

Implementation of Directive 2003/4/EC in Ireland

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Environmental Information'

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Coimisinéir um Fhaisnéis Comhshaoil
Commissioner for Environmental Information

By Regulation

- European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (the AIE Regulations)
- Secondary rather than primary legislation; therefore, strictly bound by the Directive
 - *National Asset Management Agency v Commissioner for Environmental Information* 2015 IESC 51 (*NAMA*) (O'Donnell J.): The provisions of the Regulations “must be understood as implementing the provisions of Directive 2003/4/E (and indirectly the [Aarhus] Convention and . . . ought not to go further (but not fall short of) the terms of that Directive”.
- Unofficial consolidated version of the AIE Regulations available at <https://www.dccae.gov.ie/documents/Unofficial%20Consolidation%20AIE%20Regs%202011-2018.pdf>



Recent Amendment

- Recently amended by Statutory Instrument (S.I.) No. 309 of 2018 “to clarify the status of certain offices”, i.e. that “public authority” does not include
 - the President
 - the Office of the Secretary General to the President
 - the Council of State
 - any Commission for the time being lawfully exercising the powers and performing the duties of the President



Office of the Commissioner for Environmental Information (OCEI)

- Established by Article 12 of the AIE Regulations in May 2007
- Initially intended to fulfil the Article 6(2) review function under the Directive, but status is now uncertain
 - Difficult to manage expectations: best of both worlds desired
- The role of Commissioner is assigned to the holder of the Office of the Information Commissioner (OIC)
 - The Commissioner is also the Ombudsman
 - Previously Emily O'Reilly, the current European Ombudsman
 - Current office holder: Peter Tyndall
- The OCEI is a legally separate & independent office, but “assisted by” the staff and resources of the OIC



Functions of the CEI

- To review decisions of public authorities
- To affirm, vary or annul such decisions, specifying the reasons
- Where appropriate, to require the public authority to make the requested environmental information available to the applicant
- The CEI's decisions are final & binding, but subject to appeal to the High Court
- If the public authority fails to comply, the CEI may apply to the High Court for an order directing compliance
- The CEI has no other role (e.g., no role in providing guidance, or in promoting public awareness, or in reviewing the provision of environmental information generally by public authorities)



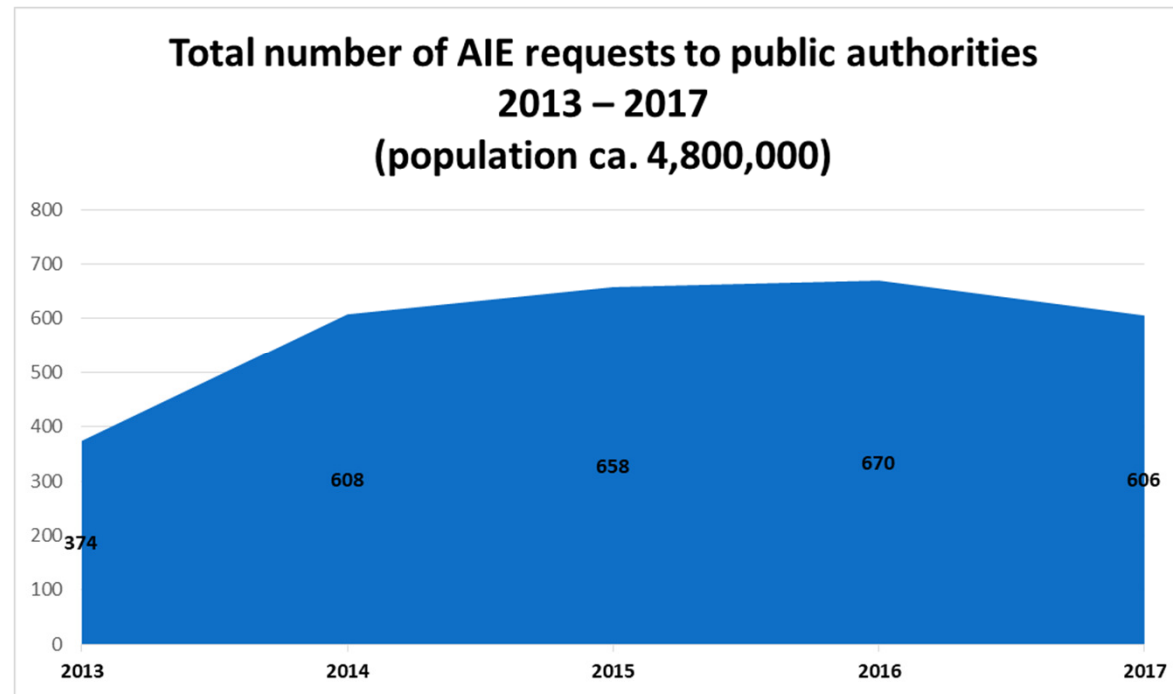
Exercising the right to AIE in Ireland

- Make a request in writing to a public authority, stating that the request is made under the AIE Regulations
 - A request can be made under both AIE and FOI – no alignment between the access regimes
- If dissatisfied with the response, request an internal review within one month
- If still dissatisfied, appeal to the OCEI within one month of the internal review decision
 - A fee of €50 generally applies
- If dissatisfied, appeal to the High Court on a point of law



