Compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention

I. Introduction - decision IV/9i of the Meeting of the Parties

1. At its fourth session, the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision IV/9i on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention (included in ECE/MP.PP/20011/2/Add.1). The findings and recommendations concerned England and Wales.
2. Through the decision, the Meeting of the Parties endorsed the findings of the Committee on three communications, namely ACCC/C/2008/23 (ECE/MP.PP/C.1/2010/6/Add.1), ACCC/C/2008/27 (ECE/MP.PP/C.1/2010/6/Add.2) and ACCC/C/2008/33 (ECE/MP.PP/C.1/2010/6/Add.3) and welcomed the recommendations contained therein. The Meeting invited the Party concerned to submit to the Committee periodically, namely, in February 2012 and February 2013, and six months before the fifth session of the Meeting of the Parties (i.e. by December 2013), information on the progress in implementing the recommendations of the Committee
3. In particular, with regard to communication ACCC/C/2008/23, the Committee had found that: in respect of the requirements of article 9, paragraph 4, of the Convention, for procedures referred to in article 9, paragraph 3, to be fair and equitable, related to the fact that in the circumstances of the case where the communicants were ordered to pay the whole of the costs while the operator was not ordered to contribute at all, that that constituted stricto sensu non-compliance with article 9, paragraph 4, of the Convention. Taking into consideration that no evidence had been presented to substantiate that the non-compliance with article 9, paragraph 4, was due to a systemic error, the Committee had refrained from presenting recommendations in that case.
4. With regard to communication ACCC/C/2008/27, the Committee had found that the communicant’s judicial review proceedings were within the scope of article 9, paragraph 3, of the Convention and thus were also subject to the requirements of article 9, paragraph 4, that the quantum of costs awarded in that case, £39,454, rendered the proceedings prohibitively expensive, and that the manner of allocating the costs was unfair, within the meaning of article 9, paragraph 4, and thus, amounted to non-compliance. It recommended that the Party concerned review its system for allocating costs in applications for judicial review within the scope of the Convention and undertake practical and administrative measures to ensure that the allocations for costs in such cases was fair and not prohibitively expensive.
5. Finally, with regard to communication ACCC/C/2008/33, the Committee had found that
   * By failing to ensure that the costs for all court procedures subject to article 9 were not prohibitively expensive, and in particular by the absence of any clear legally binding directions from the legislature or judiciary to this effect, the Party concerned failed to comply with article 9, paragraph 4, of the Convention;
   * The system as a whole was not such as “to remove or reduce financial [...] barriers to access to justice”, as article 9, paragraph 5, of the Convention requires a Party to the Convention to consider;
   * By not ensuring clear time limits for the filing of an application for judicial review, and by not ensuring a clear date from when the time limit started to run, the Party concerned failed to comply with article 9, paragraph 4, of the Convention;
   * By not having taken the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement article 9, paragraph 4, the Party concerned also failed to comply with the article 3, paragraph 1 of the Convention.
6. In its findings on communication ACCC/C/2008/33, the Committee recommended that the Party concerned
   * Review its system for allocating costs in environmental cases within the scope of the Convention and undertake practical and legislative measures to overcome the problems identified in paragraphs 128–136 of the findings to ensure that such procedures:
     1. Were fair and equitable and not prohibitively expensive; and
     2. Provided a clear and transparent framework;
   * Review its rules regarding the time frame for the bringing of applications for judicial review identified in paragraph 139 of the findings to ensure that the legislative measures involved were fair and equitable and amount to a clear and transparent framework.

**Summary proceedings**

1. On 10 September 2010, the Compliance Committee received communication ACCC/C/2010/45 concerning compliance by the United Kingdom (England and Wales) with provisions of the Convention on access to justice, and in particular concerning the rights of third parties to appeal planning decisions, access to review procedures to challenge the substantive legality of planning decisions, the costs of access to justice and the failure to provide information to the public on administrative and judicial review procedures. At its twenty-ninth meeting (21–24 September 2010), the Committee determined on a preliminary basis that the communication was admissible but that the legal issues raised by the communication had already been dealt with by the Committee in its deliberations on previous communications concerning compliance by the United Kingdom (i.e., ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33), and decided that summary proceedings would apply, according to the procedural decision adopted at its twenty-eighth meeting (ECE/MP.PP/C.1/2010/4, para. 46).
2. By letter of 27 March 2011, the communicant challenged the Committee’s decision to apply its summary proceedings procedure, and in response to the Committee’s request at its thirty-second meeting (11–14 April 2011) for the communicant to substantiate its allegations, the communicant on 12 June 2011 submitted additional information including new allegations of non-compliance by the United Kingdom with provisions of the Convention on public participation and access to justice.
3. At its thirty-third meeting (27–28 June 2011), the Committee confirmed that it would not deal with any of the issues already dealt with in the scope of its findings on communications ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33. With respect to the new allegations made in the communicant’s letter of 12 June 2011, the Committee observed that a new communication ACCC/C/2011/60 (United Kingdom) (see below) raised some similar issues regarding the planning policy in the Party concerned.
4. On 28 March 2011, the Compliance Committee received communication ACCC/C/2011/60 concerning compliance by the United Kingdom (England and Wales) with provisions of the Convention on public participation and access to justice, and in particular with respect to the possibility to make oral presentations at planning hearings, the possibilities for third parties to appeal planning decisions, and the alleged failure of judicial review to provide an adequate, effective, fair, equitable or non-prohibitively expensive remedy to challenge planning decisions. At its thirty-third meeting, the Committee determined on a preliminary basis that the communication was admissible and that the allegations made by the ACCC/C/2011/60 communicant presented similarities to the new allegations made by the ACCC/C/2010/45 communicant. The Committee decided that it would apply its summary proceedings procedure to the following issues raised by the two communications:

(a) Whether the procedure for judicial review available in the courts of the Party concerned met the standards of substantive legality set out in article 9 of the Convention, because the Committee had already dealt with that matter in its findings on communication ACCC/C/2008/33 (ECE/MP.PP/C.1/2010/6/Add.3, paras. 123–127), and no new information had been submitted to the Committee which would trigger reconsideration of its findings;

(b) Whether the cost of judicial review procedures in the Party concerned were prohibitively expensive, because the Committee had already dealt with that matter in its findings on communications ACCC/C/2008/27 (ECE/MP.PP/C.1/2010/6/Add.2) and ACCC/C/2008/33, and no new information had been submitted to the Committee which would trigger reconsideration of its findings. The Committee recalled that it would continue to closely monitor the progress by the Party concerned on that issue through its follow-up on the implementation of decision IV/9i (United Kingdom), adopted by the Meeting of the Parties at its fourth session (Chisinau, 29 June–1 July 2011).

