

## **ECONOMIC COMMISSION FOR EUROPE**

### **MEETING OF THE PARTIES TO THE CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS**

Fourth session

Chisinau, 29 June-1 July 2011

Procedures and mechanisms facilitating  
the implementation of the Convention:

Reports on implementation

### **IMPLEMENTATION REPORT SUBMITTED BY THE UNITED KINGDOM**

*Article 10, paragraph 2, of the Convention requires the Parties, at their meetings, to keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties. Through decision I/8, the Meeting of the Parties established a reporting mechanism whereby each Party is requested to submit a report to each meeting of the Parties on the legislative, regulatory and other measures taken to implement the Convention, and their practical implementation, according to a reporting format annexed to the decision. For each meeting, the secretariat is requested to prepare a synthesis report summarizing the progress made and identifying any significant trends, challenges and solutions. The reporting mechanism was further developed through decision II/10, which addressed, inter alia, the issue of how to prepare the second and subsequent reports.*

## **I. PROCESS BY WHICH THE REPORT HAS BEEN PREPARED**

1. The process of preparing the implementation report of the United Kingdom (UK) under the Convention, including consultation with stakeholders at the national level, is extremely important to the UK. This Report has been prepared by the Department for Environment, Food and Rural Affairs (Defra), which is the lead UK department for the Aarhus Convention, in conjunction with other government departments and the Devolved Administrations in Scotland, Wales and Northern Ireland.

2. The UK Government consulted on this Report from 15 October to 17 November 2010. The consultation applied to England, Wales, Northern Ireland and Scotland and was publicly available on the Defra website (<http://defraweb/corporate/consult/closed.htm>). In parallel to this, written views from organisations with a particular interest in the Convention were also sought. The types of organisations consulted covered a range of interests, such as environmental non-governmental organisations (NGOs), public authorities, think tanks and research bodies. Where appropriate, their views have been reflected in the drafting of this report.

## **II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT**

3. England and Wales, and Northern Ireland, respectively have legal systems which operate in a similar way in relation to all three pillars of the Convention.

4. Scotland has a system separate and different from those operating in England and Wales and Northern Ireland. It should also be noted that, with effect from 12 April 2010, justice functions, including matters relating to court process, were devolved to the Department of Justice in Northern Ireland.

## **III. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE GENERAL PROVISIONS IN PARAGRAPHS 2, 3, 4, 7 AND 8 OF ARTICLE 3**

### **Article 3, paragraph 2**

5. Several general measures have been taken in the UK to ensure that officials and authorities behave properly in their relations with the public, including by providing appropriate assistance and guidance. Expected standards of conduct and service delivery have been extensively codified. Examples include the Civil Service Code of Conduct (<http://www.civilservice.gov.uk/about/values/cscodex/index.aspx>) and the “Customer Service Excellence” scheme ([www.cse.cabinetoffice.gov.uk](http://www.cse.cabinetoffice.gov.uk)). A single, searchable Internet portal ([www.direct.gov.uk](http://www.direct.gov.uk)) provides access to all relevant information and services provided by government departments, agencies, local authorities and other relevant bodies, including contact details for assistance and guidance on environmental matters.

6. Defra has a general webpage which summarises the different provisions it has in place to assist the public in seeking access to information, and to facilitate public participation in decision-making and consultation procedures (<http://www.defra.gov.uk/corporate/policy/opengov/>). This includes a Code of Practice (<http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>) which provides guidance to public authorities on best practice in providing access to environmental information. In particular, Defra has an accessibility commitment that it will present information clearly, and create an open and transparent department (<http://www.defra.gov.uk/corporate/policy/opengov/defra/accessibility.htm>).
7. The Information Commissioner's Office provides information on the Freedom of Information Act and the Data Protection Act ([www.ico.gov.uk/](http://www.ico.gov.uk/)), and also provides a range of advice and training products ([http://www.ico.gov.uk/tools\\_and\\_resources.aspx](http://www.ico.gov.uk/tools_and_resources.aspx)). The Scottish Information Commissioner (<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.asp>) has similar powers under the Freedom of Information (Scotland) Act, although data protection is not devolved and remains with the UK Information Commissioner.
8. Defra has provided extensive information on public access to environmental information under the Environmental Information Regulations 2004 (<http://www.defra.gov.uk/corporate/policy/opengov/eir/index.htm>). The Defra website contains detailed guidance on the Environmental Information Regulations 2004, including leaflets, posters and slides to be used for explaining and publicising access rights to both public authority staff and the general public. Defra also has an Environmental Information Unit, which provides an email helpline and a team via Defra's telephone helpline from which members of the public and public authorities can obtain guidance on Environmental Information access rights. This team also delivers workshops and presentations to public authority staff to promulgate environmental information access rights.
9. Defra and the Department for Energy and Climate Change (DECC) have signed up to a Consultation Code of Practice, produced by the Better Regulation Executive (<http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>), which outlines what the public can expect from the Government when it runs formal, written consultation exercises on matters of policy or policy implementation.
10. A guide to the procedures involved in environmental impact assessment (EIA) are published by the Department for Communities and Local Government (DCLG): (<http://www.communities.gov.uk/publications/planningandbuilding/environmentalimpactassessment>)
11. The Government provides information and links (<http://www.justice.gov.uk/>) on the provision of effective and accessible justice for all, in particular via the Community Legal Advice website (<http://www.communitylegaladvice.org.uk/index.jsp>), which gives guidance on how to access legal services, guidance on eligibility for publicly-funded advice services and information to help resolve problems in a range of categories of law.
12. The work of officials and public authorities is complemented by the work of several independent voluntary bodies, including Citizens Advice, which provides the gateway to a

