# RESPONSE TO DECLG PUBLIC CONSULTATION: ACCESS TO JUSTICE & IMPLEMENTATION OF ARTICLE 9 OF THE AARHUS CONVENTION

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## INTRODUCTION

The Department of Environment, Community and Local Government (DECLG) is to be commended for initiating this public consultation and for agreeing to extend the original (short) consultation period. The consultation is a valuable opportunity for everyone with an interest in access to justice in environmental matters to present their views on the current state of implementation and to offer suggestions for strengthening existing rules and practice to ensure compliance with the Aarhus Convention.

The response template, while very detailed, is a useful tool to encourage sharply focussed responses to the consultation. It is also good to see that the DECLG plans to publish all responses received on its website and to prepare and publish a "final report' following the consultation process. Hopefully, this consultation marks the beginning of a process of engagement between Government and the public on how Ireland can best deliver effective access to justice in environmental matters.

### "Transposition" verses "Implementation"

The distinction between "transposition" and "implementation" of Aarhus obligations (and indeed EU law obligations) is important when assessing whether or not there is compliance both in law and in practice. This distinction is sometimes blurred when discussing the situation on the ground in Ireland, but it is fundamental to any accurate analysis of the overall state of compliance. For the sake of clarity: "**Transposition"** concerns the formal (usually legislative) measures that are adopted to "transpose" Aarhus and EU law obligations into national law. "**Implementation"** relates to how Aarhus and EU law obligations are being delivered in practice.

**General comments**

***A more holistic approach to a review of access to justice in environmental matters***

The consultation focuses *exclusively* on the access to justice provisions in Article 9 of the Aarhus Convention, although the Consultation Document states that "the general principles of the Aarhus Convention, in particular those of Article 3, will be taken into consideration in any amendments made to the implementing legislation." The general provisions set down in Article 3 are fundamental to successful Aarhus implementation at local level. In particular, Article 3(1) demands that Convention Parties put in place "proper enforcement measures" and that they "establish and maintain a clear, transparent and consistent framework" to implement the Convention. Parties are obliged under Article 3(2) and (3) to "endeavour to ensure" that authorities and officials assist and provide guidance to the public and promote environmental education and awareness, especially in relation to how to use the rights conferred by the Convention.

The obligations set down in Article 3 raise a number of serious challenges for Ireland which impact directly on access to justice. First, the complex and fragmented character of our planning and environmental legislation is well-known. This state of affairs undermines effective public engagement in environmental matters, impedes public authorities in performing their functions and fuels judicial review proceedings. For example, as Charleton J stated recently in *Kerry Co. Co. v An Bord Pleanála* [2014] IEHC 283: "The complexity of the relevant legislation has made the task of An Bord Pleanála in relation to road planning authorisation and refusal very difficult indeed." A considerable amount of work remains to be done to improve the quality of Irish planning and environmental legislation to make it more accessible and user-friendly for all concerned. Second, more needs to be done to generate awareness of the Aarhus Convention among the public and to provide advice and support to members of the public who wish to exercise their environmental rights. Consumer rights, for example, are advertised widely in the media and other publicity outlets. Plus there is a National Consumer Agency to provide expert information to the public, enforce consumer law and promote consumer rights. Similar initiatives are needed in the area of environmental rights if Aarhus is to become embedded in national administrative and legal culture.

***A wider focus - embracing all elements of Aarhus***

Rather than focussing specifically on Article 9 of the Convention, in my view it is essential to set the access to justice provisions in context. While I appreciate that the DECLG is concerned primarily with examining implementation of Article 9 at this particular point in time, the access to justice provisions cannot be viewed in isolation from the information and participation elements of the Convention. The three rights guaranteed by the Convention – access to information, participation in decision-making and access to justice – are obviously interconnected. The purpose of the access to justice provisions is to ensure that an accessible remedy is available in cases where information and participation rights are breached and, more generally, to ensure that all environmental laws are enforced in the public interest.

