environmental agreements may be located for review,
- (d) inform the public where environmental impact studies and risk assessments concerning elements of the environment may be requested,
- (e) inform the public where environmental impact studies and risk assessments concerning elements of the environment may be located for review,
- (f) take necessary measures to organise the environmental information, relevant to its functions, held by, or for, the public authority concerned with a view to its active and systematic dissemination to the public, by information technology or by other electronic means,
- (g) ensure that environmental information compiled by, or for, the public authority concerned, is up-to-date, accurate and comparable, and
- (h) provide assistance to the public in exercising the right of access to environmental information by means which may include one, or more, of the following:
 - (i) the designation of information officers within the public authority concerned;

- (ii) the establishment and maintenance of facilities for the examination of the information required within the public authority concerned;
- (iii) the provision of registers or lists of the environmental information within the public authority concerned;
- (iv) the provision of information points, with clear indications of where such information can be found within the public authority concerned.

(2) Environmental information mentioned in paragraph (1)(f) shall include at least the following:

- (a) the texts of international treaties, conventions or agreements and legislation pertaining to them;
- (b) policies, plans and programmes;
- (c) progress reports on the implementation of items specified in subparagraphs (a) and (b), where these have been prepared by the public authority or are available in electronic form;
- (d) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;

- (e) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found in the framework of Article 3 of the Directive;
- (f) environmental impact studies and risk assessments concerning the elements of the environment, referred to in paragraph (a) in the definition of environmental information, or a reference to the place where the information can be requested or found;

where such information is directly relevant to the function of that public authority and is environmental information.

(3) In the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, a public authority shall ensure that all environmental information held by, or for, the public authority concerned, which could enable the public likely to be affected to take measures to prevent or mitigate harm, is disseminated to the public immediately and without delay.

(4) Exceptions in Regulations 6 and 7, subject, as appropriate, to Regulation 8 may apply in relation to the duties imposed by this Regulation.

(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.

Commented [N1]: Does this adequately cover the issue of the format in which information is made available? For example mapped information may be available on a website as an image but a requester may wish to access that information in a geo-spatial (GIS) format. Or information may be available but not in a consolidated format meaning that it is not easily available.

The decision of the Commissioner in OCE-129105-D9Q2K4 is important in this context.

I do note that the use of the term 'may satisfy' also allows for the possibility that creating links to websites may not satisfy the requirements of the Regulation

PART 3

REQUESTS FOR ENVIRONMENTAL INFORMATION

Request for environmental information

5. (1) Subject to paragraph (2), a request for environmental information shall—

- (a) be made in writing or electronic form,
- (b) state that the request is made under these Regulations,
- (c) state the name of the applicant,
- (d) state the contact details, which may be an address for the receipt of electronic mail, of the applicant,
- (e) state, in terms that are as specific as possible, the environmental information that is the subject of the request, and
- (f) if the applicant desires access to environmental information in a particular form or manner, specify the form or manner of access desired.

(2) An applicant shall not be required to state his or her interest in making a request for environmental information.

Action on request

Commented [N2]: This is more restrictive than the Directive. The Regulations should make provision for verbal requests to be made.

Commented [N3]: Ditto

Commented [N4]: I am not convinced that the Directive requires an applicant to give a name. The mere name of an applicant may be sufficient for a public authority to infer an interest and would therefore be in conflict with 5(2). Since any information released under the Regulations is effectively released to the world at large the name of the applicant would appear to be superfluous.

Commented [N5]: This a welcome amendment. The existing Regulations are overly restrictive and deny people of no fixed abode the right to environmental information and that is contrary to the principles of the Aarhus Convention. There is no reason for a public authority to know the physical address of the requester.

Commented [N6]: In the interest of good administrative practice and certainty a public authority should be required to acknowledge receipt of a request under the Regulations and should state the timeframe for a decision. Most do this anyway.

6. (1) A public authority shall, notwithstanding any other statutory provision and subject only to these Regulations, make available to the applicant any environmental information, the subject of the request, held by, or for, the public authority.

(2) (a) 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.