nationwide network of local Citizens Advice Bureaux ([www.adviceguide.org.uk/](http://www.adviceguide.org.uk/)) providing practical advice on legal system and individuals' rights.

### Article 3, paragraph 3

13. The Government's central internet portal for public services ([www.direct.gov.uk](http://www.direct.gov.uk)) contains links to the websites of Defra ([www.defra.gov.uk](http://www.defra.gov.uk)), DECC ([www.decc.gov.uk](http://www.decc.gov.uk)) and the Environment Agency, ([www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)) which is the executive agency for environmental issues. These sites contain information and advice relevant to all areas of environmental policy. There are also links to more detailed sources of information on particular subject areas.

14. Environmental education begins at an early age and features in the National Curriculum in schools. Information is available from the Department for Education ([www.education.gov.uk](http://www.education.gov.uk)) and National Curriculum online (<http://curriculum.qcda.gov.uk/>). In addition to environmental education, the curriculum includes a citizenship programme, which encourages young people to participate in the democratic life of their school and the wider community.

15. Various environmental bodies, enforcement agencies and other organisations run specific environmental awareness programmes, sometimes in conjunction with schools, for example:

(a) The Environment Agency's flood awareness [campaign educates those at risk of flooding, helping them to protect their property and prepare for flood incidents.](#)

(<http://www.environment-agency.gov.uk/news/122330.aspx?page=9&month=8&year=2010>);

(b) The range of advice and training products offered by the Information Commissioner's Office (<http://www.ico.gov.uk/>);

(c) Local authority initiatives such as the campaigns run by Southwark Council on sustainability and energy saving for schools;

(<http://www.southwark.gov.uk/environmentaleducation>)

(d) DCLG supports a range of initiatives to promote strong, active and empowered communities, capable of defining problems and tackling them together or influencing public investment to address their priorities. Examples include the Empowerment Fund, and support to the Environmental Law Foundation (ELF), which helps people use the law to protect and improve their local environment and quality of life. ELF identifies environmental issues that concern under-represented and marginalised communities and, where they can usefully intervene, assists in bringing about focused participation in decision-making (<http://www.elflaw.org/site/>). Other examples of engaging communities include participatory budgeting ([www.participatorybudgeting.org.uk](http://www.participatorybudgeting.org.uk)) and neighbourhood agreements ([http://www.oldham.gov.uk/green\\_clean\\_ndc\\_agreement\\_a1\\_panels.pdf](http://www.oldham.gov.uk/green_clean_ndc_agreement_a1_panels.pdf)).

16. Environmental education and awareness are widely integrated into all areas of UK public policy. Examples include:

(a) The role of education for sustainable development in the national education curriculum (<http://curriculum.qca.org.uk/key-stages-3-and-4/cross-curriculum-dimensions/global-dimension/index.aspx>);

(b) The inclusion of the principles of “ensuring a just society” and “promoting good governance” which are reflected in the approach of the UK to sustainable development. (<http://www.defra.gov.uk/sustainable/government/>).

#### **Article 3, paragraph 4**

17. There are no general requirements for the recognition of associations, organisations or groups promoting environmental protection in the UK. A broadly liberal and inclusive approach is taken to their participation in public life, including in relation to environmental policy issues.