The Committee agreed to deal with certain other allegations raised by the communicants in ACCC/C/2010/45 and ACCC/C/2011/60 in accordance with its ordinary procedure.

1. On 28 November 2011, the Compliance Committee received communication ACCC/C/2011/64 concerning compliance by the United Kingdom (England and Wales) with provisions of the Convention on public participation and access to justice in respect of the implementation of national planning policy statements and environmental regulations before Parliament. At its thirty-sixth meeting (27-30 March 2012), the Committee decided that the allegations concerning public participation were not admissible, because it was too early for the Committee to review a national instrument that had not yet been adopted. With respect to the allegations concerning access to justice, while the Committee found the communication was admissible on a preliminary basis, it decided to apply its summary proceedings procedure (ECE/MP.PP/C.1/2010/4, para.45), because the legal issues raised had already been dealt with in the context of previous communications concerning compliance by the United Kingdom (ACCC/C/2008/23, ACCC/C/2008/27, ACCC/C/2008/33) and decision IV/9i of the Meeting of the Parties.
2. On 3 January 2012, the Compliance Committee received communication ACCC/C/2012/65 concerning compliance by the United Kingdom (England and Wales) with provisions of the Convention on access to justice in relation to imposition of cross-undertakings regarding injunctions in environmental judicial review. At its thirty-sixth meeting (27-30 March 2012), the Committee decided that the allegation concerning security for costs was not admissible on the ground of not meeting the de minimis requirement. With respect to the allegations on cross-undertakings on damages, while the Committee found the communication was admissible on a preliminary basis, it decided to apply its summary proceedings procedure (ECE/MP.PP/C.1/2010/4, para.45), because the allegations raised related to systemic legal issues which the Committee had already discussed in its findings and recommendations on communication ACCC/C/2008/33 and decision IV/9i of the Meeting of the Parties.