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

(c) Where a public authority is unable, because of the volume or complexity of the environmental information requested, to make a decision within one month after the date on which such request is received, it shall, as soon as possible and at the latest, before the expiry of that month—

(i) give notice in writing to the applicant of the reasons why it is not possible to do so, and

(ii) specify the date, not later than two months after the date on which the request was received, by which the response shall be made,

and make a decision on the request and, where appropriate, make the information available to the applicant by the specified date.

Commented [N7]: The date on which a request is received or issued needs to be clarified.

The Interpretation Act 2005 is an instrument that can be used to interpret other pieces of legislation. Section 18(h) of that Act provides:
“Periods of time. Where a period of time is expressed to begin on or be reckoned from a particular day, that day shall be deemed to be included in the period and, where a period of time is expressed to end on or be reckoned to a particular day, that day shall be deemed to be included in the period;”

In the schedule to the 2005 Act, “working day” is defined as “a day which is not a Saturday, Sunday, or public holiday”. No reference is made to specific hours and indeed no reference is made to either working days or business hours in the AIE Regulations.

I suggest that the Interpretation Act is cited in the Regulations to clarify matters of timing. As regards timings there must be parity between the requester and the public authority. A public authority cannot issue a decision outside of normal office hours whilst at the same time deeming a request received outside of normal office hours to have been received once normal office hours resume.

Commented [N8]: ‘As soon as possible’ is difficult to determine. The emphasis in the Directive is on ‘as soon as possible’. The one month period is a deadline. Some public authorities see it as a target. The public authority MUST make the information available as soon as possible. See the decision of the Commissioner in OCE-116197-B6XOM5.

If a public authority issues three decisions (same decision maker) within a few minutes of each on the same day can all of those decisions have been issued as soon as possible? This is a reality. Some public authorities appear to wait to issue decisions until the end of the last working day for making a decision. Unless they are operating on very tight timeframes they are not issuing decisions as soon as possible.

These words (asap) are aspirational but very largely unenforceable. Failure to make information available ‘as soon as possible’ should be considered as a breach of the Regulations. i.e. delaying releasing information that is available should not be permitted.

This paragraph should be re-worded to properly reflect the emphasis of the Directive and to place an emphasis on a public authority to justify that it has acted as soon as possible..

Commented [N9]: This needs to be re-worded with more compulsion on the public authority to either respect the timescale or provide a detailed justification as to why it is not able to do so.

Commented [N10]: Ditto on ‘as soon as possible’. Introducing a shorter time limit for a public authority to apply an extension would put the onus on the authority to make a timely provisional assessment of a request.

Commented [N11]: The standard of reasoning must be the same as that required in decision making. Too frequently this necessary provision is abused by some public authorities to stall access to records, or in the interest of expediency in order to buy time. Ideally the provision for an extension should be brought in line with the FoI Regulations and that an extension should be requested by the PA rather than just applied.

(3) (a) Where a request has been made to a public authority for access to environmental information in a particular form or manner, access shall be given in that form or manner other than where—

(i) the information is already available to the public in another form or manner that is easily accessible, or

(ii) access in another form or manner would be reasonable.

(b) Where a public authority decides to make available environmental information other than in the form or manner specified in the request, the public authority shall specify the reason for so doing to the applicant in writing.

(c) 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.

(4) Where a decision is made to refuse, in whole or in part, a request for environmental information, the public authority concerned shall—

(a) subject to subparagraph (b), notify the applicant in writing of the decision, as soon as possible and not later than one month following the date of receipt of the request,

Commented [N12]: Teleological interpretation

Commented [N13]: Provisions of 9 (5) should apply here as well

Commented [N14]: To reflect the emphasis on the prompt provision of information or prompt opportunity to challenge a refusal.

- (b) in a case to which paragraph (2)(c) applies, notify the applicant in writing as soon as possible but not later than two months after the date of receipt of the request,
- (c) specify, in detail, with reference to the Regulations the reasons ~~specify the reasons~~ for the refusal, and
- (d) inform the applicant of his or her rights of internal review and appeal in accordance with these Regulations, including the time within which such rights may be exercised.

(5) Where a request is made to a public authority and the environmental information requested is not held the authority shall by, or for, the authority concerned, **as soon as possible** refuse the request in accordance with paragraph (4).

