



Neil Foulkes &lt;neilfoulkes62@gmail.com&gt;

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**RE: Query regarding Public Notification / Participation**

1 message

**NF** <neilfoulkes62@gmail.com>

Wed, Jan 23, 2019 at 9:20 AM

To: "Cunningham, Ann" &lt;Ann.Cunningham@agriculture.gov.ie&gt;

Bcc: neilfoulkes62@gmail.com

Thank you for getting back to me so promptly Ms. Cunningham.

I apologise for the duplication of the email - I am at a loss as to explain how that happened.

In response to your comments I would make the following observations:

The Aarhus Convention Compliance Committee's role is to assess the procedures in terms of their compliance with the Convention not to compare them with other processes such as the AIE Regulations or local authority planning (which, by the way, does require the publication of a notice in the local newspaper).

The Aarhus Convention is about ensuring public participation in the decision making process not about carrying out consultation at a minimum cost to the taxpayer. To be effective it may be necessary for the Department to allocate a small fraction of the millions of euros from the overall forestry budget to this end. It should not be too difficult an exercise to find out the area coverage and circulation of local newspapers in order to determine the most appropriate outlet for advertisements in a particular area. This spend may well recoup itself in the long term if it results in better outcomes for the taxpayer. No doubt there are costs associated with the Forestry Appeals Committee. If the number of appeals can be reduced (61% of decisions have resulted in a variance or annulment of the original decision) by greater participation at earlier stages in the process then the spend may be good value even in direct terms.

The consultation and notification system under consideration is scoping for a full EIA. This makes it a relevant activity in terms of Aarhus. As far as I am aware the Local Authority Planning system to which you refer is not routinely subject to Aarhus. Only where the proposed activity is listed in Annex I of the Convention or where it is deemed that the activity may have a significant effect on the environment does the Convention apply. I do take your point about the GDPR's regarding land ownership but the Land Registry maintains records which can be publicly accessed which would provide the requisite information without compromising GDPR rules. The ACCC has stated that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned have a reasonable chance to learn about proposed activities and their possibilities to participate. The ACCC can rule as to whether a site notice is sufficient to offer the public concerned a reasonable chance to learn about a proposed activity.

Regarding timeframes: I appreciate that the forestry timeframes are set in National legislation but, as I have pointed out previously, National legislation cannot over-ride or dispense with requirements under European legislation. It is feasible that the Forestry Regulations represent an inadequate transposition of the European Directive implementing the Aarhus Convention. In any case the Forestry Regulations do provide scope for a longer timeframe for submissions "any person may make a submission or observation to the Minister within 30 days from the date of the notice or whatever longer time-frame appears on the notice".

Over the recognised holiday periods of Christmas and Easter it should be a straightforward matter to extend the period for submissions or appeals by a week to compensate.

Kind Regards,

Neil Foulkes

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From: Cunningham, Ann [mailto:[Ann.Cunningham@agriculture.gov.ie](mailto:Ann.Cunningham@agriculture.gov.ie)]  
Sent: 22 January 2019 16:36  
To: 'NF'  
Subject: RE: Query regarding Public Notification / Participation

Dear Mr. Foulkes,

I have added notes to your queries below (black italics). I would like to thank you for this opportunity to allow me to provide this information. This is the second of two emails received from you yesterday, which appear to be the same - sent 10:50 and 11:30.

Sincerely,

Ann Cunningham

Ann Cunningham

Forestry Division

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An Roinn Talmhaíochta, Bia agus Mara

Department of Agriculture, Food and Marine

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From: NF [mailto:[neilfoulkes62@gmail.com](mailto:neilfoulkes62@gmail.com)]  
Sent: 21 January 2019 11:30  
To: Cunningham, Ann  
Subject: RE: Query regarding Public Notification / Participation

Dear Ms. Cunningham,

Further to our correspondence last year I am putting the final touches to my submission to the Aarhus Convention Compliance Committee (ACCC). My submission will raise a number of detailed points in connection with the Department's notification and consultation procedures that were not specifically addressed in that correspondence. Before I send in my submission I wanted to give the Department the opportunity to address the points which I consider are failings in respect of the adequacy, timeliness and effectiveness of the public consultation and notification procedures relating to forestry applications and decisions. These are:

1) There is no public notification through the printed media of applications for, or decision on, afforestation, forest roads, aerial fertilisation or tree felling licences.

The Aarhus Convention requires that, "The public shall be informed, whether by public notices or other appropriate means such as electronic media...", the details of which, notwithstanding the examples provided, is determined by the Member State. The public is informed of applications and decisions by way of publication on the Department's website. This is required in the Forestry Regulations, SI No 191/2017 - Section 10(1), "publish a notice of the application in a manner determined by the Minister."