Proper implementation of the information and participation provisions of the Convention is fundamental to good environmental governance. Where these rights are delivered effectively in practice, there should be less need to invoke the right of access to justice – at least in certain categories of cases. It follows that designing robust legislation and investing the necessary resources to support information and participation rights should pay dividends in terms of reducing demand for (resource intensive) review mechanisms.

***Quality of environmental decision-making at first instance demands attention***

Improving the quality of environmental decision-making at first instance must be a priority in any effort to deliver on Aarhus obligations. This approach would serve to increase public faith in the regulatory process and should, in turn, reduce demand for review mechanisms down the line. Investing resources to provide sufficient numbers of appropriately qualified, expert staff to public authorities is an obvious first step towards complying with Aarhus obligations in practice. Of course, the current state of the public finances is a major challenge in this regard. However, pooling scarce resources and expertise (especially among smaller public authorities), and enabling public authorities to call on expertise from a central body (perhaps along the lines of an “Aarhus Centre” or “Aarhus Hub”) to assist them when applying Aarhus principles in practice, are approaches that could be considered. Early access to accurate information and expert advice can prevent disputes from arising in the first place by enabling public authorities to apply Aarhus rights correctly and with

confidence. Equally, where accurate information and expert advice is available to the public, this enables individuals and NGOs to alert public authorities to potential errors in their approach to applying Aarhus principles and creates the possibility for correcting an error before a formal decision is taken. Again, the idea here is to seek to prevent disputes and thereby reduce the need for formal review mechanisms – at least in the case of relatively straightforward errors that can be corrected quickly by the public authority.

At the same time, of course, an accessible and effective system of access to justice must be in place to ensure that public authorities know that they will be held to account – and that there will be consequences – when they fail to comply with environmental law.

***Impact of review procedures on quality of environmental decision-making***

We need to give more attention to the impact review procedures have on the quality of subsequent decision-making by public authorities. For example, where a decision taken by a particular public authority is quashed following judicial review, how is that outcome and the High Court's reasoning made known to public authority decision-makers to ensure that similar issues do not arise again in the future? In other words, how are the implications of particular decisions in judicial review proceedings communicated back to public authorities? And how do public authorities "learn" from the judicial review process? To what extent are the most significant judicial review decisions translated into accessible guidance notes/circulars for public authorities? Effective communication of outcomes is essential if the (resource intensive) judicial review procedure is to have real impact in practice.

***Environmental Governance***

Following on from the more holistic approach to delivering access to justice advocated above, the overall system of environmental governance in Ireland is in need of urgent review. Indeed, a review of environmental governance (to include consideration of whether a specialist Environmental Court or Tribunal should be established) was recommended by the Environmental Protection Agency Review Group which reported to the then Minister for

Environment, Community and Local Government in May 2011.[1] The Review Group highlighted the inter-connected nature of environmental issues (including climate change, the protection of biodiversity, water resources, law enforcement etc.) and the vital need for a coordinated approach across all relevant Government Departments and public authorities. It recommended the establishment of a high level Environmental Governance Network for this purpose. Neither of these recommendations has been implemented to date. The most recent report on implementation of the Review Group's recommendations states that issues "are being addressed as they arise … which will result in improved environmental governance".[2] The issue of a specialist Environmental Court or Tribunal is now being considered as part of this public consultation on Article 9 of the Aarhus Convention.[3] This persistent fragmented approach to environmental governance is disappointing. It undermines integrated environmental decision-making and hampers effective reform in this strategically important policy area. Strong leadership – and the political will to commit the resources necessary to undertake a thorough review of environmental governance – is sadly lacking. A well-thought out, holistic review would pay major dividends in terms of improved governance, better quality environmental decision-making and greater public faith in the regulatory system. It should also serve to save resources by identifying and eliminating unnecessary duplication, promoting economies of scale and delivering more efficient practices across all Government Departments and public authorities.