II. Summary of follow-up action

1. On 9 February 2012, the Coalition for Access to Justice for the environment (CAJE), a coalition of non-governmental organizations and regular observer of ACCC/C/2008/33, informed the Committee that in October 2011, the Ministry of Justice had published a consultation paper in England and Wales: “Costs Protection for Litigants in Environmental Judicial Review Claims: Outline proposals for a costs capping scheme for cases which fall within the Aarhus Convention” with a deadline for comments on 18 January 2012. CAJE had submitted detailed comments on the proposals to the Ministry of Justice. While acknowledging that the proposals were a positive step forward, CAJE informed the Committee that they did not adequately address the problem of prohibitive expense. In particular:
   * The proposed cap on the claimant’s liability for adverse costs of £5000 remained prohibitively expensive for the vast majority of individuals and civil society groups;
   * The proposed cap, when combined with the applicants own costs for bringing the application (estimated by the Ministry of Justice to be in the region of £30,000 for an average case, rendered the unsuccessful claimant liable for costs totalling £35,000, a sum which was clearly prohibitively expensive for all but the wealthiest claimants;
   * Both figures were subject to challenge on the basis of information in the public domain, thus prohibiting certainty and risking continuing satellite litigation;
   * No provision was made for injunctive relief; and
   * No provision was made for statutory appeals or private civil law cases.
2. Additional information was provided by CAJE on 3 April 2012, including the comments it had submitted in response to the consultation paper issued by the Party concerned in December 2011 on “Costs protection for litigants in environmental judicial review applications: outline proposals to limit costs for judicial review applications which fall under the Aarhus Convention” with respect to Northern Ireland and the comments it had submitted in response to the consultation paper issued by the Scottish Government in January 2012 on “Legal challenges to decisions by public authorities under the Public Participation Directive 2003/25/EC” with respect to that jurisdiction.
3. The Party concerned submitted its report due under paragraph 6 of decision IV/9i in February 2012, on 15 June 2012. It explained that the belated report was due to the ongoing consultations aiming at remedying the issue of non-compliance. In its report, the Party reported on the planned changes in the regime for Protective Cost Orders (PCOs) in the Civil Procedure Rules (CPR), following public consultations and further considerations upon the outcome of the consultations. In summary the proposals were as follows:
   * The rules were to apply to judicial review cases falling under the   
     Aarhus Convention, including those matters covered by Directive 2003/35/EC, and to all claimants (natural or legal persons) in the same way;
   * A PCO would be obtained by making an application without the need for supporting grounds and evidence unless an order other than the standard “default order” is sought;
   * A PCO would be granted if the permission to apply for judicial review is granted;
   * The application for the PCO should be made at the same time as the application for permission and would be considered on the papers;
   * The PCO would limit the liability of the claimant to pay the defendant’s costs to £5000 and the liability of the defendant to pay the claimant’s costs to £30,000 (cross-cap);
   * As an exception, where there is information publicly available about the claimant’s resources, the defendant may challenge the cap of £5000 on the grounds that the claimant is not in need for costs protection, because it has resources for litigation and access to justice is not in issue;
   * Costs of the PCO application would not be payable by either party if the PCO sought is the standard “default order” and is granted on those terms.
4. In its report, the Party concerned also mentioned that the issue of time-frames for the bringing of applications for judicial review was being considered as to what changes would be necessary for the rules to ensure compliance
5. CAJE provided comments on the Party concerned’s report on 19 June 2012. It reiterated its concern, already expressed by letter or 18 January 2012, that the proposed changes to the PCO regime were not sufficient to effectively address the major problems related to costs, as well as its concerns regarding the application of the new rules in Scotland and cross-undertakings in damages. CAJE suggested that the best way for the Party concerned to comply with the requirements of article 9, paragraph 4, of the Convention would be to introduce a system of Qualified One-Way Costs Shifting (QuOCS) as advocated by Lord Justice Jackson in his civil litigation review, but if the Party concerned would rather codify the PCO regime in CPR, CAJE suggested a number of changes.
6. The Committee deliberated on the matter at its thirty-seventh meeting (26-29 June 2012, see ECE/MP.PP/C.1/2012/5, paras. 56-57), welcoming the information received. The Committee was concerned how the amounts proposed under the revised PCO regime related to the requirement that the procedures must not be prohibitively expensive and how those amounts were to be calculated and whether those PCOs would apply to all stages of procedures for judicial review (first instance and appeals). The Committee’s views were subsequently communicated to the Party concerned and the communicant. The Party concerned was also invited to submit further information on time frames as well as background information regarding the proposed changes.
7. In the meantime, ClientEarth, the communicant on ACCC/C/2008/33 had sent a letter to the Committee on 8 June 2012, which reached the Committee only on 15 August 2012, together with its subsequent letter of 14 August 2012. ClientEarth expressed its concern over the slow progress demonstrated by the Party concerned and the flawed approach of the Party’s proposals, including the recent Legal Aid, Sentencing and Punishment of Offenders Act (“LASPO Act”), which had received royal assent on 1 May 2012.
8. On 17 September 2012, the Party concerned submitted the information requested by the Committee at its thirty-seventh meeting. The Party concerned reported on the proposals which would be put before the Civil Procedure Rule Committee for its consideration with a view to those rules’ amendment in December 2012, including:
   * A fixed recoverable costs regime to apply in all judicial review cases, irrespective of permission having been granted, where the claimant states in the claim form that the case is an Aarhus case and provides reasons why this is so, subject only to the court determining that the case is not in fact an Aarhus case;
   * The recoverable costs regime would be defined as follows: the liability of the claimant to pay the defendant’s costs capped at £5000 if the claimant is an individual and £10,000 if the claimant is an organization; the cross-cap would be £35,000 (including VAT);
   * The fixed recoverable costs for both the claimant and the defendant could not be challenged, but the fixed costs regime would not apply if the claim is not an “Aarhus claim”;
   * The judge considering whether the give permission to appeal would at the same time determine the appropriate cost limit or limits.
9. The Party concerned also noted that it intended to monitor the application of the proposed changes, once in force, on a regular basis and to consider whether, in the light of experience, any other changes to the procedure for such cases should be made.
10. With respect to time limits for bringing a challenge, the Party concerned informed the Committee that it was considering whether there was a need to amend the CPR rules governing time limits in judicial review applications so as to reflect recent court practice in England and Wales, and also Northern Ireland, following the decision by the Court of Justice of the European Union (CJEU) in *Uniplex* (C-296/08).
11. By letter of 19 September 2012, CAJE submitted that the proposed changes were improvements in two respects: that the costs protection would apply from the time the claim was issued as opposed to from the grant of permission; and that there would be no ability to challenge the figures on the basis of information in the public domain. However, CAJE considered that there were a number of issues that the revised proposals still failed to address, including the remaining high caps set for individuals and organizations (£5000 and £10,000, respectively), the latter which would be a significant deterrent to NGOs, and the remaining high cross-cap of £35,000; the fact that the costs protection would apply at first instance proceedings, whereas there was still uncertainty as to the situation at appeal and before the Supreme Court; the limited scope of “Aarhus claims” under the proposal, which would for instance exclude statutory challenges or private law environmental cases; the fact that the proposals are silent as to the costs of interested third parties; and the lack of any proposals in relation to injunctive relief and cross-undertakings.
12. CAJE also informed the Committee of the related ongoing preliminary ruling proceedings before the CJEU, further to the *Edwards* case, and the infringement proceedings initiated by the European Commission.
13. On 24 September 2012, ClientEarth provided comments on the report submitted by the Party concerned on 17 September 2012, reiterating its concerns, including over the scope of the claims covered by the proposals, which seemed not to apply to private law claims and statutory review; the failure of the proposals to address cross-undertakings in damages when injunctive relief is sought; the level of the caps which were prohibitively expensive for both individuals and organizations, and a higher cap for organizations was unfair and unjustified; the unnecessary and problematic imposition of a cross-cap on the costs a successful claimant might recover; and the complete failure of the proposals of address costs in appeal procedures. ClientEarth also updated the Committee on the *Edwards* case, at the time pending before the CJEU; commented on the Party concerned’s failure to address the Committee’s concerns regarding the limited availability of review for substantive legality; and informed the Committee that while the courts may in practice be applying the *Uniplex* case regarding time limits for seeking judicial review, to avoid confusion and uncertainty, the Civil Procedure Rules should be amended accordingly .
14. The Committee deliberated on the matter at its thirty-eighth meeting (25-28 September 2012, ECE/MP.PP/C.1/2012/8, paras. 53-56). At that meeting, the Committee took note of the information submitted since its previous meeting, on the basis of which it considered that there were concerns with respect to manner in which the Party concerned was proposing to implement the findings in communication ACCC/C/2008/33. Those concerns pertained, inter alia, to the time frame within which the Party concerned was seeking to implement changes and the costs of judicial proceedings, time limits for seeking judicial review. With respect to the cost of judicial proceedings, the Committee observed that the Party concerned appeared to be taking a piecemeal rather than a holistic approach. In addition, the Committee observed that judicial discretion continued to play a significant role in the proposed changes.
15. The Committee agreed to send additional questions to the Party concerned relating to the PCOs codification, cross-undertakings in damages, private claims and time limits, and that it would review the situation at its fortieth meeting, after it had received the report due from the Party concerned in February 2013.