It must be borne in mind that in choosing a print media outlet or outlets, it would be difficult to determine what outlet should be used; why choose one particular outlet over another; covering the plethora of regional outlets; the burden of advertising costs on the taxpayer, among other considerations. The use of the Department's website provides one single source of information emanating from the Department.

2) There is no routine direct notification to adjacent landowners of any of the applications or decisions. The activities under consideration have the potential to significantly impact on the use of neighbouring lands. In particular shading from plantations (especially exotic evergreen species) can be considerable. DAFM has a land database (LPIS) which would allow them to identify and notify directly any landowner on their system who borders the lands in the application / decision but this is not done.

The application system for forestry licences does not rely on the use of LPIS, nor is it parcel-based. Further, LPIS does not necessarily detail land owners adjacent to proposed projects, particularly where these are not themselves land owners nor farmers. Further, the local authority planning process does not notify neighbouring property owners of applications nearby, although local authorities could avail themselves of information from PRAI. It must also be noted that under GDPR, data held by public authorities must only be used for the purpose for which it was gathered, which constrains its use for the purpose you set out above.

3) The notification timeframes are never modified to take account of holiday periods. By way of an example, on 19th December 2018 the published notification for felling licence applications ran to 199 pages as it included the applications made by Coillte Teoranta (the average weekly page count is 2 to 3 pages). The period for submissions remained the same even though the Christmas and New Year holiday period meant that effectively a week or more was lost. The final public notifications on the Department's website for 2018 were made on 19th December for felling licence applications and 27th December for Afforestation and Forest Road applications. The first

public notices for 2019 did not appear until 9th January clearly indicating a slow down or suspension of activities in the Forest Service over the holiday period. This was not reflected in an extension of the period for public consultation.

The timeframes you refer to here are set down by way of the Forestry Regulations, SI No 191/2017; the Forestry Act, 2014; and the Forestry Appeals Committee, SI No 68/2018. They are consistent with similar timeframes provided for by statute, including AIE regulations for example, that do not make allowances for public holidays. The local authority planning process does not make allowance for public holidays. The 30 days provided for in the public consultation process is from the date advertised.

My submission must be in before 28th January so I would appreciate a prompt response.

Kind Regards,

Neil Foulkes

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From: NF [mailto:[neilfoulkes62@gmail.com](mailto:neilfoulkes62@gmail.com)]  
Sent: 02 January 2019 09:18  
To: 'Cunningham, Ann'  
Subject: RE: Query regarding Public Notification / Participation

Dear Ms. Cunningham,

Thank you for your response. I appreciate the fact that the website has been restructured, thank you.

In respect of point 2 the Aarhus Implementation Guide states;

Another important point is the initial day from which the time frame for public participation should be calculated. In many countries it is deemed to start immediately following the public notice. However, often national law may require several different forms of public notice and, for practical reasons, it may not be possible to make these different forms of notice available all at the same time. Good practice would be for the time frame to be counted from the date the last notice required under national law is posted.

The spirit of this would necessitate a 28 day period of notice from the issuing of the public notification, not the actual decision.

Point 3 (lack of site notices in respect of decisions) in particular I see as a clear failure to provide an adequate level of consultation.

I will be following up on points 2 and 3 with the Aarhus Convention Compliance Committee (ACCC) of the European Union.

Kind Regards,

Neil Foulkes

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From: Cunningham, Ann [mailto:[Ann.Cunningham@agriculture.gov.ie](mailto:Ann.Cunningham@agriculture.gov.ie)]  
Sent: 21 December 2018 14:53  
To: '[neilfoulkes62@gmail.com](mailto:neilfoulkes62@gmail.com)'  
Subject: FW: Query regarding Public Notification / Participation

Dear Mr. Foulkes,

In response to your queries raised;

1. The website will not be restructured as it is clearly visible from the forestry front page that applications and decisions are available to view on the left-hand menu. However, I will arrange to have the link to decisions that appears under closed consultations moved to open consultations.
2. 28 days from the date of the decision is provided in which to make an appeal. This is in accordance with Section 4(1) of the SI No 68/2018. The last date by which an appeal may be made is notified on the decisions listed on the Department's website. These notices are published on Mondays, Wednesdays and Fridays. Those who made a submission on an application are also provided with the decision and details on how to make an appeal.
3. Site notices in respect of afforestation and forest road works must be erected according to Section 11 of SI No 191/2017. These notices must remain in position for a period of not less than five weeks. Site notices for tree felling works must be erected seven days before tree felling operations commence, according to Section 4 of SI No 191/2017. It is not intended to amend any of these regulations.