18. Representatives of consumer groups and women’s groups, as well as individuals acting in an individual capacity, are included in the current membership of environmental stakeholder groups (such as the Chemicals Stakeholder Forum), policy advisory bodies or as lay or expert members, as appropriate, on specialist advisory committees (such as the Advisory Committee on Hazardous Substances or the Pesticides Residue Committee). Further information can be found at (<http://ww2.defra.gov.uk/corporate/about/with/customer/>).

19. A wide range of stakeholders are routinely involved in public consultations on policy issues, which are conducted across government according to a common administrative code: (<http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>)

20. Direct financial support to environmental associations or groups takes a variety of forms. For example, through the Greener Living Fund Defra has invested £6m to support a small number of civil society organisations who have developed specific interventions to help people live greener more sustainable lives. The Greener Living Fund built on experience of a number of funds which the Department operated up to 2008, including Every Action Counts, the Environmental Action Fund and the Climate Change Fund (<http://www.defra.gov.uk/corporate/about/with/third-sector/greener-living-fund.htm>).

21. Indirect support for environmental associations or groups includes exemption from direct and indirect taxes for qualifying fund-raising activities by registered charities, as well as tax relief on charitable donations from individuals. The National Charities Database ([www.charitiesdirect.com](http://www.charitiesdirect.com)) currently records more than 1,000 registered charities that include the pursuit of environmental aims within their objectives.

#### **Article 3, paragraph 7**

22. As a member of the European Union, the UK supports the appropriate application of the Convention to European Union legislation and bodies. It has also supported, and continues to support, the development of the participatory principles of the Convention and of Principle 10 of the 1992 Rio Declaration in international forums, such as the World Summit on Sustainable Development in 2002, the Environment for Europe process, as well

as in specific environment agreements, such as the Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

23. Examples of the active promotion by the UK at the international level of the practical application of the Convention's underlying principles include:

- (a) A UK-funded workshop and publication of a *Handbook of Good Practices in Public Participation at Local Level* ([www.unece.org/env/pp/newcastle.handbook.htm](http://www.unece.org/env/pp/newcastle.handbook.htm));
- (b) A partly UK-funded *Handbook on Access to Justice* ([www.unece.org/env/pp/a.to.j/handbook.final.pdf](http://www.unece.org/env/pp/a.to.j/handbook.final.pdf));
- (c) Membership of the Partnership for Principle 10 ([www.pp10.org](http://www.pp10.org)), under which the UK Foreign and Commonwealth Office donated approximately £1 million for the period 2007-2008 for various projects throughout the world which aim to improve access to information, public participation and access to justice in environmental matters;
- (d) The UK Environment for Europe Fund (2003-2008) (<http://webarchive.nationalarchives.gov.uk/20081023131051/http://www.defra.gov.uk/environment/internat/enveurofund/index.htm>) which aimed to promote environmental protection and sustainable development in Central Europe and Eastern Europe, Caucasus and Central Asia (EECCA subregion), and to support activities of environmental organisations in these countries;
- (e) Sponsorship by Defra of a collaborative project between the United Nations Environment Programme (UNEP) and the UK Environment Agency, to utilise the Agency's experience and expertise in GIS<sup>1</sup> based electronic information services to help build capacity in the EECCA region for efficient and effective provision of environmental information;
- (f) The contribution of funding by the UK Department for International Development (DfID) to an independent study and the development of a practical guide on public participation and the Cartagena Protocol on Biosafety ([www.unep.ch/biosafety/old\\_site/development/devdocuments/PublicParticipationIDS.pdf](http://www.unep.ch/biosafety/old_site/development/devdocuments/PublicParticipationIDS.pdf) or [bch.cbd.int/database/record-v4.shtml?documentid=41530](http://bch.cbd.int/database/record-v4.shtml?documentid=41530));
- (g) DCLG part funded [www.communityplanning.net](http://www.communityplanning.net). This website, originally funded by DfID, provides detailed information and case studies on how ordinary people can effectively influence the planning and management of their environment;
- (h) In June 2010, the United Kingdom became a signatory of the Charter of the Regional Environment Centre for Central and Eastern Europe, an international organisation which supports the exchange of environmental information, encourages public participation in environmental decision-making and promotes cooperation between government, NGOs and other stakeholders. Defra has previously donated to REC initiatives, and the Foreign and Commonwealth Office has funded various regional initiatives through Embassies in REC beneficiary countries. REC already works with UK partners via the British Embassy in Budapest and The Prince of Wales' Corporate Leaders Group (<http://www.rec.org/about.php?section=mission>);
- (i) NGOs and stakeholder groups contributed to the development of UK positions for negotiations on the EU Illegal Timber (Due Diligence) Regulation, culminating in **regular**