Commented [N15]: Ditto as soon as possible

(6) Where paragraph (5) applies and the public authority concerned is aware that the information requested is held by another public authority, it shall **as soon as possible**, inform the applicant of the public authority to whom it believes the request should be directed.

Commented [N16]: Ditto as soon as possible

(7) Where a request is made to a public authority which could reasonably be regarded as a request for environmental information but which is not a request that has been made in accordance with—

- (a) Regulation 5(1), or
- (b) the Freedom of Information Act 2014 (No. 30 of 2014),

the public authority concerned shall inform the applicant of his or her right of access to environmental information and the procedure by which that right can be exercised, and shall offer assistance to the applicant in this regard.

(8) (a) Where a request is made by the applicant in too general a manner, the public authority concerned shall, as soon as possible and, in any case, not later than one month after the date of receipt of the request, invite the applicant to make a more specific request and offer assistance to the applicant in the preparation of such a request.

Commented [N17]: Ditto 'as soon as possible'. Some public authorities use this as a delaying tactic in order to push back the time period for making a decision. I think that a shorter deadline should apply than one month in order that a public authority is required to make a preliminary assessment of a request.

(b) 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.

(c) Where subparagraph (a) applies and a more specific request is made by the applicant, the original request is considered to be withdrawn.

Commented [N18]: The inclusion of these two sub paragraphs emphasizes the importance of 'as soon as possible' in 8(a)

(9) Where, in a request for information on factors affecting or likely to affect the environment, the applicant specifies that he or she requires information on the measurement procedures, including methods of analysis, sampling and pretreatment of samples, used in compiling that information, the public authority shall either make the information available to the applicant or refer the applicant to the standardised procedures.

(10) Where a request is made for environmental information and in the opinion of the public authority release of the information may adversely affect—

- (a) the confidentiality of personal information relating to a natural person who has not consented to the disclosure of the information and where that confidentiality is otherwise protected by law,
- (b) the interests of a person who, voluntarily and without being under, or capable of being under, a legal obligation to do so, supplied the information requested, unless that person has consented to the release of that information, or
- (c) commercial or industrial confidentiality, where such confidentiality is provided for in national, or European Union, law to protect a legitimate economic interest,

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.

(11) The public authority shall notify any third party under paragraph (10) of its intended decision and shall inform the third party of his or her right to appeal under Regulation 10(1).

(12) Where a third party submits that the release of environmental information would, in its opinion, adversely affect its interests, the information in question shall not be released in accordance with paragraph (1) until—

- (a) the third party has notified the public authority of its intention not to appeal the intended decision of the public authority pursuant to Regulation 10(1),

- (b) the timeline for such an appeal has expired, or
- (c) where an appeal is made pursuant to Regulation 10(1), the appeal process has been exhausted, including any appeal under Regulation 11.

(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); or where an extension has been applied without adequate justification, or where a public authority has not provided adequate reasons for not adhering to the specified timescales of the applicant under 2(b), 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.

Commented [N19]: Where a public authority has not adequately reasoned the application of an extension under (2)(c) a requester should be permitted to consider the request to be deemed to be refused once the original time period has expired. Where there has not been reasoned regard for specified timeframes then failure to provide information to those timelines should also be considered to represent a deemed refusal.

PART 4

REFUSALS AND APPEALS CONNECTED WITH REQUESTS FOR ENVIRONMENTAL INFORMATION

Grounds for refusal of environmental information

7. (1) Subject to Regulation 8, a public authority may refuse to make available environmental information in accordance with Regulation 6—

Commented [N20]: It should be clearly stated that there is a presumption in favour of release of the requested information.

