



Environmental Pillar response to the consultation on Consultation by the Department of Public Expenditure and Reform on the

“PRINCIPLES TO GUIDE PUBLIC ENGAGEMENT ON POLICY AND SERVICES DEVELOPMENT”



1.0 Introduction:

In general, the Environmental Pillar welcomes the consultation on: “PRINCIPLES TO GUIDE PUBLIC ENGAGEMENT ON POLICY AND SERVICES DEVELOPMENT.” However it seems largely like a missed opportunity.

The Environmental Pillar is an advocacy coalition of 28 national Environmental NGOs, and a national Social Partner.

1.1 Do “Principles” change behaviour?

We consider that the notion that having a set of “Principles” is going to change practice is naïve. History tells us that unless people are directed to behave in a particular way, and given the support and capacity to enable them to do so, then overall behaviour will not change to the degree necessary.

The entirely relevant history of the delivery of Principle 10 of the Rio Declaration of 1992¹² can be seen to illustrate this perfectly. Principle 10 states:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the

¹ <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

² <http://www.gdrc.org/decision/principle-10.html>



opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”.

It was recognised that whilst this was a very important statement of principle, very little would happen unless it was translated into international law. Consequently the governments and environmental NGOs in the UNECE region worked together in 1998 to develop the Aarhus Convention³ to which Ireland was a signatory and which Ireland later ratified in 2012.

It took 5 years of activity by the Irish Government to get Irish legislation in line with the Convention prior to ratification. Despite this, and the good work of some civil servants, Ireland is still struggling to provide the legal and regulatory framework for implementation of aspects of the Convention.

Much has been done to provide better access to environmental information. However, there are still a number of black spots in the regime that implements the Aarhus derived EU Directive 2003/4/EC, as transposed through the European Communities (Access to Information on the Environment) Regulations 2007 to 2011.⁴

So 23 years after Ireland signed up to the Rio Declaration we are still some way off implementing Principle 10. It is the need for compliance with the Convention and its translating EU Directives that has driven change and sadly not the Principle on which they were built.

Along with serious capacity building of both civil and public servants, enforcement has to play a major part if any real improvement of public engagement is to be brought about.

1.2 Good practice

Whilst there are many examples of good practice within national and local government outside of DPER, none of these are examined or referenced in the consultation. There does not appear to have been any conversation between Departments prior to this document being published. Whilst it is a good example, the only example cited is from within the DPER.

³ <http://www.environ.ie/en/Environment/AarhusConvention/>

<http://www.unece.org/env/pp/welcome.html>

⁴ <http://www.environ.ie/en/Environment/AccessstoInformationontheEnvironment/>



A number of working groups and taskforces have operated under the Aarhus Convention⁵ to tease out and refine the mechanisms and processes for delivery of the three Pillars of the Convention, and a huge repository of knowledge is available as a result. We draw your attention in particular to the *Recommendations on public participation in environmental decision-making*⁶. These guidelines were developed over 3 years under the guidance of the Taskforce on Public Participation under the Chairmanship of an Irish Government nominee, Mr Phil Kearney. The guidelines were the product of 2 years of consultations with 47 governments and stakeholders from across the UNECE region.



Fig: Public Consultation as Key to Planning

⁵ <http://www.unece.org/env/pp/welcome.html>

⁶ http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/ece_mp.pp_2014_2_a_dd.2_eng.pdf



1.3 Purpose of the Consultation.

In its foreword this consultation document asserts:

It is intended that these draft consultation principles would replace and update the current [‘Guidelines on Consultation for Public Sector Bodies – Reaching Out \(2005\)’](#).

And yet that is the last we hear of the 2005 document.

- Why is there no review of delivery of its provisions, or of the effectiveness of same in achieving more transparent, inclusive participatory decision-making?
- Was the capacity of civil and public servants as well as those in state bodies to engage in effective public participation processes addressed in any way?
- Were the public more inclined to participate post 2005?

As far as principles go, the 2005 guidelines whilst not perfect are adequate. So let’s improve them. They at least spoke to the practitioners in the civil and public service as well as to the public. There are vast swathes of research into theory and practice in effective public participation and yet no effort is made in the document to reference these. Public participation in the environmental sector for example has been the subject of many studies⁷⁸.

1.4 The importance of definitions

Unlike the 2005 document, there is no attempt here to define the meaning of terms used. Indeed one acronym, ICT is used without even the long-form being used at any point.

