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31 May 2013

Dear Ms Smagadi,

Re: Response to the Aarhus Compliance Committee Communication 77, regarding access to justice in environmental matters and alleged failure to implement the Convention, in particular article 9(4) and (5)

Introduction

1. This document has been prepared by the United Kingdom ("the Party Concerned") in response to Communication 77 (ACCC/C/2012/77), submitted by Greenpeace Limited ("the Communicant") to the Committee on 21st August 2012.

2. The Party Concerned submits that the award of costs in this case was reasonable, in accordance with article 3(8) of the Convention,[1] and should not be considered prohibitively expensive for the purposes of article 9(4) and (5).

3. Since the date of the Communicant's submission, the Committee will be aware of the following developments:

   - the United Kingdom's letter of 28th February providing an update on compliance with decision IV/9i, which also addressed article 9 paragraphs 4 and 5 of the Convention; and

   - the judgment of the Court of Justice of the European Union in Case C-260/11 ***Edwards v Environment Agency***, which considered the correct approach to be taken to the not prohibitively expensive requirement contained in article 9(4) of the Convention and transposed into certain EU Directives.

4. We refer the Committee to the United Kingdom's letter of 28th February 2013 **(Annex I)** insofar as there is considered to be an overlap between the issues raised in this Communication and those raised in Communication ACCC/C/2008/33. We understand that the Committee wishes to discuss the letter at its forty-first meeting in Geneva in June, in particular how the changes referred to address the issues of alleged non-compliance raised in Communication 77.

Facts of the Communicant's challenge

5. The Communicant sets out the "Facts of the Communication" at subheading (3). The Party Concerned accepts the matters set out at paragraphs 1-4 of the section headed "Facts of the Communication". For completeness, it also sets out the background to the case below.

6. On 19th July 2011, the Party Concerned exercised its power to designate, under section 5 of the Planning Act 2008, the Nuclear National Policy Statement ("Nuclear NPS"). The relevant legislative provisions are found at **Annex III.** This was a strategic document setting out the policy for determining future applications to permit the building of new nuclear power stations (**Annex IV**).

[1] Article 3(8) provides in terms that the Convention "shall not affect the powers of national courts to award reasonable costs in judicial proceedings". Thus the costs awarded against a party must be reasonable and not prohibitively expensive but there is no prohibition on awarding costs against a losing party. This is, of course, a practice common in many legal systems. Advocate-General Kokott in Case C-427/07 ***Commission v Ireland*** [2009] E.C.R. I-6277 **(Annex II)** confirmed that article 3(8) means that there is no ban on costs from being awarded against losing parties who are covered by Directive 2003/35 (concerning environmental impact assessments; see paragraph 94 of that opinion). Reference can also be made to the findings of the Aarhus Compliance Committee in Communication ACCC/C/2008/23 to the effect that a costs order of £5,130 plus interest "not prohibitively expensive". The order was made in interim proceedings following the discharge (cancellation) of an interim injunction.

7. The designation of the Nuclear NPS followed a lengthy process of extensive consultation with the public and statutory consultees. The Nuclear NPS was also subject to an Appraisal of Sustainability incorporating the requirements of the regulations that implement the Strategic Environmental Assessment Directive. These procedures leading to the designation of the Nuclear NPS were fully compliant with the requirements of article 7 of the Convention. And given the absence of any complaint on these matters by the Communicant it is assumed that it concurs. A summary of the UK government's response to the consultation is found at **Annex V**.

8. On 16th August 2011, the Communicant served the Party Concerned with a letter under the judicial review Pre Action Protocol[2] (received 18th August 2011). This letter attached a draft statement of Facts and Grounds running to 84 paragraphs, 29 pages,[3] by which the Communicant required the Party Concerned to quash the Nuclear NPS "if necessary by submitting to a court of competent jurisdiction". The Pre Action Protocol and relevant rules of civil procedure can be accessed via the hyperlink at footnote 2 below.

9. The Planning Act provides that any challenge to a designation of an NPS should be made within a six week time limit. Therefore any application to quash the Nuclear NPS would have to have been filed by 29th August 2011 (as this date fell on a public holiday in the UK, a claim would have to be filed by 26th August 2011).