- (a) subject to paragraph (2), where disclosure of the information requested would adversely affect one, or more, of the following:
 - (i) the confidentiality of personal data relating to a natural person

where that person has not consented to the disclosure of the information to the public where such confidentiality is provided for by national, or European Union, law;

- (ii) the interests or protection of any person who, voluntarily and without being under, or capable of being put under, a legal obligation to do so, supplied the information requested, unless that person has consented to the release of that information;
 - (iii) the protection of the environment to which that information relates;
 - (iv) without prejudice to subparagraph (b), the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law;
 - (v) commercial or industrial confidentiality, where such confidentiality is provided for in national, or European Union, law to protect a legitimate economic interest,
- (b) where disclosure of the information requested would adversely affect one, or more, of the following:
- (i) international relations, national defence or public security;
 - (ii) the course of justice (including criminal inquiries and disciplinary inquiries);
 - (iii) intellectual property rights,

Commented [N21]: This will need to be clarified in the Ministerial Guidelines

(c) to the extent that it would involve the disclosure of discussions at one or more meetings of the Government, where such disclosure is prohibited by Article 28 of the Constitution,

(d) where the request—

- (i) is manifestly unreasonable,
- (ii) remains formulated in too general a manner, taking into account Regulation 6(8),
- (iii) concerns internal communications of public authorities, taking into account the public interest served by the disclosure,
- (iv) concerns unfinished documents or data, or
- (v) subject to paragraph (3), concerns material in the course of completion.

Commented [N22]: There needs to be greater guidance and clarity over what is and what is not manifestly unreasonable. Reasonableness must be considered in the context of the specific information requested.

(2) Environmental information may not be refused in accordance with paragraph (1)(a) where the request relates to information on emissions into the environment.

(3) Where environmental information is refused under paragraph (1)(d)(v), the public authority concerned shall inform the applicant of the name of the authority preparing the material and the estimated time for completion.

Incidental provisions relating to refusal of information

8. (1) A public authority shall consider each request made to it on an individual basis and weigh the public interest served by disclosure against the interest served by refusal.

Commented [N23]: Decisions on the current article 10(3) and 10(4) are generally generic.

(2) The grounds for refusal of a request for environmental information shall be interpreted on a restrictive basis having regard to the public interest served by disclosure.

(3) Environmental information held by, or for, a public authority which has been requested by an applicant shall be made available in part where it is possible to separate out any information refused under Regulation 7(1), that falls within the scope of—

(a) subparagraph (a)(i), (iv) or (v),

Commented [N24]: Why not (iii)? I could see this provision being abused.

(b) subparagraph (b)(ii) or (iii), or

(c) subparagraph (d)(iii) or (v),

Commented [N25]: (i) and (iv) should be included in this. Whilst a request as a whole may be considered to be manifestly unreasonable it may contain elements that reasonably could be addressed. If (v) is applicable why is (iv) not?

of that Regulation, from the rest of the information requested.

Internal review of refusal

9. (1) Where the applicant's request has been refused under Regulation 6, in whole or in part, or deemed to have been refused in accordance with Regulation 6(13) the applicant may, not later than one month after the date of receipt of the decision to refuse, or as the case may be the date of the deemed refusal in accordance with Regulation 6(13), request the public authority to review the decision, in whole or in part.

Commented [N26]: The Directive places no time constraint on the right to seek a review.

(2) Following receipt of a request for a review under paragraph (1), the public authority concerned shall designate a person **unconnected** with the original decision whose rank is the same as, or higher than, that of the original decision-maker to review the decision and that person shall—

Commented [N27]: The Guidelines need to provide clarity on how 'unconnected' is defined

- (a) affirm, vary or annul the decision, and
- (b) where appropriate, require the public authority to make available environmental information to the applicant,

in accordance with these Regulations.

(3) (a) **A decision under paragraph (2) shall be notified to the applicant as soon as possible and not later than one month after the date of receipt of the request for the internal review.**

Commented [N28]: To ensure consistency with the spirit of the Directive.

- (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.

(4) Where the decision under paragraph (2) affirms a decision under Regulation 6, or varies it in a way that results in the request being refused in whole or in part, the public authority concerned shall—

- (a) Specify **in detail, with reference to the Regulations**, the reasons for the decision under paragraph (2), and

- (b) inform the applicant of his or her right of appeal in accordance with these Regulations, including the time within which such right may be exercised.

Commented [N29]: There is no specific provision in the Directive for a time limit to apply to the making of an appeal.

(5) The reference to a request refused in whole or in part in paragraph (1) and Regulation 10(1)(a) includes a request that—

Commented [N30]: Should this not apply to the original decision (6(4)) also in terms of the capacity to seek an internal review?

