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ZERO WASTE ALLIANCE IRELAND
Comhaontas Saor Ó Dramhaíl na hÉireann

Submission by Zero Waste Alliance Ireland to the Department of Climate, Energy and the Environment on the Regulation of Costs Payable in Matters Prescribed on Foot of Section 294 of the Planning and Development Act 2024 (Scale of Fees)

15 January 2026

Zero Waste Alliance Ireland is funded by the Department of Climate, Energy and the Environment through the Irish Environmental Network, and is a member of Zero Waste Alliance Ireland is a member of

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CAN CLIMATE ACTION NETWORK Europe
IEN Irish Environmental Network

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ZERO WASTE ALLIANCE IRELAND

Towards Sustainable Resource Management

Consultation on the Regulation of Costs Payable in Matters Prescribed on Foot of Section 294 of the Planning and Development Act 2024

*This submission concerns the proposed regulation of legal costs pursuant to Section 294 of the Planning and Development Act 2024, which empowers the Minister to prescribe mandatory monetary limits on costs recoverable in certain environmental proceedings. The full text of Section 294 is set out in **Appendix 1** for ease of reference.*

1. Introduction

Zero Waste Alliance Ireland welcomes the opportunity to make a submission on the proposed regulation of costs payable in certain environmental legal proceedings.

However, we must state at the outset that both the *manner in which this consultation has been conducted* and the *substance of the proposals themselves* are fundamentally flawed.

The proposals under consideration have serious and far reaching implications for access to justice in environmental matters. As such, they demand a consultation process that is transparent, adequately resourced and genuinely facilitates effective public participation. These standards have not been met. As conducted, the process is inconsistent with Ireland's obligations under the **Aarhus Convention and EU law**. Zero Waste Alliance Ireland has previously made submissions concerning the implementation of the Aarhus Convention in Ireland, and the concerns raised in those submissions remain unresolved and are directly engaged by the proposals under consideration in this consultation.

2. Unacceptable Manner in Which the Consultation Was Conducted

The manner in which this consultation has been run is deeply problematic, unfair and unacceptable.

Notice of the consultation was given on **3 December 2025**, with submissions required **by 5.30 pm on 15 January 2026**. This effectively buried the consultation within the busiest holiday period of the year, severely limiting the capacity of civil society organisations, community groups, legal practitioners and members of the public to engage meaningfully with the proposals.

Multiple requests were made to the Department to extend the consultation deadline. Despite these requests, no extension was granted.

This already inadequate timeframe was further undermined by the addition of approximately 140 pages of complex and highly technical material, which were published on 9 December and again on 23 December 2025. These additions fundamentally altered and expanded the consultation documentation, **yet the closing date remained unchanged.** Introducing substantial new material so late in the process, without extending the consultation period, is manifestly unreasonable and contrary to the principles of fair and effective public participation.

Moreover, significant deficiencies remain in the consultation materials. Key information required to enable consultees to properly assess the proposals is missing, including:

- A clear explanation of how the proposed scale of fees was determined;
- Any assessment of compliance with the Aarhus Convention or EU law;
- Transparency regarding the data, evidence or analysis underpinning the proposals; and
- Disclosure of what bodies or stakeholders were involved in developing these measures.

Without this information, it is impossible for consultees to respond fully or effectively on either the appropriateness of the proposals or the proportionality of the proposed fee limits.

Effective public participation is a core requirement of the Aarhus Convention. It is therefore particularly concerning that the Department responsible for its implementation has conducted a consultation that so clearly frustrates its objectives. A consultation of this nature, conducted over the Christmas period and based on incomplete and opaque materials, cannot be considered compliant with Ireland's international and EU legal obligations.

3. Access to Justice Must Not Be Prohibitively Expensive

Access to justice is a cornerstone of the Aarhus Convention. Article 9(4) explicitly provides that environmental legal procedures must offer "adequate and effective remedies" and that they must be "fair, equitable, timely and not prohibitively expensive".

Under the current system, individuals and groups who successfully challenge unlawful environmental decisions may recover some or all of their legal costs. This is a critical mechanism through which access to justice is made real in

practice. It allows members of the public and NGOs to engage legal representation on a “no foal, no fee” basis and ensures that only legally sound cases are pursued, as lawyers are unlikely to take cases they do not believe have merit.

The proposed cost regime would fundamentally undermine this system. By imposing strict limits on the costs that a successful applicant can recover, the proposals would mean that even where a person or organisation wins their case, they could still face substantial unrecoverable legal costs.
In practical terms, this would mean that individuals and civil society organisations could be left paying hundreds of thousands of euros to correct unlawful decisions made by public bodies. This effectively penalises members of the public for upholding EU law and assisting public authorities to properly execute their legal obligations.

Such an outcome is clearly **incompatible with the Aarhus Convention and EU law**, both of which require the removal of financial barriers to environmental justice.

4. Inequality of Arms and Chilling Effect

The proposals would introduce a **stark and unjust inequality of arms.**

Public authorities, such as An Coimisiún Pleanála and Government departments, as well as developers and other well resourced private interests, would face no equivalent restrictions on the legal fees they can pay. In contrast, individuals, community groups and NGOs would be subject to rigid cost limits.

This imbalance would create profound uncertainty and a chilling effect on environmental litigation. Many meritorious cases would simply never be taken due to the financial risk involved. For those cases that do proceed, the proposed fee limits would significantly restrict the pool of lawyers willing and able to act.