[1] Environmental Protection Agency Review Group, *A Review of the Environmental Protection Agency* (Dublin: Department of Environment, Community and Local Government, May 2011) para 1.4.6. Text available here: http://environ.ie/en/Publications/Environment/Miscellaneous/FileDownLoad,26491,en.pdf.
**Declaration:** The author of this submission was a member of the Review Group.

[2] Environmental Protection Agency, *Review of Environmental Protection Agency: Implementation of Recommendations* (August 2014). See in particular Recommendation 7.1.1. Text available here: http://www.epa.ie/pubs/reports/other/corporate/EPA%20Review%20Implementation%20of%20Recommendations%20Final.pdf.

[3] Environmental Protection Agency, *Review of Environmental Protection Agency: Implementation of Recommendations* (August 2014). See in particular Recommendation 7.1.3.

## SECTION 1 - Article 9(1)

| **Question 1** | Does Ireland's legislation implementing Article 9(1) fully comply with the requirements of the Convention? If not, why not? |
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| **Answer** | Ireland has made no legislative provision to ensure that the Commissioner for Environmental Information determines appeals in a "timely" manner. The Access to Information on the Environment Regs 2007-2011 (the AIE Regs) fail to provide that appeals must be determined within a specific time frame.<br><br>Similarly, there is no legislative provision to ensure that an appeal to the High Court on a point of law from a decision of the Commissioner, or a judicial review of a decision, act or omission of the Commissioner, is determined in a "timely" manner. |

| **Question 2** | Does the implementation of the existing legislation fully comply with the Convention in practice? If not, how do you think implementation fails to comply? |
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| **Answer** | The unacceptable delays involved in processing appeals in the Office of the Commissioner for Environmental Information are well known.<br><br>The two appeals against decisions of the Commissioner that have come before the courts to date have involved very serious delays: *An Taoiseach v Commissioner for Environmental Information* [2010] IEHC 241 and *National Asset Management Agency v Commissioner for Environmental Information* [2013] IEHC 86 (currently under appeal to the Supreme Court; judgment is pending at the time of writing).<br><br>Delay undermines the right of access to information on the environment.<br><br>The Commissioner's practice of determining preliminary (threshold) matters of jurisdiction and then remitting a case back to the public authority in question simply exacerbates the already unacceptable delays faced by individuals and NGOs who seek access to environmental information. Once an appeal is made to the Commissioner, he should determine whether or not the information at issue is subject to release under the AIE regulations and, if it is, he should direct its release.<br><br>The Commissioner's remit under the AIE Regs is very narrow. He does not have any specific statutory role in relation to alleged bad practice by public authorities under the AIE Regs. Nor does he have power to investigate cases that have not been appealed formally. Plus, his office has no enforcement powers in relation to Article 5 of the AIE Regs. These are all matters that need to be addressed by way of amendments to the AIE Regulations if the right of access to environmental information is to be effective in practice. See further: *Commissioner for Environmental Information Annual Report 2013*, pp74-75. |

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| | The appeal fee deters individuals and NGOs from bringing appeals before the Commissioner.<br><br>The Commissioner's decisions should be published promptly on his website.<br>Decisions should be set out using paragraph numbers for ease of reference. As currently presented, it is difficult to navigate the Commissioner's decisions. Paragraph numbers would be a significant improvement for those who use the Commissioner's decisions in practice, including public authorities.<br><br>It is disappointing that the Commissioner decided to withdraw the Supreme Court appeal against the decision of the High Court in *An Taoiseach v Commissioner for Environmental Information* [2010] IEHC 241. One of the reasons the Commissioner gave for his decision to withdraw this appeal was the "severe financial constraints within which [his] Office is obliged to operate in the current difficult economic climate" (*Commissioner for Environmental Information Annual Report 2013*, p.76). A Supreme Court decision in this case would have clarified the scope of the Commissioner's jurisdiction to deal with significant issues involving implementation and enforcement of EU law. An important opportunity to bring clarity to the law was lost.<br><br>More detailed guidance notes should be available to public authorities on the application of the Aarhus Convention, Directive 2003/4/EC and the AIE Regs. Any guidance notes should be kept under review and updated on a regular basis. In particular, the main points arising from any new decisions of the Commissioner, the High Court/Supreme Court and the Court of Justice of the European Union on any AIE related matters should be incorporated into the guidance notes as soon as possible.<br><br>The current (very limited) AIE guidance notes should be supplemented with a series of case studies on AIE to assist public authorities in applying the different stages of the AIE decision-making process and to help the public to better understand this process.<br><br>Dedicated training for public authorities on AIE maters is needed urgently and it is heartening to see that DECLG has now begun to "roll out" this training.<br><br>Data on AIE activity in practice should be published regularly by the DECLG to bring transparency to AIE in practice. |