16. On 28 February 2013, the Party concerned submitted its progress report due under paragraph 6 of decision IV/9i, and addressed the questions raised by the Committee at its thirty-eighth meeting. The proposed changes in CPR for England and Wales would come into force on 1 April 2013, while similar changes were to be implemented in Northern Ireland on the same date and in Scotland shortly also. In reply to the Committee’s questions, the Party concerned provided the following clarification:
    * The new PCO rules would apply to all Aarhus-related case, as defined in rule 45.41(2), i.e. “a claim for judicial review of a decision, act or omission all or part of which is subject to the [Aarhus Convention], including a claim which proceeds on the basis that the decision, act or omission, or part of it, is so subject”;
    * The amendments on PCOs codify court practice in the context of judicial review, which were also considered by the Committee, and not for third party appeals in planning decisions;
    * The costs limits apply in first instance only; on appeal, the case would enter a costs-shifting (“loser pays”) regime under new CPR rule 52.9A, whereby the court at the outset of the appeal would determine what the costs position should be and would order a recoverable costs limit, on the basis of the means of the parties, the circumstances and the need to facilitate access to justice;
    * It is for the defendant to argue before a court that a claim is not an Aarhus claim. If a defendant indeed so argues and the court upholds the argument, the court will not make an order for costs (new rule 45.44(3);
    * The caps of £5000 and £10,000 for individuals and organizations, respectively, were included in the public consultation for the proposals and were taken up from developed court jurisprudence, notably *Garner*, while the £35,000 cross cap is seen as a reasonable limit on the amount of costs that may be recovered by a successful claimant of an Aarhus claim;
    * Cross-undertakings in damages in case of injunctive relief would remain in place, however, the amendments to the Practice Direction of the CPR would make specific provision for Aarhus Convention cases so as ensure compliance with article 9, paragraph 4, of the Convention;
    * The overall time limit for judicial review is three months from when the cause of action arose, while the requirement, over and above the three month limit, that the application be made “promptly” is not applied in cases where a remedy for breach of an obligation or right under EU law is sought, including in many Aarhus cases.
17. Also on 28 February 2013, CAJE responded to the questions raised by the Committee at its thirty-eighth meeting, attaching a copy of the Statutory Instrument (SI 262) and the Practice Direction 45. In its submissions, CAJE welcomed the changes (as codified into pages 11 and 41-42 of SI 262 and pages 3-4, 9 and 40-41 of Practice Direction 45) in general, but expressed serious concerns as to application of the amendments in England and Wales only, the scope of application (all Aarhus claims, private claims, planning); the application only in first instance; the lack of any apparent rationale for the setting of the cap and cross-cap sums, which remained high; the uncertainty as to the definition of “groups” for which a higher cap would apply; the potential problematic application of cross-undertakings (Practice Direction 25A); and especially the recent consultations launched by the Party concerned in December 2012 in relation to planning applications (reduction of the deadline to apply for judicial review, limitation of oral renewal of the permissions, increased fees for judicial review) and how those recent proposals would be compatible with the recently introduced changes in order to comply with the Convention.
18. On the same date, WWF-UK made supplementary submissions to stress that as shown by recent jurisprudence in *Evans v. Secretary of State for Communities and Local Government*, there was no sufficient judicial review mechanism in place for challenging the substantive and procedural legality of decisions under article 6 of the Convention, as required by article 9, paragraph 2, and thus that the Committee’s previous concerns had not been sufficiently or properly addressed by the Party concerned.
19. The changes entered into force in England and Wales on 1April 2013, Northern Ireland on 15 April 2013 and Scotland on 25 March 2013.
20. On 21 May 2013, CAJE welcomed the commitment of the Party concerned and the CJEU’s April 2013 judgement in C-260/11 (the *Edwards* case),[[1]](#footnote-1) but expressed its disappointment at recent developments in England and Wales regarding judicial review, such as the reduction of the time limit for lodging judicial review applications in respect of planning decisions from three months to six weeks, measures being developed with respect to planning applications in England and Wales. It provided a summary table of the new costs regimes in England and Wales, Northern Ireland and Scotland, and its opinion on the implications of the CJEU’s judgment in the *Edwards* case for each of the new regimes.
21. At its forty-first meeting (25-28 June 2013), the Committee discussed the matter with representatives of the Party concerned, CAJE, and the communicants on ACCC/C/2008/23 and ACCC/C/2008/33, as well as with observers. In its oral statement, the Party concerned informed the Committee with respect to costs that:
22. With respect to costs, in England and Wales, Part 45 of the Civil Procedure Rules was amended on 1 April 2013 to introduce a new Section VII dealing with costs limits in Aarhus Convention claims. Where a claimant indicated in their claim form that it was an Aarhus Convention claim the parties may not be ordered to pay costs exceeding the amounts prescribed in Practice Direction 45. In relation to a claimant ordered to pay costs the prescribed amounts were £5,000 where the claimant was claiming only as an individual, and £10,000, when claiming as or on behalf of, a business or other legal person. In relation to a defendant ordered to pay costs, the prescribed amount was £35,000. It was open for the defendant to challenge whether the claim was an Aarhus Convention claim. Where such an argument was raised the court would determine this issue at the earliest opportunity. Where it was found not to be an Aarhus Convention claim the court would not normally make an order for costs in relation to those proceedings. Where it was found to be an Aarhus Convention claim, the court would normally order the defendant to pay the claimant’s costs of those proceedings. This may be ordered even where this could increase the costs payable by the defendant beyond the £35,000 prescribed in Practice Direction 45.
23. In Northern Ireland, the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 came into operation on 15 April 2013. These set similar limitations on costs awarded in relation to Aarhus Convention cases, which included applications for judicial review and reviews under statute to the High Court of decisions, acts or omissions.
24. In Scotland, changes to the Rules of the Court of Session came into force on 25 March 2013. A new Chapter 58A provided that protective expenses orders may be applied for by a petitioner in an application or an appellant in an appeal which involved a challenge to a decision, act or omission which was subject to, or said to be subject to the Public Participation Directive. This applied to applications to the supervisory jurisdiction of the court and appeals under statute.
25. With respect to the time frame for the bringing of applications for judicial review, for cases concerning the assertion of rights under EU law, the requirement of ‘promptness’ was, in practice, disapplied, in the light of CJEU case law.
26. The observers noted that while the progress achieved was significant, there were still concerns as to the compliance by the Party concerned with the Convention, because of the limited scope of application of the new measures to judicial review only, the still prohibitive expensive caps set for individuals and organizations and the introduction of new measures in planning processes that would create new obstacles for access to justice. The Party concerned observed that the measures taken should be evaluated by the Committee in the context of the recommendations of the decision only and not beyond the scope of the communications that had initially triggered review of compliance, which in the view of the Party concerned did not include costs in private nuisance cases.
27. Also at its forty-first meeting, the Committee considered the preliminary admissibility of communication ACCC/C/2013/86, received on 28 February 2013. The communication alleged non-compliance by the Party concerned with the provisions of the Convention on access to justice for failing to consider that private nuisance cases fell within the scope of those provisions and that therefore the Convention’s requirements for non-prohibitive costs would apply to such cases. The Committee decided that the communication was admissible on a preliminary basis. The Committee considered that further to its discussion with representatives of the Party concerned with regard to decision IV/9i (see above), the Party concerned appeared to interpret the recommendations of the Committee as not relevant to private nuisance proceedings. The Committee stressed that the recommendations in decision IV/9i concerned costs in all court procedures and it therefore did not agree with the position of the Party concerned that costs in private nuisance proceedings were outside its scope. In the light of the position of the Party concerned, however, the Committee decided to admit the communication and to consider communication ACCC/C/2013/86 under the ordinary, and not the summary, proceedings procedure.
28. On 17 September 2013, on the invitation of the Party concerned, and in the context of the follow up to decision IV/9i and in accordance with paragraph 25 of the annex to decision I/7 of the Meeting of the Parties, the Chair of the Committee undertook a one day mission to the Party concerned. He met with representatives of a number of ministries and agencies of the Party concerned first, followed by a meeting with both public officials and representatives of non-governmental organizations of the Party concerned. The Chair reported that the mission had provided a useful opportunity for exchange between the representatives of the Party concerned, the non-governmental organizations taking part and the Committee.
29. At its forty-second and forty-third meetings (24-27 September and 17-20 December 2013), the Committee commenced preparation of its draft report to the fifth session of the Meeting of the Parties regarding the implementation of decision IV/9i.
30. On 20 December 2013, the Party concerned provided its final progress report due through decision IV/9i six months before the fifth session of the Meeting of the Parties. In its progress report, the Party concerned informed the Committee of recent developments concerning the Edwards litigation and also the Opinion of the Advocate General in the C-530/111 infraction proceedings related to the EU Public Participation Directive. In April 2013, the CJEU in its preliminary ruling on Edwards, held that there was an objective and subjective element to the criteria for deciding costs. The UK Supreme Court applied this ruling in its judgment of 11 December 2013, and found that the figure of £25,000 was neither subjectively nor objectively excessive. The Party reported that the C-530/11 infraction proceedings against it before the CJEU under the Public Participation Directive were still on-going, and it would review its position in light of the CJEU’s decision once received. The Party indicated its intention to continue to update the Committee of developments until the finalization of the Committee’s report on the implementation of decision IV/9i.
31. Following receipt of the Party concerned final progress report, the Compliance Committee completed its draft report on the implementation of decision IV/9i through its electronic decision-making procedure before sending it to the parties for their comments on XX 2014.

