

Review of the Administration of Civil Justice

Submission of the Aarhus, Bio-economy, and Environmental Awareness Division **Department of Communications, Climate Action and Environment**

This submission seeks primarily to deal with the fifth component of the proposed review, i.e. “achieving more effective and less costly outcomes for court users, particularly vulnerable court users”.

However, it also supports and encourages the review group in its overall goal of improving access to justice and reducing costs of litigation.

Aarhus Convention

Ireland ratified the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, commonly referred to as the Aarhus Convention, on 20th June 2012.

Over 60 pieces of legislation have been used to implement the Convention, including a number of amendments to the Planning and Development Acts.

Access to Justice

The provisions of the Aarhus Convention are broken down into three pillars: access to information, public participation in decision-making and access to justice. The Access to Justice requirements provide that the public has access to independent review procedures that are timely, equitable and not prohibitively expensive, to challenge decisions relating to the environment.

Article 9(4) states:

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

These are mirrored in EU law in Article 11 of the EIA Directive which states:

“Any such procedure shall be fair, equitable, timely and not prohibitively expensive.”¹

Ireland and Access to Justice

Consideration is being given to the development of legislation to clarify the existing legislation implementing the access to justice requirements of the Aarhus Convention and the access to justice requirements of the EIA and IED Directives, as inserted by the Public Participation Directive. The Department is continuing to analyse both legislative and non-legislative options in this regard.

¹ To note, this has been found in case law to extend to the full text of Article 11, not solely to the text in 11(4), as per Article 10a of the previous EIA Directive, as inserted by the Directive 2003/35/EC, commonly referred to as the Public Participation Directive.

Department's Submission

DCCAE requests that the review group is mindful of the provisions of the Aarhus Convention and Ireland's obligations under EU Law and domestic law with regard to the Aarhus Convention, and to Article 11 of Directive 2011/92/EU, in its work, and that it ensure that the Ireland continues to promote access to justice in a manner that provides adequate and effective remedies that are fair, equitable, timely and not prohibitively expensive. The Department is available to assist the Review Group in its work in this regard, in relation to the implementation of the Aarhus Convention and the Article 11 of the EIA Directive.

The Department also requests that consideration be given to the requirements in the Convention that decisions of the courts and any other relevant bodies be publicly accessible.

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