- (a) has been refused on the ground that the body or person concerned contends that the body or person is not a public authority within the meaning of these Regulations,
- (b) has been refused on the ground that the environmental information requested is not held by, or for, the public authority,
- (c) has been refused on the ground that the information requested is not environmental information,
- (d) has been refused without providing adequate reasons, including for the application of an extension or without adequate consideration of the timelines specified by the applicant,
- (e) has not been dealt with in accordance with Regulation 6(2) or, as the case may be, Regulation 6(3),
- (f) has been inadequately answered, or

- (g) has otherwise not been dealt with in accordance with Article 3, 4 or 5 of the Directive (including the ground that the amount of the charge levied under Regulation 13(1) is excessive).

Appeal to Commissioner for Environmental Information

10. (1) Where—

- (a) a decision of a public authority has been affirmed, in whole or in part, under Regulation 9, or
- (b) a person other than the applicant, including a third party, reasonably believes that their interests would be adversely affected,

the applicant, the person other than the applicant or a third party may appeal to the Commissioner against the decision of the public authority concerned.

- (2) (a) An appeal under this Regulation shall be initiated not later than one month after the date receipt of a decision under Regulation 9(3).
- (b) Where the Commissioner is satisfied, in the circumstances of a particular case, that it is reasonable to do so, he or she may extend the time for initiating an appeal under subparagraph (a).
- (3) (a) Following receipt of an appeal under this Regulation, where the Commissioner considers that the reasons for the decision provided in

accordance with Regulation 9(4)(a), or in the case of Regulation 6(4)(c), are not adequate, 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.

- (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.

(4) The Commissioner may at any time endeavour to effect a settlement between the parties concerned of the matter concerned and may for that purpose suspend, for such period as may be agreed with the parties concerned, and if appropriate discontinue, the review concerned.

(5) Following receipt of an appeal under this Regulation, the Commissioner shall—

- (a) review the decision of the public authority, and
- (b) affirm, vary or annul the decision concerned, specifying the reasons for his or her decision,

in accordance with these Regulations and for the purpose of Article 6(1) of the Directive.

(6) 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.

(7) (a) Where the Commissioner varies or annuls the decision under paragraph (5)(b), the Commissioner shall remit the decision to the public authority, or where appropriate, require the public authority to make available environmental information to the applicant.

(b) Regulations 6, 7, 8, 10 and 11 shall apply to a remitted decision as they apply to a request for environmental information under Regulation 5.

(8) (a) A decision by the Commissioner under paragraph (5) shall be made in a timely manner and, insofar as practicable, not later than four months after the date of receipt by the Commissioner of the application for the review concerned.

(b) The timeline in paragraph (8)(a) shall be suspended—

(i) where paragraph (3) applies, until such time as the public authority complies with the direction under paragraph (3)(a),

(ii) where paragraph (4) applies, or

(iii) where further information is requested by the Commissioner from the applicant or a third party to the appeal, until such time as the information requested is provided.

Commented [N31]: The Commissioner should be empowered to impose sanctions on a public authority that in his view consistently or persistently fails to comply with the Regulations. The 2022 Annual Report identifies certain public authorities who are consistently and persistently failing to issue decisions consistent with the Regulations. There needs to be a significant disincentive for a public authority to use the scope of the Regulations to stall, defer or attempt to evade the release of environmental information. Where the Commissioner is satisfied that records have been refused where it is clear that the public authority should have been aware that release was the correct option the Commissioner should have the power to both impose a sanction and to formally refer the issue to the head of the Public Authority concerned. The Oireachtas should be accorded the power to carry out an investigation in to any such referral. In such cases the appeal fee should not only be refunded but the Commissioner should be able to award costs against the public authority. There needs to be increased deterrents to public authorities who do not comply with the Regulations on a consistent basis. The Regulations need to permit the Commissioner to address more than just individual decisions; the Office needs to be empowered to tackle systemic issues with particular authorities.

Commented [N32]: There is a risk that public authorities can use this process to stall the provision of environmental information. Should there be a limit on the number of times that a particular request can be remitted? The emphasis is on the provision of environmental information as soon as possible. Provisioning for an unlimited number of remittals is not consistent with this.