The exclusive term “citizen” should be removed and instead reference should be made to the inclusive “public” as defined in the Aarhus Convention:

“The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups”

It is also important to define which bodies the guidance refers to. It should apply to all public authorities. Again the definition provided by the Convention is used in the EU

⁷ <http://www.gdrc.org/decision/index.html>

⁸ <http://www.epa.ie/pubs/reports/research/econ/strivereport86.html#.VhOhnflViko>



Directives and should be used here, removing the words *in relation to the environment* in (b) and (c)

“Public authority” means:

(a) Government at national, regional and other level;

(b) Natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;

(c) Any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;

(d) The institutions of any regional economic integration organization.....

This definition does not include bodies or institutions acting in a judicial or legislative capacity;

The term Regulatory Impact Assessment is used, whereas the correct term in the Irish context is Regulatory Impact Analysis (RIA)⁹

2.0 The Consultation process on these guidelines

The Environmental Pillar appreciates the extension afforded it to respond to this consultation – but has to highlight the unfortunate irony that our request for such an extension was necessitated in the first instance owing to the lack of outreach and awareness created around a consultation on improved practices in consultation and public engagement. In short it was through a very indirect channel that the Environmental Pillar as one of the Social Partners learned of this consultation.

It seems from the start the exact launch-date of this process and the notifications and orchestrations around that to facilitate effective engagement, in the first instance by making people aware of it, was significantly compromised as we note:

- The press release regarding the consultation back on July 27th available [here](#) indicates that the consultation was for an 8 week period to the 18th of September.

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http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/Revised_RIA_Guidelines_June_2009.pdf



- So the consultation on this matter of key public interest was planned to be executed over the height of the summer holiday and the busy return to school periods.
- A further webpage on the Public Consultation section of the DPER website [here](#) indicates that the consultation was for a 4 week period, not an 8 week period

To what extent were the proposed guidelines and principles considered in the plans and decisions which informed this consultation in the first instance – is a question that must be asked and what evidence and basis is there for these decisions.

This leads to perhaps the first key lessons to be learned and comment from us on this matter that:

- All decisions pertaining to public consultation should be documented and freely and readily available;
- A public consultation should be a documented planned programme of work, with a clearly accountable owner responsible for its delivery.
- That a clear and documented public account of how public participation has been taken into account by the decision-makers.

3.0 High-level evaluation of the efficacy of the proposals

3.1 Effectiveness of the Principles

The Foreword to the Consultation Document indicates

“The primary aim of this consultation process is to assess whether this principles-based approach, and its suggested elements, can facilitate greater citizen consultation and involvement. To assist this process, stakeholders are invited to submit their views on the draft principles and checklist, and in doing so may wish to consider the following issues:-

- The need to balance greater, and more meaningful public consultation with the specific requirements of all diverse interests; and
- The practical considerations that will encourage and enhance active participation in the development and implementation of policy.”

To answer the first part of the question posed:



“whether this principles-based approach, and its suggested elements, can facilitate greater citizen consultation and involvement.”

We submit the answer is “No”. While underlying principles are of course important to guide an activity like consultation, the concern is that the proposed approach:

- Is not accompanied by any initiative to work on transforming, into meaningful public participation in decision making, the practice of multiple Public Authorities who often pay lip-service to consultation - conforming to a “we have to tick the public consultation tick-box” approach -;
- Does not contain any measurement process to evaluate compliance or efficacy of consultations following the introduction of these new guidelines;
- Does not include any incentive to comply or requirement to comply with them.

Consequently the concern is that this will become a new guideline document to add to the library of shelf-ware in Public-Authorities which will not change practices or result in the stated objective of *“greater citizen consultation and involvement”*.

That objective in itself is possibly problematic as *“consultation”* without being purposed at achieving real participation will not serve to *“involve”* citizens, as they will quickly become disillusioned if the engagement does not have any results which are meaningful to them. A much more fundamental shift in how the role of the public is seen in developing policy is needed within political circles used to imposing policy. To this end the word consultation should be replaced with Participation.

In respect of the second part of the question posed above:

The draft guidelines are pitched at too high and un-specific a level to provide for any real clarity and consistency in approach:

For example the guidelines provide no practical guidance on how to identify a target audience of the public concerned; and no guideline even to suggest an authority should err on the side of caution rather than risk excluding some stakeholders. In fact the concept of the public as “stakeholders” isn’t acknowledged or how their interests need to be assessed protected and analysed in the context of the decisions on how to conduct a consultation.

3.2 The Checklist

The guidelines and checklist combined fail to provide for lists of considerations and factors which should be taken into account or which could be used to inform decisions.