---

<sup>1</sup> Geographical information system.

meetings between key stakeholders and the Secretary of State for Environment, Food and Rural Affairs to discuss the prohibition element of the Regulation. This was complemented by more irregular meetings with a range of stakeholders representing small and medium-sized enterprises (SMEs) and specialist trade groups

(j) Defra officials convene an expert group for NGOs with an interest in the International Whaling Commission (IWC). The meetings are used to shape the UK's official position and two NGO representatives are nominated by the group to join the UK delegation for the IWC's annual meeting.

(k) In advance of the Conference of the Parties to the Convention on Biological Diversity, several meetings were held to allow interested parties to input their views into UK positions for the COP10 in Nagoya, notably on the Access and Benefit Sharing Protocol.

(l) DECC conducts regular meetings with stakeholder organisations in order to take their views ahead of international meetings at all levels of the department; from Secretary of State and Ministerial level to official level contacts. DECC holds meetings on topics including fast start finance, long term climate finance, MRV, REDD and forestry, governance and architecture, carbon markets, adaptation, technology and IPR at appropriate junctures and according to international milestones. In response to the concerns of NGOs and the recommendations of the PPIF taskforce, there is a contact point in the UK delegation to the UNFCCC negotiations with whom stakeholders can raise any concerns about public participation in the meeting.

### **Article 3, paragraph 8**

24. The UK has strengthened the access rights to information through powers of enforcement given to the office of the Information Commissioner (ICO) and the Tribunals Service. The ICO examines complaints from members of the public who feel that their request for information has not been dealt with properly by the public authority. The First Tier Tribunal (Information Rights), Upper Tribunal and, ultimately, the Supreme Court give further and higher levels of appeal. The ICO, Tribunals and the Supreme Court have powers to order public authorities to release information and both appeal procedures are free of charge. The Scottish Information Commissioner has broadly similar powers, although the appeal procedure operates without a tribunal.

25. We treat all members of the public equally, regardless of nationality, citizenship and domicile. Any legal person has equal access to the courts.

26. Several legal and administrative measures are available in the UK to protect people from penalization, persecution or harassment in pursuing matters covered by the Convention. Some of these measures relate to the avoidance of discrimination against particular members of the public, such as at work or in the provisions of services (e.g., the Race Relations Act 1976, or the Disability Discrimination Act 1995). Others have more general application, or are based on fundamental human rights. Examples include the Protection from Harassment Act 1997, which makes it a criminal offence to behave in a way amounting to the harassment of another person, or the Human Rights Act 1998, which makes rights from the European Convention of Human Rights enforceable in UK courts. ([http://www.direct.gov.uk/en/Governmentcitizensandrights/Yourrightsandresponsibilities/DG\\_4002951](http://www.direct.gov.uk/en/Governmentcitizensandrights/Yourrightsandresponsibilities/DG_4002951))

**IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 3**

27. No obstacles have been encountered.

**V. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE GENERAL PROVISIONS OF ARTICLE 3.**

28. Not applicable.

**VI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 3**

29. Please see information provided above.

**VII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO ENVIRONMENTAL INFORMATION IN ARTICLE 4**

30. The provisions of Articles 4 and 5 of the Convention fall within the competence of the European Union, as do the related matters covered by Article 9, Paragraph 1, of the Convention.

31. On 28 January 2003, ‘Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC was adopted (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:EN:NOT>). Directive 90/313/EEC had previously established measures for the exercise of the right of the public to access environmental information.

32. The preamble of Directive 2003/4/EC states that “Provisions of Community law must be consistent with that [Aarhus] Convention with a view to its conclusion by the European Community” (paragraph 5) and that “Since the objectives of the proposed Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty.” (paragraph 23.)

33. The European Union has therefore implemented article 4 of the Convention through this legislation. The UK was required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 February 2005. To do this, Defra produced new domestic Environmental Information Regulations (SI 2004/3391) which are the statutory provisions relating to public access to environmental information in England, Wales and Northern Ireland (<http://www.defra.gov.uk/corporate/policy/opengov/eir/index.htm> ).