(9) The Commissioner may consider an appeal to be withdrawn where the public authority makes the requested information available, in whole or in part, prior to a formal decision of the Commissioner under paragraph (5).

(10) The Commissioner may, for the purposes of this Regulation, do any of the following:

- (a) require a public authority to make available such information as may be necessary for the Commissioner to determine the appeal, and where appropriate—
 - (i) require the public authority concerned to attend before the Commissioner for that purpose, and
 - (ii) where the public authority is a body corporate, require its chief officer to attend;
- (b) examine and take copies of any environmental information held by a public authority relevant to the appeal;
- (c) enter any premises occupied by a public authority and there require to be furnished with such information relevant to the appeal as he or she may reasonably require, or take such copies of, or extracts from, any information relevant to the appeal found or made available on the premises.

(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.

(12) Where a public authority fails to comply with a decision of the Commissioner within the period specified in paragraph (11), the Commissioner **may** apply to the High Court for an order directing the public authority to comply with that decision and, on the hearing of such an application, the High Court may grant such relief accordingly.

Commented [N33]: Is 'may' sufficient

(13) (a) The Commissioner may refer any question of law arising in an appeal under this Regulation to the High Court for determination and shall postpone the making of a decision until after the determination of the court proceedings.

(b) The High Court or, on appeal from that Court, the Court of Appeal or the Supreme Court, may order that some or all of the costs of an applicant or other person affected in relation to a reference under this paragraph be paid by the public authority concerned.

(14) The Commissioner shall be assisted by the staff of the office of the Information Commissioner and by such other resources as may, from time to time, be available to that office.

(15) The Commissioner may delegate to a member of the staff of the Commissioner any of the functions of the Commissioner under Regulation 10 and, where so delegated, references in this Regulation to the Commissioner shall be construed as including references to any person to whom functions stand delegated by the delegation.

(16) Subject to these Regulations, the procedure for conducting an appeal under this Regulation shall be such as the Commissioner considers appropriate in all the circumstances of the case.

(17) The Commissioner shall retain information held in his or her possession obtained under paragraph (10) for a reasonable period—

- (a) having regard to his or her functions under these Regulations, and,
- (b) according to the laws of the State in relation to data protection.

(18) The Commissioner should be able to recover reasonable costs from a public authority in circumstances where a request has been remitted to that authority on a second or subsequent occasion.

Appeal to High Court on point of law

11. (1) A party to an appeal under Regulation 10 or any other person affected by the decision of the Commissioner may appeal to the High Court on a point of law from the decision.

(2) An appeal under paragraph (1) shall be initiated not later than 2 months after the date on which a notice of the decision under Regulation 10(5) was given to the party to the appeal or other person affected by the decision.

(3) Where an appeal under this Regulation by an applicant or other person affected is dismissed by the High Court or, on appeal from that Court, the Court of Appeal or the Supreme Court, the Court may order that some or all of the costs in relation to the appeal of any person affected be paid by the public authority concerned, if it considers that the point of law concerned was of exceptional public importance and, but for this paragraph, would not so order.

Commented [N34]: 3

(4) In an appeal under this Regulation to the High Court or, on appeal from that Court, the Court of Appeal or the Supreme Court, the court shall, where appropriate, specify the period within which effect shall be given to its order and may include such other matters as the court thinks appropriate to ensure the provision of an adequate and effective remedy.

(5) Public authorities shall comply with any order of a court requiring information to be issued to the person making the request concerned.

(6) The courts shall act as expeditiously as possible consistent with the administration of justice in determining any application made to them under these Regulations.

(7) Following the determination by a court of an appeal made under this Regulation, the Commissioner shall make his or her decision accordingly and, where appropriate, require the public authority to make available environmental information to the applicant.

PART 5

GUIDELINES AND FEES

Guidelines

12. (1) The Minister shall publish guidelines in relation to the implementation and operation of these Regulations by public authorities, not later than 12 months after the date of their coming into operation.

(2) The Minister shall review any guidelines published under paragraph (1) at regular intervals not exceeding 5 years.

Commented [N35]: Given 12 (3) should it be specified that any review is subject to public consultation?

(3) A public authority shall, in the performance of its functions under these Regulations, have regard to any guidelines published by the Minister under paragraph (1).