III. Considerations and evaluation by the Committee

1. In order to fulfil the requirements of decision IV/9i, prior to the fifth session of the Meeting of the Parties, the Party concerned would need to provide the Committee with evidence that:

(a) It had taken measures to effectively ensure that the costs for all court procedures subject to article 9 are not prohibitively expensive, including clear legally binding directions from the legislature or judiciary to this effect (article 9, para. 4);

(b) The system as a whole is sufficient “to remove or reduce financial […] barriers to access to justice (article 9, para. 5);

(c) It had taken measures to effectively ensure clear time limits for the filing of an application for judicial review, including a clear date from when the time limit starts to run (article 9, para. 4);

(d) It had taken the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement article 9, paragraph 4 (article 3, para. 1).

1. **Measures to ensure that costs for all court procedures subject to article 9 are not prohibitively expensive**
2. Through paragraph 3(a) of decision IV/9i, the Meeting of the Parties endorsed the Compliance Committee’s finding on communication ACCC/C/2008/33 that by failing to ensure that the costs for all court procedures subject to article 9 were not prohibitively expensive, the Party concerned failed to comply with article 9, paragraph 4, of the Convention. The Committee welcomes the efforts by the Party concerned to address decision IV/9i through the introduction of provisions on protective costs orders and cross-undertakings for damages in the civil procedure rules applicable in England and Wales, Scotland and Northern Ireland. The new provisions are considered below.
3. **Protective costs orders in the civil procedure rules**
4. The new provisions on protective costs orders introduced into the civil procedure rules in the three legal jurisdictions of the Party concerned may be briefly summarized as follows:
   * In England and Wales, Practice Direction 45 to the Civil Procedure Rules (England and Wales) provides for a protective costs order in “Aarhus Convention claims” of “£5,000 where the claimant is claiming only as an individual and not as, or on behalf of, a business or other legal person; in all other cases, £10,000”.[[2]](#footnote-2) The liability of the defendant for a successful claimant’s costs is capped at £35,000.The sum of recoverable costs for both the claimant and the defendant cannot be challenged.
   * In Northern Ireland, regulation 3(2) of the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 provides that “in an Aarhus Convention case, the court shall order that any costs recoverable from an applicant shall not exceed £5,000 where the applicant is an individual and £10,000 where the applicant is a legal person or an individual applying in the name of a legal entity or unincorporated association”. As in England and Wales, the liability of the defendant for a successful claimant’s costs is capped at £35,000.[[3]](#footnote-3)
   * In Scotland, chapter 58A of the Court of Session Rules provides for a protective expenses order of £5,000 and the court may, on cause shown by the applicant, lower the sum mentioned. In return, the respondent’s liability to pay the costs of a successful applicant is capped at £30,000, though the court may on cause shown by the applicant, raise the sum mentioned. In order to make the order, the Court must be satisfied that the proceedings are prohibitively expensive for the applicant, which is considered to be so if the applicant could not reasonably proceed with the proceedings in the absence of a protective expenses order.[[4]](#footnote-4)
5. Having reviewed the amended civil procedure rules for each jurisdiction in quite some detail, the Committee remarks on the following aspects:

Types of claims covered

1. While the amendments made to the civil procedure rules of England and Wales, Scotland and Northern Ireland each address some of the court procedures subject to article 9, none of them address all such court procedures. In England and Wales, the new cost protection provisions apply to claims for “judicial review of a decision, act or omission all or part of which is subject to the Aarhus Convention”, but do not address statutory review or private law claims.[[5]](#footnote-5) The new cost protection provisions applicable in Northern Ireland apply to both judicial and statutory review of a decision, act or omission subject to the Aarhus Convention but not to private law claims.[[6]](#footnote-6) Lastly, the new Scottish provisions address judicial review and appeals under statute, but only regarding decisions, acts or omissions which are subject to the EU Directives 85/33/EEC[[7]](#footnote-7) and 2008/1/EC.[[8]](#footnote-8) The Scottish rules thus do not apply to appeals under any provision of national law relating to the environment that is not derived from EU law, nor to any private law claim.[[9]](#footnote-9) Bearing in mind that the requirement in article 9, paragraph 4 for procedures to be not prohibitively expensive applies to all procedures within the scope of paragraphs 1, 2 and 3 of that article, the Committee finds that the Party concerned has taken insufficient measures to fully meet the requirements of article 9, paragraph 4 in this regard.

Costs incurred pre-permission or in satellite proceedings at first instance

1. The Committee welcomes the confirmation by the Party concerned during its statement at the forty-first meeting that the costs-caps will apply to all costs incurred up until the end of the first instance, including any costs incurred prior to the grant of permission in judicial review cases or in satellite proceedings at first instance. The Committee notes that this clarification is lacking in the rules themselves and invites the Party concerned to provide clear direction either in the rules or in accompanying guidance that the costs-caps indeed include any costs incurred pre-permission or in satellite proceedings at first instance.

Costs relating to determination of claim being an Aarhus claim

1. The Committee welcomes the inclusion in the civil procedure rules for England and Wales[[10]](#footnote-10) Northern Ireland[[11]](#footnote-11) of provisions on the allocation of costs should the defendant challenge a claimant’s assertion that the claim is an Aarhus claim. Both sets of rules provide that if the court holds that the claim is not an Aarhus Convention claim, it will normally make no order for costs in relation to those proceedings and conversely, if the court holds that the claim is an Aarhus Convention claim, it will normally order the defendant to pay the claimant’s costs of those proceedings on the indemnity basis. In contrast, the Scottish civil procedure rules do not mention how the costs of a challenge that a claim qualifies for costs protection should be determined. To assist with certainty, the Committee invites the Party concerned to consider introducing a provision clarifying the costs apportionment for such challenges into the Scottish rules also.