Highly skilled practitioners capable of taking on the State and well funded developers in complex environmental litigation are unlikely to operate under such uncompetitive and restrictive conditions. Without access to adequate legal representation, access to justice is denied in practice.

Furthermore, the proposals would allow the Government to indirectly control the quality of cases brought against it, by limiting the level of expertise and time that legal representatives can realistically devote to a case. No such constraints would apply to public authorities or developers.

5. Impact on Public Interest Environmental Litigation

Public interest environmental litigation has played a vital role in protecting Ireland's environment and ensuring compliance with EU law.

Some of the most significant environmental outcomes in Ireland have been achieved through litigation brought by civil society organisations and members of the public. If the proposed cost rules had been in place, many landmark cases, including An Taisce's case concerning the Edenderry peat-fired power plant and the ongoing nitrates water quality litigation (which relates directly to issues addressed in the Sixth Nitrates Action Programme, on which Zero Waste Alliance Ireland made a consultation submission), would never have been taken. would never have been taken.

Ireland's environment is already in a critical state. The State has repeatedly failed to properly implement and enforce EU environmental law. In this context, public interest litigation is not a nuisance; it is an essential safeguard and a necessary corrective mechanism.

The proposed scale of fees would severely hamper this role and would lead to poorer environmental decision making, weaker enforcement of EU law and increased environmental harm.

6. Conclusion and Recommendations

These proposals are unlawful, undemocratic and unfair. If adopted, they are likely to give rise to further litigation, including the possibility of referrals to the Court of Justice of the European Union.

While the proposals are purportedly intended to facilitate the delivery of critical infrastructure, in reality they will only increase uncertainty and delay, while simultaneously undermining environmental protection and public accountability. This proposal represents a significant attack on civil society and on the public's right to access justice. It should be withdrawn in its entirety. The existing cost protection regime should be retained.

Instead of restricting access to justice, the Government should focus on improving:

- The quality and legality of public authorities' decision making;
- The robustness of planning decisions; and
- The quality of plan making processes.

These measures are essential to addressing the housing, climate, energy and biodiversity crises we face, and to delivering the infrastructure Ireland needs in a lawful, democratic, and environmentally responsible manner.
This submission is made on behalf of Zero Waste Alliance Ireland.

Signed on behalf of Zero Waste Alliance Ireland

Órla Coutin Fitzsimons

Coordinator

15th January 2026

Organisations Supporting This Submission

The following organisations support and endorse this submission.

Crann – Trees for Ireland
streamscapes – the waters & the wilds
The Organic centre
Bat Conservation Ireland
Irish Whale and Dolphin Group
Coastwatch
The Environmental Forum
Celt
Coillearnacha Dúchasacha Woodlands of Ireland
Voice
Irish Peatland Conservation Council
Talamh Beo – Land · People · Community
native woodland trust
glucaiseacht – For Global Justice
Dark Sky Ireland
Wildlife Rehabilitation Ireland

Appendix 1

Regulation of costs payable in respect of prescribed matters 294

294. (1) Subject to subsections (3) and (4) of section 293 , and notwithstanding section 169 of the Legal Services Regulation Act 2015 and Order 99 of the Rules of the Superior Courts (S.I. No. 15 of 1986), the following shall be in accordance with the monetary amounts prescribed under subsection (2) in relation to each matter so prescribed:

(a) the costs awarded to an applicant, in respect of proceedings to which this Chapter applies and in which the applicant succeeds in obtaining relief;

(b) the contribution made from the environmental legal costs financial assistance mechanism to the costs of an applicant in relation to whom a determination under paragraph (b) or (c) of subsection (3) of section 297 and under paragraph (b) or (c) of subsection (4) of section 297 is made, in respect of proceedings to which this Chapter applies and in which the applicant does not succeed in obtaining relief, or succeeds in obtaining relief only in part;

(c) the contribution made from the environmental legal costs financial assistance mechanism to the costs awarded to the applicant under subsection (7) of section 298 .

(2) The Minister for the Environment, Climate and Communications shall—

(a) after consulting with the Minister and the Minister for Justice, and

(b) with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform,

prescribe monetary amounts for the purposes of subsection (1), and in doing so may prescribe different such amounts in respect of any or all of the following:

(i) different types of legal work conducted by legal practitioners;

(ii) different types of legal proceedings and applications;

(iii) different court jurisdictions in which proceedings are taken;

(iv) proceedings of differing durations;

(v) work carried out by different categories of legal practitioners, including by reference to the amount of experience possessed by, and the nature of legal qualification of, the legal practitioner.

(3) Before making regulations under subsection (2), the Minister for the Environment, Climate and Communications shall have regard to—

(a) the need to ensure that proceedings to which this Chapter applies can be taken by applicants in a manner that is not prohibitively expensive,

(b) the need for equitable and orderly access to the courts for all persons to be ensured in accordance with law,

(c) the need to ensure that court and judicial resources are utilised for the common good and in the interests of justice, and

(d) the cost to the Exchequer of matters provided for in such regulations.

(4) The Minister for the Environment, Climate and Communications shall conduct a review of the monetary amounts prescribed in regulations made under subsection (2), in consultation with the Minister and the Minister for Justice, not less than once in every period of 5 years after the making of the regulations.