Sincerely,

Ann Cunningham

Ann Cunningham

Forestry Division

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An Roinn Talmhaíochta, Bia agus Mara

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From: NF [mailto:[neilfoulkes62@gmail.com](mailto:neilfoulkes62@gmail.com)]  
Sent: 19 December 2018 17:21  
To: Cunningham, Ann  
Cc: [andrew.doyle@oireachtas.ie](mailto:andrew.doyle@oireachtas.ie); Hayes, Colm; Kelly, Patricia; Nolan, Bridgeena  
Subject: RE: Query regarding Public Notification / Participation

Dear Ms Cunningham,

Thank you for your email: However, I am dissatisfied with your response.

I have raised three areas of concern with the public participation process regarding forestry related applications and decisions but your response only relates to one of them.

On the matter of the Department's website I have identified a concern; the data analytics that I have sourced and presented may not prove my point but they lend strong support to my hypothesis that the structure of the Department's website is acting as a deterrent to public participation in respect of issued Decisions by listing them under Closed Consultations when they are still open to appeal. I find your response to be both dismissive of the facts and unconstructive. You have neither offered an alternative explanation for the statistically significant discrepancy relating to the public access of the different elements of the consultation process on the Department's website nor have you indicated any curiosity, concern or intent to investigate for the reasons behind the disparity. Why would a Department that is genuinely committed to the principles of public participation not have some curiosity regarding such a large differential in statistics relating to the public's accessing of relevant information between applications and decisions?

The public consultation pages may well be available through the route that you describe but they are also available by another route and that route, as I have pointed out, differentiates between open and closed consultations.

A Google search for 'forestry consultations' returns the page that I have indicated as its number 1 site. The public consultation process must not only satisfy National Law (Forestry Regulations) it must also meet the requirements of European Law.

I have contacted the European Commission about this matter and they have indicated that I can make a formal complaint to the Commission in respect of failings in the implementation of European Law. I wish to give the Department every opportunity to address the concerns internally but should it not be prepared to do so I will be following the route advised. The public should not be prevented or deterred, intentionally or

unintentionally, from exercising its legal rights relating to the access to environmental information and participation in the decision making process. The Department's public consultation process fails to meet the full requirements of Article 6 (2) of the Aarhus Convention as being carried out in an 'adequate, timely and effective manner'.

In order to comply fully with European legislation I am asking the Department to review its public notification procedures for Forestry related EIA public consultations to include;

\* Structuring its website so that it is clear to the public that decisions that are open to appeal are not listed under Closed Consultations

\* Requiring a full 28 period for members of the public to make an appeal from the time the public notification is published, not from the date that the decision is issued.

\* Requiring the erection of appropriately timed and positioned Site Notices;

a) to indicate that an application for a felling licence has been submitted, including notification of the opportunity to submit observations

b) to indicate the issuing of an afforestation, forest road or felling licence or permission, including the right to appeal.

The Aarhus Implementation Guide indicates that public notices on websites are not adequate as the sole means of public notification.

Kind Regards,

Neil Foulkes

From: Cunningham, Ann <mailto:[mailto:Ann.Cunningham@agriculture.gov.ie]>

[mailto:Ann.Cunningham@agriculture.gov.ie]

Sent: 05 December 2018 16:14

To: 'NF'

Subject: RE: Query regarding Public Notification / Participation

Dear Mr. Foulkes,

The public consultation pages of the Forestry section of the Department's website are available in the left-hand strap, headed by "Public Consultation". Listed underneath are links to each of the licence categories, followed by decisions and appeals.

Following, for example, the link to afforestation licences, underneath the text there are links to each of the months for the current year, where licence applications are advertised. The register of decisions gives information on decisions made, again under each of the licence types.

The data analytics you received are a count of the number of times a webpage was accessed. No other conclusions can be drawn from this information. There are no plans to restructure the website.

Sincerely,

Ann Cunningham

Ann Cunningham

Forestry Division

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From: NF <[mailto:\[mailto:neilfoulkes62@gmail.com\]](mailto:[mailto:neilfoulkes62@gmail.com])>  
<<mailto:neilfoulkes62@gmail.com>>  
Sent: 27 November 2018 09:16  
To: Cunningham, Ann  
Cc: <<mailto:andrew.doyle@oireachtas.ie>> [andrew.doyle@oireachtas.ie](mailto:andrew.doyle@oireachtas.ie)  
Subject: RE: Query regarding Public Notification / Participation

Hello Ann,

I have not received a response from you to my email of 22-10-18.