| **Question 3** | If the answer to either of the above questions is "No", what changes would you suggest to the existing legislation to improve Ireland's compliance? |
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| **Answer** | The appeal fee should be abolished. To the best of my knowledge, no other jurisdiction in the EU applies such a fee for what is essentially an administrative review. It is obvious that the appeal fee is deterring people from lodging appeals with the Commissioner.<br><br>The Commissioner's office must be adequately resourced with expert staff, including lawyers, to ensure that it can deliver a "timely" remedy in all cases.<br><br>With a view to encouraging compliance, consideration should be given to introducing a sanction/penalty for public authorities who are found by the Commissioner to have failed to comply with their AIE obligations. The Commissioner should have statutory power to investigate alleged bad practice by public authorities and to enforce the obligations that Article 5 of the AIE regulations impose on public authorities.<br><br>[**Note:** Apart from the access to justice issues under consideration here, there are serious deficiencies in the AIE regulations that I have highlighted previously, including the requirement that requests must be made in writing/electronic format and the reference to "mandatory" exceptions.] |

## SECTION 2 - Article 9(2)

| **Question 1** | In Ireland, Judicial Review is the review procedure required by Article 9(2). Are there alternative review procedures that could be used to implement this Aarhus review requirement? For example, is it appropriate that the review procedure be before a court or should it be before an independent and impartial body established by law such as a tribunal? Please give reasons for your preference. |
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| **Answer** | While judicial review is the review procedure for the purposes of Article 9(2), in the case of certain planning/environmental decisions taken by public authorities there is also the possibility of a preliminary review in the form of an administrative appeal. The relevant review procedures here are, of course, An Bord Pleanála (ABP) (when acting as an appeals mechanism) and the Aquaculture Licences Appeals Board (ALAB).<br><br>It is notable that there is no administrative appeal in the case of decisions involving Strategic Infrastructure Development and in respect of EPA licensing decisions (e.g. IPPC/IED licences, waste licences, waste water discharge licences, GMO consents etc.). The result is that there are different remedies available depending on the category of decision at issue.<br><br>On balance, if the High Court had direct access to appropriate technical expertise when dealing with planning and environmental cases, and if the current problems with delay and cost associated with judicial review proceedings could be addressed satisfactorily, I would favour retaining the existing system. In other words, judicial review before a more technically expert High Court, plus the current (well-established) appeals system before ABP and ALAB.<br><br>The High Court commands considerable public respect in terms of its independence and authority. I'm not convinced that any new administrative Environmental Tribunal would not run into difficulties in terms of questions being raised as to its independence and its credentials - especially in a small jurisdiction like Ireland. |

| **Question 2** | If before a court, should it be before the High Court or before the Circuit Court or a newly established specialist Environmental Court or a Regulatory appeal/review Court at either High Court level or Circuit Court level? Please give reasons for your preference. |
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| **Answer** | The judicial review jurisdiction should absolutely remain with the High Court.<br>This is a fundamental point given the vital importance of judicial review in ensuring that public authorities comply with the law.<br><br>However, given the increasingly technical and specialist nature of many planning and environmental disputes, there is certainly an argument to be made for providing the High Court with appropriate experts to advise the court directly when dealing with such matters. For example, the Land and Environment Court in Sweden is comprised of both lawyers and technical/scientific experts. This model appears to work well in practice and has led to the public having greater faith in the competence of the court to review complex planning and environmental decisions.<br><br>I believe it is worth considering appropriate mechanisms to provide the High Court with access to expertise in planning and environmental matters to assist the (legally qualified) judges when called on to consider complex issues. This is an issue that is likely to become even more important into the future as science and technology develop apace. |