For example the checklist includes the following:



- “ 1. know why they are consulting, and decide who to consult;*
- 2. decide the most appropriate method or methods of consultation;”*

It does not however include any further prompts on what considerations or factors need inform those decisions. If a Public Authority is capable of identifying target/impacted audiences and stakeholders in the first instance, and also capable of determining what is the effective engagement mechanism amongst the multiplicity of channels and mechanisms open to them without any prompting - they hardly need to be prompted at such a basic entry-level as the checklist provides for. It is at once too inadequate for those with little or no experience of consultation, and redundant for those with some or good experience. The guidelines provide no case studies, no suggestions of alternative approaches. There is nothing to spark or challenge the imagination or existing practices in this document.

A further example in the “Checklist” provided is:

- “ 4. develop realistic timelines for the conduct and conclusion of the process”*

Yet again there are no considerations here to prompt for what is realistic from the point of view of those who are to be consulted. There is little point for example in conducting a consultation on changes or proposals on children’s issues over the Christmas holiday period. Once again in the context of novices to Consultation – the checklist is not very helpful, and for those who are more advanced it adds no value.

3.3 In terms of the guidelines:

The guidelines fail to provide or even indicate the necessary complementary training requirements so that people can make appropriate and properly informed decisions regarding the very wide scope of discretion the guidelines provide for and to guide them on what factors should be taken into account.

3.4 The “Principles”

While the Aarhus Convention provides for some very broad principles on Public Participation in the context of Environmental Decision Making as a human right the core principles of Public Participation in Article 6 of the Aarhus Convention and their



requirements in terms of “efficacy” of consultations could provide very useful insight and input, together with the guideline materials from the UNECE on this Convention.¹⁰

Below we examine each of the three principles documented in turn and provide other proposed principles:

Principle 1

- *Consultation with citizens must be genuine, meaningful, timely, balanced and with the ultimate objective of leading to better outcomes and greater understanding by all involved of the benefits and consequences of proceeding with particular policy or legislation proposals. Consultation should aim to achieve real engagement and ‘real listening’ rather than being a pro-forma exercise for bureaucratic purposes. A genuine consultation process ensures that the real-world impact of policy options is considered.”*

It is clear from the above what is intended here is an information gathering exercise in terms of views on a policy or proposal. The language in this principle does not go far enough to reflect the obligation to respond and change consequent on the consultation. Unless there is a commitment to change consequent on consultation there is little purpose. It is not sufficient to execute “real-listening” and feed-back what has been said – for consultation to be meaningful it has to acknowledge the potential for that consultation to change and indeed halt proposals, programmes or policies.

Principle 2

- *Consultation should be targeted at and easily accessible to those with a clear interest in the policy in question. There is no ‘one size fits all’ approach to consultation. The size, type and scope of the consultative process depends on the proposed policy, the type and scale of the potential impacts of the proposal or decision being taken, the number of people or groups affected by them, and where relevant particular requirements of the child and young people and those who may be marginalised or vulnerable.”*

¹⁰ <http://www.unece.org/index.php?id=35869&L=0>



This principle seems to be a mix of principle in the first sentence and guideline in the remainder. The concept of stratifying multiple messages for multiple audiences of differing capacities or requirements should also be explicit.

Principle 3

- *Government departments and agencies should make systematic efforts to ensure that interested and affected parties have the opportunity to take part in open consultations at all stages of the policy process on significant policy, services and legislative matters: development, implementation, evaluation, and review.”*

This principles / guidelines fail to establish clearly any compliance obligation in respect of consultation based on the Government’s commitment in the Open Government initiative and action plan, or any consequence of failure to comply with the principle or commitment.

There should not be a charge for making submissions on public consultations

Additional Proposed Principle 1

In order that the public can engage in any public participation process they need to be well informed. To enable this, apart from the need to provide the public with all the necessary information for the particular process, Public Authorities must proactively provide information on an ongoing basis, as provided for in Article 5 of the Aarhus Convention¹¹. Provision of information on request should also follow the Convention, this time Article 4.

Additional Principle 2 – Time

In line with the Aarhus Convention’s requirement for the public to have an opportunity to participate when all options are open, the public should have a possibility to provide comments and to have due account taken of them, together with other valid considerations required by law to be taken into account, at an early stage of decision-making when all options are open, on whether the proposed activity should go ahead at all.

¹¹ <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>



The timelines suggested in this draft guideline are inappropriate. A range of 2-12 weeks is totally impractical. 2 weeks is far too short for any consultation. A minimum of 8 weeks will allow participants to get informed and where necessary seek access to information not readily available, through FOI or AIE processes. This also allows for collaborative working by community groups/NGOs resulting in better informed and quality inputs.

No maximum should be given. Multi-stage processes such as the creation of County Development Plans can extend to over a year. Highly technical decision-making may also require extensive research as part of the decision-making.