Subsequent to that mail I have acquired records under the AIE Regulations in relation to the use, by the public, of relevant pages of the Department's website.

The records indicate that webpage hits on decisions (Closed Consultations) run at approximately one fifteenth of those on applications (Open Consultations). The records show 16451 hits on the applications pages for 2018 compared with just 1112 for the decisions pages for the same time period. I think that this provides some evidence that the public are being deterred from participating in the decision making process by the structure of the public notification process on the Department's website.



What I am pointing to here is a deficiency in the Department's public notification process which I consider needs to be addressed not dismissed.

I would like to remind you of the ninth preamble from the Aarhus Convention which states;

Recognizing that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns,

In order to comply fully with European legislation I am asking the Department to review its public notification procedures for Forestry decisions to include;

- \* Structuring its website so that it is clear to the public that decisions that are open to appeal are not listed under Closed Consultations
- \* Requiring a full 28 period for members of the public to make an appeal from the time the public notification is published, not from the date that the decision is issued.
- \* Requiring the erection of appropriately timed and positioned Site Notices;

to indicate that an application for a felling licence has been submitted, including notification of the opportunity to submit observations

to indicate the issuing of a felling licence, including the right to appeal.

Kind Regards,

Neil Foulkes

----- Forwarded message -----

From: Neil <[neilfoulkes62@gmail.com](mailto:neilfoulkes62@gmail.com)>

Date: Mon, Oct 22, 2018 at 9:48 AM

Subject: RE: Query regarding Public Notification / Participation

To: Cunningham, Ann <[Ann.Cunningham@agriculture.gov.ie](mailto:Ann.Cunningham@agriculture.gov.ie)>

Thank you for your reply Ann.

I think that you have misunderstood the purpose of my query. I am trying to engage with the Forest Service regarding two elements of the public participation process for Forestry applications which involve potential breaches of European legislation (Aarhus Convention).

Item 1

In my view public notification of decisions which are still subject to the appeals process should not be listed under Closed Consultations on the Department's website. This is not an 'adequate' form of public notification under Article 6 of Aarhus as it does not adequately inform the public of their rights. The public should not be in any doubt as to whether they can participate or not and they should not be deterred or deflected from any rights that they have through being misinformed. Forestry decisions that are subject to appeal are not closed to public input.

Regarding the link that you have provided, if you follow the main 'Public Consultation' box on that page (top left of the 3 main columns of tabs and in my view a more obvious option than the one that you directed me to) you will reach the link that I brought to your attention. Lest you are in any doubt, I have attached a screenshot of the page which indicates that the Register of Decisions is listed under Closed Consultations. Being able to bypass this page (if you know how) does not remove the fact that the public can be misinformed.

In my view, decisions that are still open to public appeal should be listed under Open Consultations.

Item 2

You have effectively acknowledged that public notifications are not necessarily issued on the same day as decisions. This means, in terms of public participation in the decision making process, that some members of the public are afforded less than 28 days in which to make an appeal dependent on the timing of the public notification on the Department's website.

In my view, members of the public should be afforded a minimum of 28 days from the time that the public notification is published, not from the date that the decision is issued. Failure to accord all members of the public a full 28 day period in which to make an appeal could be considered to fail the test of timeliness required by Article 6 of Aarhus.

Can you indicate if the Forest Service is prepared to consider introducing changes to address these two points?

Kind Regards,

Neil Foulkes

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From: Cunningham, Ann [mailto:[Ann.Cunningham@agriculture.gov.ie](mailto:Ann.Cunningham@agriculture.gov.ie)]  
Sent: 19 October 2018 16:16  
To: 'Neil'  
Subject: RE: Query regarding Public Notification / Participation

Dear Mr. Foulkes,

As part of the public consultation process, the Department makes available details of applications received and decisions made. These are available at this link <https://www.agriculture.gov.ie/forests-service/> in the left-most menu under public consultation - afforestation licences; forest road licences; etc. Applications are advertised once weekly and decisions twice weekly.

Sincerely,

Ann Cunningham

Ann Cunningham

Forestry Division

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An Roinn Talmhaíochta, Bia agus Mara

Department of Agriculture, Food and Marine

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<<http://www.agriculture.gov.ie/>> [www.agriculture.gov.ie](http://www.agriculture.gov.ie)

From: Neil [mailto:[neilfoulkes62@gmail.com](mailto:neilfoulkes62@gmail.com)]  
Sent: 16 October 2018 09:35  
To: Felling ForestService; forestryappenq  
Cc: Cunningham, Ann  
Subject: Query regarding Public Notification / Participation

Sir / Madam,

I trust that you will be able to refer this email to the appropriate member of staff.