| **Question 3** | Should the legislation be amended to provide expressly that the judicial review system is the review system required by the Aarhus Convention? If not, why not? |
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| **Answer** | For the sake of clarity, yes, I would be in favour of this being stated expressly in legislation. |

| **Question 4** | Are there other legislative amendments that the Irish authorities should consider to improve clarity for members of the public on the appropriate methods of review of environmental decision-making? |
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| **Answer** | Consolidating planning and environmental legislation is vital to ensure that all rules, including the rules governing judicial review, are accessible to everyone.<br><br>It is especially important that the public, lawyers and others have easy access to the current updated texts of legislation, including statutory instruments. |

| **Question 5** | Is the requirement for exhaustion of administrative review procedures prior to recourse to judicial review procedures appropriate? If so, please outline your reasons and identify the advantages of the existing or proposed approach. |
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| **Answer** | The obligation to exhaust any available administrative review procedure only arises where the review procedure that is available can provide an effective remedy in the particular case. If the available administrative review procedure is not capable of addressing the particular issue(s) arising, then there is nothing to prevent an individual/NGO from proceeding directly to judicial review. In fact, this is quite common in practice – e.g. judicial review of a planning authority's decision to correct an error of law. The appropriate remedy (administrative appeal or judicial review) depends on the facts of each individual case. |

## **SECTION 3 - Article 9(3)**

| **Question 1** | Is it appropriate / useful to define and / or list what is covered by the term "national law relating to the environment"? |
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| **Answer** | I think it would be risky to attempt to set out an exhaustive list. There is a strong likelihood of something significant being omitted inadvertently.<br><br>But it should be possible to draft a general definition that is sufficiently open-ended to enable a court to determine whether or not a particular provision qualifies as "national law relating to the environment" in the event of a dispute. |

| **Question 2** | Should a list of specified legislation be set down in law or is it preferable to leave it to the judiciary to decide in individual cases whether the law in question falls under Article 9(3)? |
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| **Answer** | See response to Question 1 above. |

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| **Question 3** | Or should it be a combination of a list of environmental legislation with a fall back mechanism of judicial decision should the need arise? |
| **Answer** | I would favour a general definition with scope for judicial interpretation/determination in the event of any dispute on the matter. |
| **Question 4** | Why do you favour one or other approach? |
| **Answer** | It is impossible to provide in legislation for every conceivable situation that may arise in practice. So a more flexible approach, by way of a general definition, is probably best in the circumstances. |

## SECTION 4 - Article 9(4)

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| **Question 1** | Are the remedies provided under Irish legislation sufficient to meet the requirements of the Aarhus Convention? If not, how do the remedies fail to meet the requirements? |
| **Answer** | A wide range of remedies is available, depending on the nature of the proceedings at issue. The question of effectiveness will usually depend on the facts of an individual case and what the parties are seeking to achieve in the proceedings.<br><br>Effectiveness is often closely related to the availability of interim relief to prevent harm/damage pending the final determination of the proceedings. If a party is required to give an undertaking in damages as a pre-condition to obtaining interim/interlocutory relief, then that can prove problematic for a party of limited means.<br><br>Generally speaking, judicial review provides effective remedies. However, there is an important issue around the scope of judicial review proceedings and, in particular, the extent to which the courts defer to expert public authorities in certain planning and environmental matters.<br><br>The case law on this point continues to evolve. It appears from the case law to date that some judges are very alert to the need to ensure that judicial review provides an "effective" remedy, particularly in Aarhus/EU law cases, and that this may well |