10. In its letter, whilst acknowledging that the Pre Action Protocol for Judicial Review suggests allowing for a response within 14 days, the Communicant requested a response by 22nd August 2011 – that is to say a response was requested within a matter of a few days (and which included a weekend). The Communicant gave the reason for sending its Pre Action Protocol letter almost a month after the decision had been taken as being the result of "the time for challenge [falling] during the vacation."

11. The Communicant sought to challenge the decision to designate on two grounds, alleging:

    i) failure to take into account material considerations and/or failing to review the Nuclear NPS EN-6 prior to its designation in relation to: (a) flood risk; (b) off-site electrical supplies; and (c) on-site emergency controls; and

[2] http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv. Before applying for permission, to apply for judicial review a claimant should normally comply with the pre-action protocol for judicial review. That requires the claimant to send a letter before action to the defendant. The letter should identify the decision, act or omission being challenged, set out a summary of the facts and the reasons for the challenge. A standard form letter is set out at Annex A to the pre-action protocol. The defendant should normally respond within 14 days, giving its response to the claim and indicating which parts of the claim, if any, is conceded. A standard form letter setting out the information that should be provided is set out at Annex B to the pre-action protocol. The claim should not normally be made until the 14 days for the reply has passed.

[3] This went well beyond the summary of the facts and the reasons for the challenge required by the Pre-Action Protocol for Judicial Review.

ii) failure to consult on the issue raised by the Fukushima accident and the interim report.

12. The Party Concerned responded to the letter on 22nd August 2011. It explained that, owing to the short deadline imposed by the Communicant (and contrary to the Pre Action Protocol) it had not been possible to provide a fuller substantive response. Despite that, in an effort to assist the Communicant, and to comply with the spirit of the Pre Action Protocol, which aims to deter parties from instigating unnecessary litigation, the Party Concerned enclosed several documents to address the two threatened grounds of challenge. This documentation addressed both the allegation of failure to take into account the specified relevant considerations, and the alleged failure to consult properly. They demonstrated, *inter alia*, that the Party Concerned had asked specific questions about the impact of the Fukushima disaster on the Nuclear NPS in correspondence with the Head of the Office for Nuclear Regulation, Dr Mike Weightman, for consideration when he prepared his report.

13. The Communicant sent a response dated 24th August 2011, briefly stating that the Party Concerned's letter had not in its view addressed its grounds of challenge, and reserving the right to amend its grounds in light of any substantive response, and reserving its position as to costs. The Communicant then issued its claim for judicial review on 26th August 2011. The issue of the proceedings was accompanied by a great deal of publicity generated by the Communicant whose senior officers issued press statements.

14. The Party Concerned, in accordance with the relevant court rules, filed its Summary Grounds of Defence and Acknowledgment of Service on 20th September 2011 (**Annex VI)**. The issues in the case were of great importance to the Party Concerned as the Nuclear NPS was a strategic planning policy document. There was further correspondence between the Communicant and the Party Concerned, but this did not affect the amount of costs claimed.

15. In England & Wales a claim for judicial review requires a High Court Judge to grant permission to apply for judicial review. The test for granting permission is usefully summarised in the White Book[4] as:

> "The purpose of the requirement for permission is to eliminate at an early stage claims which are hopeless, frivolous or vexatious and to ensure that a claim only proceeds to a substantive hearing if the court is satisfied that there is a case fit for further consideration. The requirement that permission is required is designed to "prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending although misconceived" (***R. v Inland Revenue Commissioners Ex p. National Federation of Self-employed and Small***

[4] The guide to civil procedure in England & Wales.

Businesses Ltd [1982] A.C. 617 at p.642 per Lord Diplock). Permission will be granted only where the court is satisfied that the papers disclose that there is an arguable case that a ground for seeking judicial review exists which merits full investigation at a full oral hearing with all the parties and all the relevant evidence (***R. v Legal Aid Board Ex p. Hughes*** (1992) 5 Admin. L. Rep. 623; ***R. v Secretary of State for the Home Department Ex p. Rukshanda Begum and Angur Begum*** [1990] C.O.D. 107 and ***Sharma v Brown-Antoine*** [2007] 1 W.L.R. 780 at para.14(4)) ...".

16. In a decision issued by the High Court on 12th December 2011, Mr Justice Ouseley refused permission on all grounds of the challenge. The full text of his decision can be found at heading (8) paragraph (7) of the Communication.

17. Under Civil Procedure Rule 45.12(3) the claimant can renew its application for permission, which will then be considered at an oral hearing rather than on the papers. The Communicant in this case chose not to pursue this route. Its claim was therefore at an end.