I wish to bring to your attention that on the Department's website <https://www.agriculture.gov.ie/forests-service/publicconsultation/> the Register of Decisions to which the public has a right to appeal comes under the heading "Closed Consultations"; applications are listed under 'Open Consultations', but decisions are listed under 'Closed consultations'.

Can you explain how the structure of the website contributes to public participation? How are decisions that are subject to public appeal considered to be closed consultations? There is an implication with a 'closed consultation' that the potential for the decision to be challenged or amended has passed. By including decisions that are subject to appeal (a form of public participation) under the heading of 'closed consultations' would be serving to deter members of the public from exercising their statutory right to appeal. This would not be consistent with the 'adequate' or 'effective' elements of Article 6 of the Aarhus Convention.

In addition, decisions are made on a daily basis but are only published on a weekly basis. If a decision is issued on the day after the publication of the weekly decision list it will not be available to the public for another 6 days which effectively reduces the period for public participation on these decisions - this is not consistent with the 'timely' component of Article 6 of the Aarhus Convention. By way of an example - there were three approvals for afforestation issued on 20-9-18 with a latest appeal date of the 18-10-18, i.e. 28 days later in accordance with Section 4 (1) of SI 68 (2018). However the details of the decision were not publically published until 25-9-18 reducing the public consultation period by 5 days. Any member of the public wishing to appeal these decisions has not been accorded a full 28 day period in which to do so. As far as I can see the framework of the legislation does not require the public to be accorded a minimum period of notification in which to appeal (which would be contrary to Article 6 of Aarhus). The right to appeal relates to the timing of the Minister's decision (Section 4 (1) of SI 68 (2018)). Under that code the public has a right to appeal within a 28 day period of that decision but there is no legal requirement (under SI 558 (2010)) as to the actual timing of when the public notification of the decision must be made. This further erodes the public's right of participation. Surely the 28 day period for appeal should be referenced to the date of public notification not the date of the decision where there is a discrepancy between the two dates?

The Department may be acting in a manner consistent with Forestry Regulations but it must also be cognisant of its responsibilities under European Law, notably the Aarhus Convention. It is my view that the consultation standards applied by the Forest Service are falling short of those required by Aarhus.

I would appreciate a response to the points made in this email which represent a potential breach by the Forest Service of European Law (and as a natural consequence, the conditions of the State Aid decision).

Kind Regards,

Neil Foulkes

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Department of Agriculture, Food and the Marine

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An Roinn Talmhaíochta, Bia agus Mara

Tá an t-eolais san ríomhphost seo, agus in aon ceanglái leis, faoi phribhléid agus faoi rún agus le h-agmaigh an seolaí amháin. D'fhéadfadh ábhar an seoladh seo bheith faoi phribhléid profisiúnta nó dlíthiúil. Mura tusa an seolaí a bhí beartaithe leis an ríomhphost seo a fháil, tá cosc air, nó aon chuid de, a úsáid, a chóipeál, nó a scaoileadh. Má tháinig sé chugat de bharr dearmad, téigh i dteagmháil leis an seoltóir agus scrios an t-ábhar ó do ríomhaire le do thoil.

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An Roinn Talmhaíochta, Bia agus Mara

Tá an t-eolais san ríomhphost seo, agus in aon ceanglái leis, faoi phribhléid agus faoi rún agus le h-agmaigh an seolaí amháin. D'fhéadfadh ábhar an seoladh seo bheith faoi phribhléid profisiúnta nó dlíthiúil. Mura tusa an seolaí a bhí beartaithe leis an ríomhphost seo a fháil, tá cosc air, nó aon chuid de, a úsáid, a chóipeál, nó a scaoileadh. Má tháinig sé chugat de bharr dearmad, téigh i dteagmháil leis an seoltóir agus scrios an t-ábhar ó do ríomhaire le do thoil.

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Tá an t-eolais san ríomhphost seo, agus in aon ceanglái leis, faoi phribhléid agus faoi rún agus le h-agmaigh an seolaí amháin. D'fhéadfadh ábhar an seoladh seo bheith faoi phribhléid profisiúnta nó dlíthiúil. Mura tusa an seolaí a bhí beartaithe leis an ríomhphost seo a fháil, tá cosc air, nó aon chuid de, a úsáid, a chóipeál, nó a scaoileadh. Má tháinig sé chugat de bharr dearmad, téigh i dteagmháil leis an seoltóir agus scríos an t-ábhar ó do ríomhaire le do thoil.

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