Level of cost-caps

1. While the new rules are a positive step forward, the Committee is not convinced that the sum of £5000 for individuals and £10,000 for organizations will not be prohibitively expensive for many individuals and organizations. In this regard, the Committee notes that the cap on what the applicant must pay if its claim is ultimately unsuccessful at first instance does not operate on its own – the unsuccessful applicant will also have to meet its own costs, estimated by the Ministry of Justice to be in the region of £30,000 for an average application for judicial review. This means a total costs liability in the region of £35,000 in an average case, and in a complex case, the applicant’s own costs may make the total even higher. The Committee agrees with the reasoning in the following excerpt of the Sullivan I report: “Overall, we consider that the costs, whether actual or risked, would be “prohibitively expensive” if they would reasonably prevent an ‘ordinary’ member of the public who would not be entitled to legal aid from embarking on the challenge falling within the terms of Aarhus, including obtaining any appropriate interim relief.”[[12]](#footnote-12) The Committee is concerned that, despite the Party concerned’s efforts, the current figures remain prohibitively expensive sums for the majority of the public and many environmental NGOs. The Committee thus welcomes the information from the Party concerned that it intends to review on a regular basis the impact and application of these changes, including the level at which the caps have been set and whether, in the light of experience, any other changes to the procedure for such cases should be made.[[13]](#footnote-13) The Committee looks forward to being informed of the outcomes of these regular reviews.

Reliance on legal aid to prevent the cost-caps being prohibitively expensive

1. In its letter of 28 February 2013, the Party concerned stated that “In the case of an individual whose financial means might dissuade them from bringing proceedings because of the possibility of having to pay costs of up to the £5,000 limit, it is likely that they would be entitled to legal aid (subject to the usual means and merits tests).”[[14]](#footnote-14) Noting the observer’s submissions on this point, the Committee considers that it is problematic to rely on legal aid in this way. The short timeframes for bringing judicial review may mean that by the time a claimant has had its legal aid application approved it may be too late to bring a claim. Moreover, the financial thresholds to qualify for legal aid are very low, which means that most members of the public will earn too much to qualify. The Committee understands that legal aid can be difficult to obtain in public interest cases and may not be available for all types of environmental claims (e.g. negligence claims are excluded).[[15]](#footnote-15) In the light of the above, the Committee finds the availability of legal aid for some applicants does not preclude the fact that the cost-caps of £5000 and £10,000 may be prohibitively expensive for many other applicants who would not qualify for such aid.

How the cost-caps will apply in practice

1. The Committee finds there is a lack of clear guidance as to how the costs-caps will be applied in practice. In particular, it notes that the following is not made clear in the new provisions:
   * If there are multiple individual applicants, whether the cap of £5000 will be shared amongst them or each applicant may be liable for costs up to this sum. With respect to England and Wales, the Committee notes that the Court in the *Garner* case imposed an overall protective costs order of £5000 to be shared between three applicants.[[16]](#footnote-16) However, it is not clear to the Committee whether the *Garner* case stands as precedent that the overall protective costs order should be £5000 irrespective of the number of applicants, or as precedent that the Court has discretion to decide whether the PCO should be imposed per applicant or overall.
   * Similarly there is no guidance as to whether for multiple NGO applicants (or other legal persons) the cost-cap of £10,000 (England and Wales, Northern Ireland) will be imposed as a total overall cost-cap, irrespective of the number of applicants, or it may be at the discretion of the court to decide.
   * There is no clear guidance as to what the cost cap will be, and how it will be apportioned, if the applicants include both individuals and NGOs.
   * There is no guidance as to what happens if one of applicant fails to pay his or her share of the PCO. Will the other applicants be liable for that applicant’s share?

The Committee considers that directions clarifying the above points should be inserted either in the rules or in accompanying guidance.

Cross-caps

1. The Scottish rules provide that the cap on the costs that the successful applicant may recover from the respondent may be increased on cause shown by the applicant. The rules for England and Wales and Northern Ireland do not provide the possibility for such an increase. From the information before it, the Committee understands that the figure of £30,000 is the estimated cost to bring an application for judicial review in an “average case”, though the costs for more complex cases may be higher. The Committee notes that that the Aarhus Convention looks at prohibitive expense and financial barriers to access to justice for the applicant, not the defendant. If there is to be a cross-cap, to ensure that the cross-cap will not act as a barrier to access to justice in more complex cases, the Committee recommends that the Party concerned consider following the Scottish approach in the rules applicable to England and Wales and Northern Ireland also so that applicants may apply to have the cross-cap raised in more complex cases.

Recoverability of costs of third parties

1. The rules in all three jurisdictions of the Party concerned are silent as to the recoverability of the costs of any interested third party. Costs claimed by third parties (eg developers) in environmental proceedings can sometimes be significant, and threats to reclaim such costs are frequently used by third parties to discourage the proceedings continuing. The Committee considers that the recoverability of third party costs should therefore be clarified, for example, by providing that the cost caps specified in the civil procedure rules represent the total costs payable by the claimant, to be allocated between all interested parties (including third parties where appropriate) by the court.