18. In accordance with established procedures[5] the Party Concerned, in the event permission was refused, requested the costs of preparing its Acknowledgment of Service and Summary Grounds of Defence and was initially awarded £11,813 by the judge considering the permission application. That figure was the amount of costs which the Party Concerned had actually incurred in defence of the claim.

19. The Communicant challenged this costs award for the reasons quoted in its Communication.

20. By a decision of 19th March 2012, Mr Justice Ouseley reduced the award of costs from £11,813 to £8,000. He commented that the case was: "plainly not an ordinary claim" but "raised issues of the highest public interest and concern." He went on to state that the:

> "time required to deal with [the claim] on paper was well outside the normal length for a paper application…the statutory role of the different bodies involved was complex, and the arguability of the allegations that material considerations had been ignored and that the consultation was flawed could not be resolved devoid of factual analysis…The costs claimed measured against ordinary claims are obviously high, but not obviously so when measured against this claim."

21. The position in relation to the award of costs against a claimant who is unsuccessful at the permission stage is as follows. A defendant should, generally, be able to recover the costs of filing an Acknowledgment of Service from an unsuccessful claimant where permission is refused: see paragraph 76(1) of the judgment in ***R. (Mount Cook Land Ltd) v Westminster City Council*** [2004] 2 P. & C. R. 405 and ***Leach, Re*** [2001] EWHC Admin 455. The court should though not order an unsuccessful claimant to pay

[5] In the case of ***R (Mount Cook Land Ltd) v Westminster City Council*** [2004] 2 P. & C. R. 405: see further below and see **Annex VII** for the decision.

the costs of a defendant attending an oral hearing and successfully resisting an application for permission except in exceptional circumstances. Such circumstances may consist in the presence of one or more of the following factors: (a) the hopelessness of the claim; (b) the persistence by the claimant in the claim after having been alerted to facts or the law demonstrating its hopelessness; (c) the extent to which the court considers that the claimant has sought to abuse the process of judicial review for collateral purposes; (d) whether, as a result of full argument and the deployment of documentary evidence, the claimant has, in effect, had the advantage of an early substantive hearing of the claim.

22. The Court of Appeal has examined what is reasonable in terms of the level of costs incurred in filing an Acknowledgment of Service and Summary Defence, see e.g. ***R (Ewing) v Office of the Deputy Prime Minister*** [2006] 1 W.L.R. 1260 (**Annex VIII)**.

23. As noted above here the Communicant having been refused permission on the papers did not renew its application for permission to an oral hearing.

24. Moreover, a costs order such as that made by Mr Justice Ouseley in this case can be appealed to the Court of Appeal. No such appeal was ever made.

Response to the Communicant's submissions

Merits of the claim itself

25. It is the Party Concerned's position that the responsibility for incurring the costs in this case should be laid at the door of the Communicant. As noted above, the threshold for getting permission to apply for judicial review is a relatively low one, requiring only that the case is "arguable"[6] and it has a "realistic prospect of success".[7] The permission filter seeks to dissuade claimants from lodging speculative and hopeless claims. The Communicant was not able to convince the court that it had even an arguable case. It is though not that uncommon for a judicial review case to be refused permission on the papers only for the claimant to successfully renew and obtain permission at an oral hearing. The fact that the Communicant chose not to take this step suggests it did not have any faith in its grounds of challenge. Moreover, it could have done so with relatively little risk of incurring any further costs because as explained above a Court will only award the costs of such an oral renewal against the claimant in exceptional circumstances.

[6] See, for example, ***R v Secretary of State for Trade and Industry, ex parte Eastaway*** [2000] 1 WLR 2222: "[t]he requirement of permission to apply for judicial review is imposed primarily to protect public bodies against weak and vexatious claims".

[7] ***Sharma v Director of Public Prosecutions*** [2006] UKPC 57, para 14(4) per Lord Bingham

26. In the recent ***Edwards*** case (Case 260/11 **Annex IX**) the Court of Justice of the European Union said in the context of considering the not prohibitively expensive requirement in article 9(4) of the Convention that a Court should consider “whether the claimant has a reasonable prospect of success ... the complexity of the relevant law and procedure and the potentially frivolous nature of the claim at its various stages ...”.