The Guidelines should also provide for an early-warning system to allow the public to prepare in advance for a participatory process. So where a Public Authority is commencing work on a decision-making process it should at the outset plan for public participation, and announce its intentions to hold up and coming consultations in advance of commencement. This would enable a much better process with well-informed engagement by the public.

Consultations should be timed to ensure that the largest possible number of people can have an opportunity to respond. Holiday periods and other significant events should be avoided where possible. For example, consultations should not be held during the Month of August or around the Christmas holidays - consultations regularly end on 31st December. If it is necessary to hold a consultation over these types of distraction, extra time should be given to the consultation period e.g. a consultation originally scheduled to end on 31st December should be extended to 31st January.

Additional Principle 3 – Public Interest and Confidentiality

The document in the following paragraph fails to provide any actual guidance on the challenges in balancing of public interest with conflicting pressures for confidentiality. This is a crucial area, where both principles and guidance are needed. The document merely states as a narrative with no-value add in terms of principle or guidance:

“This guidance recognises that consultation forms part of wider engagement, and decisions on whether and how to consult should in part depend on the wide scheme of engagement. There may be instances where it may be necessary, for reasons such as confidentiality, revenue protection or anti-avoidance measures relating to the tax system, that limited or no



consultations will be possible, and other instances where consultations will necessarily be truncated due to urgency. In such instances, the relevant Department or Agency should explain the rationale for the approach taken.”

The document fails to grapple with the confidentiality of confidentiality agreements, and does not indicate:

- when decisions on confidentiality should be made available
- what level of justification and evaluation of public interest should be applied
- what level of scrutiny and accountability should be applied to those decisions to avoid abuse.

Additional Principle 4 – Transparency

Submissions should always be readily available – as summaries run the risk of compromising or manipulating the messages.

Submissions made as part of a Public Consultation should be immediately publicly available.

Underlying raw data should be available in respect of any analysis provided

Provision of information provided in electronic format – but in good quality format accompanied by “accessible” formats for the visual or hearing impaired, in differing languages appropriate to the issues at stake, and ready access

Use of the Public Broadcasters and Local News Radio stations subsidised by the state to advertise public consultations

Ministerial diaries with entries of meetings and details of submissions from vested interests should be part of the record of information provided in any related public consultation

We welcome the notion of a central website portal detailing public consultations – but the scope of what is covered by that website needs further consideration - for example LA County Development Plans, SEA’s, as well as RIA on new legislation etc.



The concept of a much wider repository and standard should be considered, as well as a standard across Public Authority websites in respect of all their consultations and decisions.

3.5 Methodology

Online questionnaire type consultations should have an overview of all of the questions that will be asked in the consultation, viewable before commencing the consultation. This is in order to allow people to gauge the time it will take to respond and to plan their response. Similarly, there should be a facility in all online consultations to allow responders to obtain a document with the questions and their responses - for their records at the end of the consultation. A downloadable PDF could be produced or offered at the end of the consultation.

When publishing documents for consultation, or responses, they should be posted in as high a quality as possible. Searchable PDF documents that adhere to accessibility criteria should be used. Scans of documents should only be used where there is no other alternative. In these cases, documents should be scanned at their original size and high quality digital photos should be used for large documents (A2- A0)

3.6 Compliance

There needs to be a section of compliance with the guidelines. The public should have recourse when consultations are not held in a constructive manner at little or no cost. This measure would encourage the consulters to ensure that consultations are transparent and fair. We believe that this measure would actually improve the quality of consultations and save the state money in the long run.



Contact Details

Michael Ewing
Coordinator,
The Environmental Pillar
Knockvicar, Boyle,
Co Roscommon
Rep of Ireland
F52 X821
Tel: +353 71 9667373
Mob: +353 86 8672153
email: michael@environmentalpillar.ie
web: www.environmentalpillar.ie
Twitter: @MichaelEwing1
Skype: michaelk.ewing

This submission was developed using the Environmental Pillar processes but is not necessarily the policy of each member group in the Pillar.

Environmental Pillar members: An Taisce. Bat Conservation Ireland, BirdWatch Ireland. CELT - Centre for Ecological Living and Training. Coast Watch. Coomhola Salmon Trust. Crann. ECO UNESCO. Feasta. Forest Friends. Friends of the Earth. Global Action Plan Ireland, Gluaiseacht. Good Energies Alliance Ireland, Hedge Laying Association of Ireland. Irish Doctors Environment Association. Irish Natural Forestry Foundation. Irish Peatland Conservation Council. Irish Seal Sanctuary. Irish Seed Saver Association. Irish Whale and Dolphin Group. Irish Wildlife Trust. The Native Woodland Trust. The Organic Centre. Sonairte. Sustainable Ireland Cooperative. VOICE. Zero Waste Alliance Ireland