Costs for appeals

1. The Committee reiterates that decision IV/9i requires the Party concerned to ensure that the costs for **all** court procedures subject to article 9 are not prohibitively expensive. This includes the costs for court procedures at all stages, whether first instance or on appeal. The Committee notes that the three jurisdictions of the Party concerned take rather different approaches to the costs of proceedings beyond first instance. Scotland’s Court of Session Rules provides that an application for a protective expenses order may be made at any stage of an appeal proceeding whether or not an application for such an order was made, or an order granted, at first instance.[[17]](#footnote-17) The rules provide no further guidance, and the Committee interprets this to mean that the provisions on protective expenses orders set out in Chapter 58A will apply afresh on appeal, though it would be helpful if the rules would be clear on this point. The Costs Regulations (Northern Ireland) provides that upon an appeal of a decision in an Aarhus Convention case, the court may make an order that the recoverable costs of the appeal will be limited to the extent which the court specifies having regard to (a) the means of both parties; (b) all the circumstances of the case; and (c) the need to facilitate access to justice.[[18]](#footnote-18) The Committee expresses concern that this provides no guidance whatsoever as to the potential level of the cost-cap(s). The Civil Procedure Rules (England and Wales) are expressed in very similar terms[[19]](#footnote-19) save for the following additional clause: “If the appeal raises an issue of principle or practice upon which substantial sums may turn, it may not be appropriate to make an order”.[[20]](#footnote-20) The Committee finds this clause of particular concern. If the case raises an important issue of principle or practice, it seems all the more important to facilitate access to justice regarding such an issue, not to hamper it. Moreover, substantial sums may often be at issue in the environmental context, in particular with respect to large development projects, and it would be problematic if this clause were to operate against cost-caps for the party seeking to protect the environment in such cases.
2. In the light of its various concerns outlined above, the Committee expresses its appreciation for the serious efforts made by the Party concerned to address decision IV/9i in the context of protective costs orders. Nevertheless, the Committee finds that further work remains to be done in order to meet the requirements of article 9, paragraph 4, to ensure that all procedures subject to article 9 are not prohibitively expensive and of article 3, paragraph 1, to provide a clear, transparent and consistent framework to implement the Convention.
3. **Cross-undertaking for damages**
4. In England and Wales, new Practice Direction 25A 5.1B (1) provides: “If in an Aarhus Convention claim the court is satisfied that an injunction is necessary to prevent significant environmental damage and to preserve the factual basis of the proceedings, the court will, in considering whether to require an undertaking by the applicant to pay any damages which the respondent or any other person may sustain as a result and the terms of any such undertaking (a) have particular regard to the need for the terms of the order overall not to be such as would make continuing with the claim prohibitively expensive for the applicant; and (b) make such directions as are necessary to ensure that the case is heard promptly.”[[21]](#footnote-21) The Northern Ireland provision is expressed in very similar terms.[[22]](#footnote-22) The Committee welcomes the efforts taken by the Party concerned to implement paragraph 133 of the Committee’s findings on ACCC/C/2008/33. It also welcomes the new rule that the court will “make such directions as are necessary to ensure that the case is heard promptly”. The Committee, however, regrets that though the new provisions are a positive step, they are not sufficient to fully meet the requirement in article 3, paragraph 1 for a clear, transparent and consistent framework to implement the Convention. The provisions’ reliance on judicial discretion does not provide certainty as to whether (i) the applicant will be required to give a cross-undertaking or not; (ii) if a cross-undertaking is required, what the level of the undertaking will be; and (iii) how the court should determine what would be “prohibitively expensive for the applicant”. These uncertainties may mean that applicants wishing to seek interim relief may be dissuaded from doing so, because of the risk that they may be required to give cross-undertakings for damages, and thus face prohibitive expense. While recognizing it is ultimately for the Party concerned to decide how to implement this provision in its national law, the Committee notes that the simplest way to ensure compliance may be to provide that, when interim relief is sought in an Aarhus claim, no cross-undertaking will be required. Then the sole question for the judge is whether the injunctive relief sought is itself appropriate.
5. With respect to Scotland, the Committee has not been informed of any measures that the Party concerned has taken to ensure that applicants do not face prohibitive expense when seeking interim interdicts in court procedures subject to article 9 due to a requirement to give a cross-undertaking for damages before such an interdict would be granted. In order to ensure a clear, transparent and consistent framework to implement the Convention as required by article 3, paragraph 1, the Committee encourages the Party concerned to address this point in the Court of Session Rules or accompanying guidance.
6. In summary, the Committee welcomes the serious and constructive efforts made by the Party concerned to address the Committee’s finding, endorsed through paragraph 3(a) of decision IV/9i, that by failing to ensure that the costs for all court procedures subject to article 9 were not prohibitively expensive, and in particular by the absence of any clear legally binding directions from the legislature or judiciary to this effect, the Party concerned failed to comply with article 9, paragraph 4, of the Convention. However, as set out in the considerations above, the Committee is not convinced that the measures taken by the Party concerned in their current form sufficiently meet the requirement of the Convention to ensure that all court procedures subject to article 9 are not prohibitively expensive. Moreover, a number of aspects of the measures taken lack the necessary clarity to provide a clear, transparent and consistent framework to implement the Convention as required by article 3, paragraph 1.
7. **System as a whole sufficient “to remove or reduce financial […] barriers to access to justice**
8. In the light of the Committee’s above finding that the Party concerned has failed to take sufficient measures to ensure that the costs for all court procedures subject to article 9 in England and Wales, Scotland and Northern Ireland were not prohibitively expensive, the Committee finds that the Party concerned has failed to sufficiently consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice, as required by article 9, paragraph 5.
9. **Time limits for seeking judicial review**
10. In its findings on ACCC/C/2008/33, endorsed by the Meeting of the Parties through paragraph 3(c) of decision IV/9i, the Committee found that, by not ensuring clear time limits in England and Wales for the filing of an application for judicial review, and by not ensuring a clear date from when the time limit started to run, the Party concerned failed to comply with the requirement in article 9, paragraph 4, of the Convention for procedures subject to article 9 to be fair and equitable. The Committee recommended that the Party concerned review its rules regarding the time frame for the bringing of applications for judicial review to ensure that the legislative measures involved were fair and equitable and amount to a clear and transparent framework. Those recommendations were welcomed by the Meeting of the Parties through paragraph 4 of decision IV/9i and agreed by the Party concerned.

Clear time limits for the filing of an application for judicial review

1. In England and Wales, the procedural rules regarding timing in case of judicial review are set out in Rule 54 of the Civil Procedure Rules (CPR).[[23]](#footnote-23) CPR 54.5 (1) states that an application for judicial review must be filed: “(a) promptly; and (b) in any event not later than 3 months after the grounds to make the claim first arose”. According to case law considered by the Committee when making its findings on ACCC/C/2008/33, an application for judicial review filed under CPR 54.5 could be refused even if filed within three months if the Court determined that in view of all the circumstances it was not made “promptly”.[[24]](#footnote-24)
2. In its statement to the forty-first meeting, the Party concerned informed the Committee that following the decision by the Court of Justice of the European Union (CJEU) in the *Uniplex* case (C-296/08), the requirement that the application be made “promptly” was no longer applied in cases where a remedy for breach of an obligation or right under EU law is sought, including in many Aarhus cases.
3. The Committee welcomes this development as moving in the right direction, however, it regrets that it is not sufficient to meet the requirement in article 9, paragraph 4 that all procedures subject to article 9 be fair and equitable nor the requirement in article 3, paragraph 1, for a clear, transparent and consistent framework to implement the Convention. As conceded by the Party concerned, the change in jurisprudence resulting from the CJEU’s decision in *Uniplex* relates only to cases concerning the assertion of rights under EU law. The *Uniplex* decision thus does not ensure that the requirement that the application be made “promptly” is no longer applied in cases where the provision of national law allegedly contravened is not derived from EU law.
4. By letter of 19 September 2012, the Party concerned informed the Committee that it was considering whether there was a need to amend the Civil Procedure Rules governing time limits in judicial review applications so as to reflect recent court practice in England and Wales, and also Northern Ireland, following the CJEU’s decision in the *Uniplex* case. On the basis of the information before it, the Committee understands that to date, no such amendments have been made. The Committee strongly encourages the Party to do so, but in making the amendments, to bear in mind the Committee’s findings in paragraph 58 above, and thereby to ensure that the rules are amended to disapply the promptness requirement for all applications for judicial review within the scope of article 9 of the Convention, and not just those asserting rights derived from EU law.