27. The Party Concerned submits that the claim itself was densely, at times confusingly drafted, and required considerable work by its advocates to clarify the grounds of challenge. It had to carry this work out under time pressure and on an issue of strategic importance to the UK’s energy policy.

28. The Communicant asserts that its claim raised issues of the highest public concern. Whilst it is common ground that the Nuclear NPS was of strategic importance, the Party Concerned cannot agree. It is disingenuous of the Communicant to use the strategic importance of the issue to bring a claim that had no prospect of success. This challenge was not in the public interest: it led to unnecessary expense, ultimately borne by the UK taxpayer. The Advocate-General in the ***Edwards*** case (see above and see **Annex X** for the opinion) said at para. 47 in the context of assessing what is prohibitively expensive “[t]he prospects of success may also be relevant with regard to the extent of the public interest. A clearly hopeless action is not in the interest of the public, even if it has an interest in the subject-matter of the action in principle”. This provides a direct answer to the Communicant’s assertions in this regard.

29. Public engagement and consultation had been a feature of the decision making process around the Nuclear NPS, and those including the Communicant who participated took the responsibility of ensuring sound decision making extremely seriously. The Communicant makes no complaint to the Committee of any breach of article 7 in the way in which the Nuclear NPS was designated. The Party Concerned’s response to the Communicant’s Pre Action Letter was a genuine attempt to resolve the issues, and to reassure the Communicant that the points it raised, quite properly in its role as a campaigning NGO, had been satisfactorily addressed. Despite this, the Communicant irresponsibly took the decision to pursue the claim, and then expressed surprise that it had to bear the costs when it failed.

30. Further, the Communicant misunderstood the nature of the designation decision and the correct point in the process, and also the correct public body, to receive such a challenge. As a strategic policy document, the Nuclear NPS sets the framework for future policy on applications for the construction of power stations. It does not itself make those decisions, which would be amenable to judicial review in the future. This challenge was premature and misconceived from the beginning, which is all the more surprising since the Communicant is a well-resourced and experienced litigator, which uses litigation as a campaigning tool.

Non response to the Pre Action Protocol Letter

31. The Communicant complains that the Party Concerned's non response to its Pre Action Letter increased the Communicant's costs, and complains it could not have acted earlier in order to give the full time to respond to a Pre Action Letter owing to timing of the decision. However, the decision to designate the Nuclear NPS was widely publicised and had been subject to a full public consultation; the Communicant would have been aware that the decision was imminent. In his costs judgment, Mr Justice Ouseley disagrees with the Communicant's submissions on this point: "[t]he deadline set by the Claimant [Communicant] was half the time which would have been allowed in an ordinary case; it was set after nearly a month had passed since the publication of the NPS, which itself could not have come as a surprise to the claimant given its involvement with it; it was not a bolt from the blue in timing or content."

Characterisation of the claim

32. The Communicant asserts that the costs in the Acknowledgment of Service were excessive because the case could not be described as one "requir[ing] consideration of matters of particular technical or scientific complexity".[8] Whilst judicial review is brought on a point of law, this was an unusually complex case, as evidenced by the fact that, although the Communicant was only applying for permission, its own grounds of claim were 37 pages long, and it submitted a bundle of 67 documents numbering 1,611 pages. These documents go into considerable detail about the Fukushima incident, and all had to be considered by the Secretary of State's representatives. The Party Concerned further submits that scientific and technical complexity is not the only way costs are increased in judicial review. In this, the Party Concerned draws support from the costs order made by Mr Justice Ouseley[9] who commented on the complexity of the case; see paragraph 20.

33. The bulk of the costs incurred in the preparation of the Acknowledgment of Service were counsel's fees: the Party Concerned instructed two Queen's Counsel, one of whom is first Treasury Counsel, and a junior. Whilst this is a significant investment, it was entirely correct for the Party Concerned to focus its efforts on eliminating the challenge at the first stage; the grounds of defence were proportionate to the complexity of the claim. It should also be balanced by the Communicant's use of two experienced counsel, one of 17 years call (who is now a Queen's Counsel) and one of 9 years call. The Committee will be aware that the government has negotiated special rates for its regular and first Treasury Counsel; fees for government advocates in this case were well below those incurred by parties engaging experienced counsel at standard commercial rates.