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| | involve closer scrutiny of decision-making than has traditionally been the case in Irish administrative law.<br><br>The courts also appear to be getting more proactive in overseeing how public authorities comply with their obligations under EU environmental law. A recent example is the decision of the High Court in *Kelly v An Bord Pleanála* [2014] IEHC 400.<br><br>Providing the High Court with direct access to expertise in planning and environmental matters (as suggested above) would strength its ability to deal with complex planning and environmental decision-making.<br><br>As regards the Commissioner for Environmental Information, the delays in processing appeals can undermine the effectiveness of the remedy. Information may be out of date, or the time limit for bringing judicial review or enforcement proceedings may have passed by the time information is released following an appeal. |
| **Question 2** | Are the Irish court procedures fair, timely and effective? If your view is that they are not, what are your reasons for that opinion? |
| **Answer** | Apart from the High Court Commercial List, delays in the courts system militate against "timely" procedures.<br><br>It is widely acknowledged that the current delays in the Supreme Court are unacceptable. Hopefully the establishment of the Court of Appeal will ease the current pressure on the Supreme Court – at least to some extent, although it will take time to clear the existing backlog.<br><br>It is difficult to measure fairness and effectiveness in the abstract. Whether or not these standards are met will usually vary from case to case – depending on the nature of the proceedings, whether or not parties have expert representation etc. |

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| **Question 3** | Are there specific legislative or procedural changes that could be made to improve these elements with respect to environmental cases? If yes, please specify. |
| **Answer** | Apart from some mechanism to "fast-track" planning and environmental cases that come before the courts, it is difficult to see how the delays could be addressed. And, of course, there are many categories of cases – apart from planning and environmental cases – that should be determined in a timely manner. |

## SECTION 5 - Timely

| Question 1 | Are there any issues with regard to timeliness of access to justice in Ireland? |
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| **Answer** | See the response to Question 2 above. |

| Question 2 | Could these be addressed through legislative amendments and/or changes to the rules of procedure? |
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| **Answer** | In the case of the Commissioner for Environmental Information, the AIE regs should be amended to provide that appeals must be determined within a particular time frame. But adequate resources would have to be provided to the Commissioner to facilitate faster determinations.<br><br>As regards court procedures, the main issue is one of resources (i.e. more judges and more support for judges, for example, judicial assistants/researchers/secretarial support).<br><br>Providing the High Court with direct access to technical expertise in planning and environmental cases (as suggested above) might go some way towards reducing delays by enabling the courts to deal with complex, technical matters more efficiently. |

## SECTION 6 - Not prohibitively expensive

| **Question 1** | Is it appropriate to make further changes to the cost rules in respect of challenges to environmental proceedings? If so, why? |
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| **Answer** | Unfortunately, yes. Clarity is required as to the scope of the special costs rules. The current scope of the special costs rules is too narrow.<br><br>Section 6 of the Environment (Miscellaneous Provisions) Act 2011 is particularly opaque. If the legislative intention behind this section was to apply the special costs rules to judicial review of environmental decision-making generally, the section as currently drafted does not achieve this end.<br><br>The current legislative scheme has generated significant uncertainty and fuelled (expensive and resource intensive) satellite litigation relating to costs issues. |

| **Question 2** | Could changes be made to the list of legislation to which the cost rules apply? If so, what kind of changes would be beneficial? |
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| **Answer** | The current costs rules need to be reworked to provide as much clarity and certainty as possible for all concerned.<br><br>Lawyers who practise in this area and have direct experience of the cost rules in action are best placed to make specific recommendations in this regard. I look forward to reading their submissions to this public consultation.<br><br>Before any further changes are made to the costs rules, DECLG should consider establishing a Working Group on Access to Justice in Environmental Matters to consider the question of costs and related procedural matters in planning and environmental cases. Such a group should include representatives of the judiciary, practising lawyers, the Attorney General's Office, relevant officials (including Department of Justice & Equality and the Courts Service) and environmental justice advocates. It should also include representatives of the public authorities charged with enforcing environmental law, including EPA, NPWS and selected local authorities.<br><br>An expert and well-informed group, with direct experience of the costs rules in practice, is best placed to identify appropriate amendments to the current costs rules and to explore the likely implications of any proposed changes.<br><br>It is vital that the judiciary and Courts Service are involved in this process from the outset. |