Clear date from when the time limit started to run

1. In its progress report of 28 February 2013, the Party concerned stated that the overall time limit for judicial review is three months from when “the cause of action arose”. However, the Party has not put before the Committee any legislative or judicial directions that make clear at which point in a judicial review claim, the cause of action will be said to have arisen. Moreover, in an April 2013 paper prepared for a consultation process on reform of judicial review more generally, the Party said: “We have decided not to seek to clarify when the time limit starts to run in Judicial Review cases where the grounds giving rise to the claim are the result of an ongoing breach, relate to a delay in making a decision or taking action, or relate to a case where there have been multiple points at which decisions have been made.”[[25]](#footnote-25) The Committee finds that by not taking measures to ensure a clear date from when the time limit started to run, e.g. the date on which a claimant knew, or ought to have known of the act, or omission, at stake, the Party concerned remains in non-compliance with the requirement in article 9, paragraph 4, that procedures subject to article 9 be fair and equitable. Moreover, it remains in non-compliance with the requirement in article 3, paragraph 1, to provide a clear, transparent and consistent framework to implement the Convention.

**IV. Conclusions and recommendations**

**A. Main findings**

1. The Committee welcomes the constructive ongoing engagement of the Party concerned throughout the intersessional period with respect to the follow-up on decision IV/9i. Having considered the information available to it, however, the Committee concludes that, despite the Party’s serious and active efforts to implement the recommendations made by the Committee to the Party with its agreement and welcomed by the Meeting of the Parties through paragraph 4 of decision IV/9i, the Party concerned has not yet fully addressed the points of non-compliance identified in paragraph 3 (a)-(d) of decision IV/9i. The Committee thus finds that:
2. By not taking sufficient measures to ensure that the costs for all court procedures subject to article 9 in England and Wales, Scotland and Northern Ireland are not prohibitively expensive, and in particular, by not providing clear legally binding directions from the legislature or the judiciary to this effect, the Party concerned continues to fail to comply with article 9, paragraph 4, of the Convention;
3. The system as a whole still remains not such as “to remove or reduce financial […] barrier to access to justice”, as article 9, paragraph 5, of the Convention requires a Party to the Convention to consider;
4. By still not ensuring clear time limits for the filing of an application for judicial review nor a clear date from when the time limit started to run, the Party concerned continues to fail to comply with article 9, paragraph 4 of the Convention;
5. By not having taken the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement article 9, paragraph 4, the Party concerned continues to fail to comply with article 3, paragraph 1 of the Convention.

**B. Recommendations**

1. The Committee recommends that the Meeting of the Parties reaffirms its decision IV/9i adopted at its fourth session and requests the Party concerned to take urgent action to:
2. further review its system for allocating costs in all court procedures subject to article 9, and undertake practical and legislative measures to ensure that the allocation of costs in all such cases is fair and equitable and not prohibitively expensive;
3. further consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice;
4. further review its rules regarding the time frame for the bringing of applications for judicial review to ensure that the legislative measures involved are fair and equitable and amount to a clear and transparent framework; and
5. put in place the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement article 9, paragraph 4.
6. The Committee recommends to the Meeting of the Parties that it request the Party concerned to provide detailed progress reports to the Committee by 31 December 2014, 31 October 2015 and 31 October 2016 on the measures taken and the results achieved in implementation of the above recommendations.

1. Case C-260/11 R (on the application of Edwards and another v Environment Agency), judgement of 11 April 2013 [↑](#footnote-ref-1)
2. Practice Direction 45 <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part45-fixed-costs/practice-direction-45-fixed-costs>. The changes to the Practice Direction relating to Aarhus Convention claims came into force on 1 April 2013. [↑](#footnote-ref-2)
3. Regulation 3(3). [↑](#footnote-ref-3)
4. Court of Session Rules, Chapter 58A http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules, [↑](#footnote-ref-4)
5. Civil Procedure Rules (England and Wales), s 45.41, section: VII Costs Limits in Aarhus Convention Claim. [↑](#footnote-ref-5)
6. The Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013), section 2(1) [↑](#footnote-ref-6)
7. Council Directive 85/337/EEC of 27th June 1985 on the assessment of the effects of certain public and private projects on the environment [↑](#footnote-ref-7)
8. Directive 2008/1/EC of the European Parliament and of the Council of 15th January 2008 (concerning integrated pollution prevention and control) [↑](#footnote-ref-8)
9. Court of Session Rules, http://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules [↑](#footnote-ref-9)
10. Civil Procedure Rules (England and Wales), rule 45.44 3(a) and (b) [↑](#footnote-ref-10)
11. The Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013, section 4(3) [↑](#footnote-ref-11)
12. (Sullivan I): Ensuring access to environmental justice in England and Wales: Report of the Working Group on Access to Environmental Justice (May 2008), Executive Summary, page 3, <http://www.wwf.org.uk/filelibrary/pdf/justice_report_08.pdf> [↑](#footnote-ref-12)
13. Letter from the Party concerned of 17 Sept 2012 [↑](#footnote-ref-13)
14. DEFRA letter of 28 Feb 2013 above n 32, at 8(vi) [↑](#footnote-ref-14)
15. <https://www.gov.uk/check-legal-aid> and <http://www.adviceguide.org.uk/england/law_e/law_legal_system_e/law_taking_legal_action_e/help_with_legal_costs_legal_aid.htm> [↑](#footnote-ref-15)
16. *R. (Garner) v Elmbridge Borough Council* [2010] EWCA Civ 1006), at para 58. [↑](#footnote-ref-16)
17. Chapter 58A.3 (3) [↑](#footnote-ref-17)
18. Regulation 3(7) [↑](#footnote-ref-18)
19. CPR 52.9A(1) and (2) [↑](#footnote-ref-19)
20. CPR 52.9A(3) [↑](#footnote-ref-20)
21. http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part25/pd\_part25a#5.1 [↑](#footnote-ref-21)
22. Regulation 5. [↑](#footnote-ref-22)
23. Civil Procedure Rules, Part 54, http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part54#54.5 [↑](#footnote-ref-23)
24. See *Andrew Finn–Kelcey v. Milton Keynes Council and Others* [2008] EWCA Civ 1067. [↑](#footnote-ref-24)
25. *Reform of Judicial Review: the Government Response* (April 2013), page 6, para 15 https://consult.justice.govuk/digital-communications/judicial-review-reform/results/judicial-review-response.pdf [↑](#footnote-ref-25)