[8] Para 9 of Communication 77
[9] See enclosure (g) of the Communicant's submission

34. The Communicant cites the ***Ewing*** case as evidence that the costs for an Acknowledgment of Service need to be proportionate. However, the ***Ewing*** case is not helpful for the Communicant's argument, as it recognises that: "[42] the considerations which may apply in responding to the application for permission will vary enormously from case to case". There is no absolute or inflexible rule to be applied in determining what is "reasonable" and "proportionate" in terms of the Party Concerned's costs of the Acknowledgment of Service. Moreover, the Communicant's complaint in this regard appears to be (at least in part) that the Judge in making the order he did misapplied the relevant domestic costs rules. If so it could have appealed his costs decision to the Court of Appeal. It did not do so. The significance of this in terms of the non-exhaustion of domestic remedies is considered below.

Approach to assessing costs in this case

35. The Party Concerned submits that the High Court took the correct approach to assessing costs in this case. The Communicant did not apply for a protective costs order, which would have been a route open to it under the then established principles in ***R(Garner) v Elmbridge Borough Council*** (at **Annex XI**, now replaced by the changes to the Civil Procedure Rules and explained in the United Kingdom's letter of 28th February providing an update on compliance with decision IV/9i). At the relevant time though it would though have been open to the Communicant to seek a protective costs order. Moreover, it was open for it to seek an interim protective costs order limiting its liability for costs at the permission stage and until its application for permission and a full protective costs order was determined. Such orders have been made in other cases e.g. ***Dullingham Parish Council v East Cambridgeshire District Council*** [2010] EWHC 1307 (Admin) and ***R. (UK Uncut Legal Action Ltd) v Revenue and Customs Commissioners*** [2012] B.T.C. 222. No such orders were sought.

36. The approach to costs in environmental judicial review has also now as already mentioned been elucidated by the Court of Justice of the European Union in the recent judgment in ***Edwards. Edwards*** considered a referral from the UK Supreme Court on several issues concerned with the interpretation of the Convention, as transposed into EU law, in particular the correct approach to the "not prohibitively expensive" test.

37. The court in ***Edwards*** held that an assessment of the question of what is prohibitively expensive cannot "be carried out solely on the basis of the financial situation of the person concerned but must also be based on an objective analysis of the amount of the costs…the costs of proceedings must not appear…to be objectively unreasonable. …The court may also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the

relevant law and procedure and the potentially frivolous nature of the claim at its various stages."

38. The case law of the European Court is a useful source of guidance on the interpretation of the test of what is "prohibitively expensive". The decision of the Court is entitled to great respect. The merits of this case were weak and the Party Concerned submits there was no strong public interest in pursuing this claim. ***Edwards*** provides that the merits of the case are relevant to a decision on costs. The Communicant itself appears to have been aware of this, as it made no attempt to renew permission to apply for judicial review orally. Its submission states that this was because of fear of incurring further costs, but the Party Concerned submits that it is more likely that this was because this was not a well-considered challenge and it was unlikely that any other Judge (or Judges) would take any more sympathetic a view of the strength of its claim than the High Court. As explained above, the domestic costs rules would have militated against any further award of costs save in exceptional circumstances.

39. In addition, the European Court held that although a claimant's own financial means cannot be the sole consideration in deciding what is prohibitively expensive, they are a relevant factor. In this case, the Communicant's income for the year 2010 was £8,931,000.[10] A wholly subjective approach to what reasonable costs are for a claimant is not suggested in the light of ***Garner*** or ***Edwards****,* but it is open to a court assessing costs to take into account the situation of the parties concerned, as well as the complexity of the relevant law and procedure, and the potentially frivolous nature of the claim. It is submitted that this approach supports the Party Concerned's view that £8,000 is reasonable in this case.

40. It is also necessary to consider what the alternative is if the Party Concerned could not recover its reasonable costs. In ***R (Davey) v Aylesbury Vale District Council*** (**Annex XII)** the Master of the Rolls said "[t]he basic rule ... that costs follow the event in public law cases, as in others" exists "because, where an unsuccessful claim is brought against a public body, it imposes costs on that body which have to be met out of money diverted from the funds available to fulfil its primary public functions". In the light of the current fiscal crisis the Department of Energy & Climate Change (the defendant in the judicial review brought by the Communicant) has, like other public authorities, had its budget cut significantly.