| Question 3 | Could changes be made to the procedural rules of court in respect of the cost rules set out in the legislation? If so what kind of changes would be beneficial? |
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| Answer | Rules of procedure are needed with regard to an application to the court under section 7 of the Environment (Miscellaneous Provisions) Act 2011 to determine whether or not the special costs rules apply in a particular case.<br><br>A similar procedure should be introduced in the context of section 50B of the Planning and Development Act 2000 as amended. |

| Question 4 | Could changes be made to how the cost rules are set out? |
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| Answer | I'm not clear as to what exactly is being asked here, but if further amendments are made to the costs rules, then consideration should be given to producing consolidated provisions governing costs and avoiding the usual practice of fragmented legislation spanning different pieces of legislation. |

| Question 5 | Are changes to how it is determined that cost rules apply appropriate e.g. should the parties to proceedings determine this in advance? In writing? In court proceedings? What effect would such changes have? |
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| Answer | See the response to Question 2 above. |

| Question 6 | It has been suggested that the cost rules in section 50B should be repealed and that there should be one set of general cost rules re-drafted to include both those currently provided for in section 50B (i.e. those relevant to the EIA, IPPC and SEA directives) and the Environment (Miscellaneous Provisions) Act 2011. Others have suggested that 50B be retained, but limited to planning decisions with other EIA, IPPC and SEA cases covered under another general cost rule. Which approach would you support? Why? |
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| Answer | See the response to Question 2 above. |
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| Question 7 | What guidance should be made available to the court to ensure that the cost rules only apply to Aarhus cases? How best can it be ensured that only Aarhus cases are so protected? |
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| Answer | See the response to Question 2 above. |

| Question 8 | Should developers be excluded from the protection provided by the cost rules? Should State bodies continued to be excluded from this protection? If so, why? If not, why not? |
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| Answer | See response to Question 2 above. |

## SECTION 7 - Publicly accessible decisions

| **Question 1** | Are there problems in practice with public access to court decisions? If yes, please specify. How could access to court decisions be improved? |
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| **Answer** | In many cases, the High Court and the Supreme Court deliver written, reasoned judgments and these judgments are usually published on the Courts Service website.<br><br>However, there can be a significant delay before decisions of the High Court are published on the Courts Service website.<br><br>Some rulings, including, in particular, rulings on costs matters, are given ex tempore and no written judgment is published.<br><br>In cases where the court does not deliver a considered, written judgment the decision of the court is recorded in a court order which is available only to the parties to the case.<br><br>This state of affairs is a clear breach of the express requirement in Article 9(4) that court decisions in Aarhus cases must be publicly accessible.<br><br>Decisions of the District Court and the Circuit Court are rarely published in the form of written judgments that are made available to the public.<br><br>A database of Aarhus cases would be a useful resource on the Courts Service website. |

## SECTION 8 - Article 9(5)

| **Question 1** | What other barriers to access to justice in relation to environmental decision-making do you consider might exist in Ireland? |
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| **Answer** | See the Introduction to this submission. |

| **Question 2** | How can these be addressed? |
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| **Answer** | See the Introduction to this submission. |

| General Comments | Please provide any additional comments on this Consultation |
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| | We lack data on environmental litigation in Ireland.<br><br>For example:<br>What is the volume of environmental litigation (including judicial review proceedings, environmental enforcement proceedings etc.)?<br>Who litigates environmental issues?<br>How long do such proceedings take in a typical case?<br>What trends are emerging in costs matters?<br>Is there a rise in the number of lay litigants following the introduction of the special costs rules?<br><br>This sort of information would inform policy development in this area. As things stand, much of the available evidence as to what is happening in practice is anecdotal.<br><br>The Courts Service should consider how data concerning environmental litigation could be collected and presented in a user-friendly format.<br><br>At present, the Courts Service Annual Reports do not provide any specific information on planning and environmental litigation. |