(4) In addition to the guidelines referred to in paragraph (1), the Minister shall ensure that an indicative list of public authorities is publicly available in electronic format on a website maintained by the Minister.

(5) Notice of the making of guidelines or a list under this Regulation shall be published in the Iris Oifigiúil.

Fees of public authorities

13. (1) A public authority may levy a charge when it supplies environmental information in accordance with these Regulations (including when it makes such information available following an appeal to the Commissioner under Regulation 10), provided that such charge shall be reasonable having regard to the provisions of the Directive.

Commented [N36]: It needs to be clarified that when a public authority charges a fee whether that fee is imposed prior to or after release of the information. Does the requester have to pay in order to have sight of the information or does the public authority have to disclose the information before payment is made? Is it like a restaurant where you order the meal and pay after you have been served, or is it McDonalds?

'When it supplies' implies the former but the wording could be amended to achieve greater clarity. The Directive is not 100% clear on this but lends to the former.

(2) Notwithstanding paragraph (1), a public authority shall not charge a fee for—

Commented [N37]: In the interest of clarity this paragraph should be modified to reflect the findings and Recommendations of the ACCC in ACCC/C/2017/147 para 86-89

(a) access to any public registers or lists of environmental information pursuant to Regulation 4(1)(f), or

- (b) the examination of information, supplied in accordance these Regulations, in the premises of the authority concerned.

(3) Where an applicant examines information, in accordance with paragraph (2)(b), and wishes to obtain copies of that information, a public authority may charge a fee, consistent with the list of fees specified under Regulation 14, for the provision of such copies.

(4) Where a public authority levies charges pursuant to this Regulation, it shall make available on a website maintained by the authority concerned, a schedule of such charges, information on how they are calculated and the circumstances under which they may be levied or waived.

Fees for appeals

14. (1) Subject to paragraph (2), a fee of €50 shall be charged for making an appeal to the Commissioner under Regulation 10.

(2) A fee of €15 shall be charged in respect of an appeal pursuant to Regulation 10 by—

- (a) a holder of a medical card,
- (b) a recipient of a social welfare payment that is subject to a means test,
- (c) a dependant of a person referred to in subparagraph (a) or (b), or

- (d) a person referred to in Regulation 10(1)(b).
- (3) The Commissioner may refund all, or part, of the appeal fee —
- (a) where the Commissioner considers an appeal to be withdrawn in accordance with Regulation 10(9),
 - (b) in respect of an appeal pursuant to Regulation 10 on a decision under Regulation 6(13) or 9(3)(b),
 - (c) where an appeal pursuant to Regulation 10 is withdrawn by an appellant, or
 - (d) where an appeal is made under Regulation 10 in respect of a request for information which was previously the subject of an appeal and was remitted to the public authority under Regulation 10(6).
 - (e) Otherwise at the discretion of the Commissioner given the circumstances of the appeal

PART 6

FINAL PROVISIONS

Revocations

15. The following are revoked:

- (a) other than article 12(1) and (2), the Regulations of 2007;
- (b) the European Communities (Access to Information on the Environment) (Amendment) Regulations 2011 (S.I. No. 662 of 2011);
- (c) the European Communities (Access to Information on the Environment) (Amendment) Regulations 2014 (S.I. No. 615 of 2014);
- (d) the European Communities (Access to Information on the Environment) (Amendment) Regulations 2018 (S.I. No. 309 of 2018).

Transitional arrangements

16. (1) A request made under the Regulations of 2007 not determined by the public authority concerned prior to the coming into operation of these Regulations shall continue to be dealt with and determined under the Regulations of 2007 as if those first-mentioned Regulations had not been revoked.

(2) Where on the date of the coming into operation of these Regulations, any legal proceedings are pending in any court or tribunal arising in connection with any matter under the Regulations of 2007, those proceedings shall continue as if those second-mentioned Regulations had not been revoked.

(3) Where on the date of the coming into operation of these Regulations, an appeal has been made to the Commissioner arising in connection with any matter under the Regulations of 2007, that appeal shall continue as if those second-mentioned Regulations had not been revoked.

GIVEN under my Official Seal,

_____ 2023.

Minister for the Environment, Climate
and Communications