Exhaustion of domestic remedies

41. The Party Concerned also submits that the Communicant has not exhausted domestic remedies.

[10] Income to Greenpeace UK Limited, page 19, Greenpeace Impact Report 2011, accessed at Greenpeace.org.uk on 8/5/2013

42. In this regard the Party Concerned makes reference to paragraph 21 of Decision I/7. An appeal to the Court of Appeal was available to the Communicant against the level of costs awarded. No such appeal was made. Moreover, the refusal of permission (on which the award of costs was contingent) could have been the subject of an oral renewal to a High Court Judge, and thereafter subject to further appeals to the Court of Appeal. None of these domestic remedies was exhausted – see below.

43. In its Guidance Document on the Aarhus Convention Compliance Mechanism[11] it is required that a communicant states what steps have been taken either under domestic or international law to exhaust alternative remedies.

44. Although this is not a strict requirement, the Communicant has not pursued all the remedies available to it and the Party Concerned submits that this would have been the proper path for the Communicant to have followed.

45. The Party Concerned submits that the guidance to the Committee applies here, and that appealing the costs order would not have been an unreasonably prolonged process, nor would it have failed to provide an effective or sufficient means of redress.

Remedy sought by the Communicant

46. The remedy sought by the Communicant, that the Committee recommends a costs award of £1,500, places the Committee in an invidious position. As the Committee is aware, it is not an appropriate use of the compliance mechanism to recommend awards of costs to national courts. Following the Communicant's wishes risks bringing the Committee into conflict with national legal systems. Article 15 of the Convention provides that the Committee is established on a "non-confrontational, non-judicial and consultative basis" to in order to advise; it ought not to be asked to suggest costs awards to Parties Concerned.

Summary of response

47. The Communicant brought a weak and badly thought through challenge to a strategic policy document. Despite its protestations that it had a very short timescale to prepare its case, it was well aware of the decision to designate the Nuclear NPS and the timescale within which it would be made. The Party Concerned was not able to reply fully to the Communicant's Pre Action Letter by the Communicant's deadline; less than half the time suggested under the Protocol. However, it provided information in order to assist the Communicant, and to deter it from issuing its challenge and incurring unnecessary costs.

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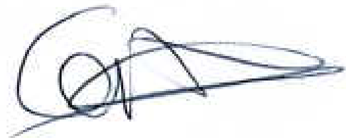
[11] Published by the UN Economic Commission for Europe, page 34

48. The Communicant’s challenge failed at the first stage because the High Court did not consider it had an arguable case. By this time, the Party Concerned had been forced to take steps to defend the challenge, and to address the points raised in the voluminous documentation the Communicant submitted. Acting consistently with established guidance, the Party Concerned claimed the costs of preparing its Acknowledgment of Service. The Communicant appealed the amount, and it was duly reduced. It had the opportunity to challenge this decision but failed to pursue it. It now seeks redress from the Committee, which is not a request appropriate to that body’s jurisdiction, and without having exhausted domestic remedies.

49. In the light of the circumstances of this case, we invite the Committee to dismiss this complaint. Owing to the complex nature of this case, the costs award was not prohibitively expensive, there was no failure to comply with article 9(4) and (5) of the Convention and no breach of article 9(4). This is especially so in the light of the recent decision of the Court of Justice of the European Union in the case of ***Edwards***, and applying the established principles in ***Garner***.

Yours sincerely,



Ceri Morgan

List of annexes to this response

The Committee will find enclosed:

I. Letter from the United Kingdom to the Committee dated 28th February 2013 providing an update on compliance with decision IV/9i;

II. Opinion of Advocate General Kokott in the case of C-427/07 *Commission* v *Ireland*;

III. Part 2 and sections 103-107 Planning Act 2008 (as at the date of this judicial review);

IV. Nuclear National Policy Statement (two volumes);

V. UK Government response to consultation on the revised draft NPS (June 2011);

VI. The Party Concerned's Summary Grounds of Defence and Acknowledgment of Service (two separate documents);

VII. *R(Mount Cook Land Ltd)* v *Westminster City Council*;

VIII. *R(Ewing)* v *Office of the Deputy Prime Minister*;

IX. The decision of the Court of Justice of the European Union in *Edwards* v *Environment Agency;*

X. Opinion of Advocate General Kokott in the case of *Edwards* v *Environment Agency*;

XI. *R (Garner)* v *Elmbridge Borough Council;*

XII. *R (Davey)* v *Aylesbury Vale District Council*.