Total number of AIE requests

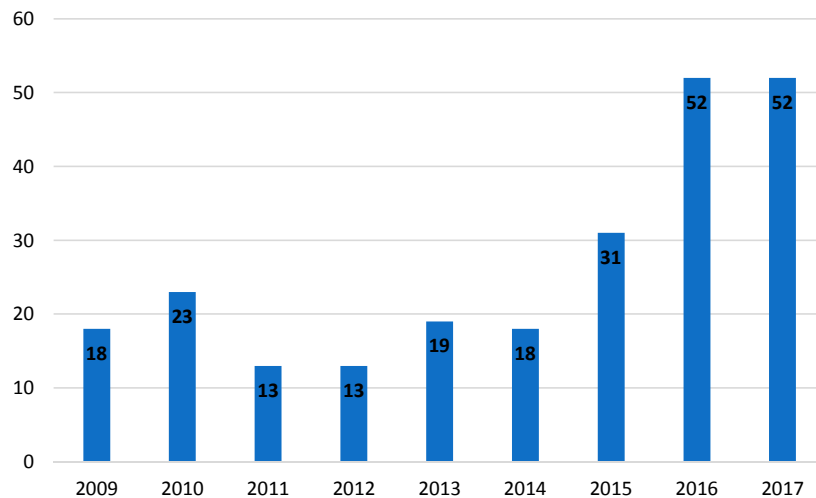
- Increase in the number of AIE requests being made to public authorities year on year from 2013 to 2016 with decline in 2017 (Government Departments/Bodies & Local Authorities only)



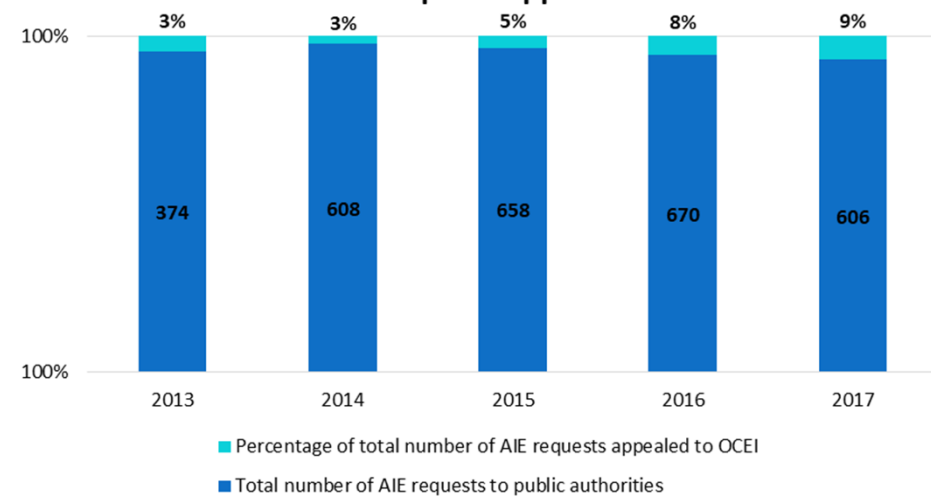
Increases in AIE appeals to the OCEI

- Increase in the number of appeals to the OCEI year on year from 2014 to 2016 (levelled off in 2017)
- OCEI received 52 new appeals from 16 requesters in 2017

AIE appeals received by the OCEI 2009 - 2017



Number of AIE requests appealed to the OCEI



Challenges include . . .

- Difficulties with interpretation, including the basics:
 - Scope of “environmental information”, especially “measures . . . and activities”
 - What is a “public authority” (or what is not)?
- Potential conflict with constitutional principles
 - Cabinet confidentiality
 - Presidential immunity (hence S.I. No. 309 of 2018)
- Lack of awareness by public authorities of obligations & confusion with FOI
- Failure to meet statutory deadlines
- Poor decision-making generally
- Conflicting expectations among applicants
- Questions over third party rights (e.g., right to appeal if “incriminated” by disclosure)



For further information

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