34. In Scotland, separate arrangements have been made for Environmental Information (Scotland) Regulations (SSI 2004/520) ([www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm](http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm))

35. The Freedom of Information Act 2000 (and the 2002 Scottish Act) took effect on 1 January 2005, and has brought about significant changes to access to information held by public authorities ([http://www.ico.gov.uk/for\\_organisations/freedom\\_of\\_information\\_guide.aspx](http://www.ico.gov.uk/for_organisations/freedom_of_information_guide.aspx)).

36. These legislative measures ensure compliance with the provisions mentioned in the above question.

#### **VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 4**

37. No obstacles encountered.

#### **IX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 4**

38. The Ministry of Justice publishes statistics and reports on the performance of central government in the provision of access to information at: <http://www.justice.gov.uk/freedomofinformationquarterly.htm>

#### **X. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4**

39. Please see information provided above.

#### **XI. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON THE COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION IN ARTICLE 5**

40. The provisions of Articles 4 and 5 of the Convention fall within the competence of the European Union, as do the matters covered by Article 9, paragraph 1.

41. On 28 January 2003, 'Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC' was adopted (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:EN:NOT>). Directive 90/313/EEC had previously established measures for the exercise of the right of the public to access environmental information.

42. The preamble of Directive 2003/4/EC states that "Provisions of Community law must be consistent with that [Aarhus] Convention with a view to its conclusion by the European Community" (paragraph 5) and that "Since the objectives of the proposed

Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty.” (paragraph 23.)

43. The European Union has therefore implemented Articles 4 and 5 of the Convention through this legislation. The UK was required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 February 2005. To do this, the Department for Environment, Food and Rural Affairs produced new domestic Environmental Information Regulations, which are the statutory provisions relating to public access to environmental information in England, Wales and Northern Ireland. (<http://www.defra.gov.uk/corporate/policy/opengov/eir/index.htm>)

44. In Scotland, separate arrangements have been made for Environmental Information Regulations. (<http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm>)

45. A new Public Sector Transparency Board, established in June 2010 will drive forward the Government’s transparency agenda for releasing key public datasets and setting open data standards across the public sector. The intention is to make public data available and easy to find through a single easy to use online access point ([data.gov.uk](http://data.gov.uk)). One example of the data set emerging from this process is MAGIC a web-based interactive map service to bring together environmental information from across government (<http://www.magic.gov.uk>).

46. In addition:

- (a) The Department for Environment, Food and Rural Affairs (<http://www.defra.gov.uk>);
- (b) The UK Environment Agency (<http://www.environment-agency.gov.uk>);
- (c) The Scottish Executive (<http://www.scotland.gov.uk/Topics/Environment>);
- (d) The Welsh Assembly Government (<http://new.wales.gov.uk/topics/environmentcountryside/?lang=en>);
- (e) The Department of the Environment in Northern Ireland (<http://www.doeni.gov.uk/>) publishes extensive amounts of information relating to the environment.

### **Article 5, paragraphs 6 and 8**

47. The UK Government believes that changes to the way we produce, use and dispose of products and provide services can result in big reductions in the major environmental impacts. The Government’s aim is to develop more integrated approaches to tackling product impacts right across their life cycle. This involves identifying product sectors with the most significant impacts and finding the best combination of market measures to bring about improvements.

48. These measures include ways of promoting consumer demand for more sustainable products, such as raising public awareness and developing tools to improve green claims and other labelling. Information on consumer products and the environment is available from DirectGov (<http://www.direct.gov.uk/en/Environmentandgreenerliving/index.htm>)

49. The Advisory Committee on Consumer Products and the Environment provides advice to the Government on the development and implementation of policy in this area. (<http://ecolabel.defra.gov.uk/history.htm>)

50. Other bodies which provide information to the public, to enable them to make informed environmental choices about products and services, include:

- (a) The Food Standards Agency (<http://www.food.gov.uk/>);
- (b) The Department for Energy and Climate Change (<http://www.decc.gov.uk/>);
- (c) The Department for Business, Innovation and Skills ([www.bis.gov.uk](http://www.bis.gov.uk/));
- (d) The Trading Standards Institute (<http://www.tradingstandards.gov.uk/>);
- (e) The Carbon Trust, which helps businesses and the public sector cut carbon emissions (<http://www.carbontrust.co.uk/Pages/Default.aspx>).

#### **Article 5, paragraph 9**

51. The Protocol on Pollutant Release and Transfer Registers (PRTRs) was adopted during the fifth “Environment for Europe” Ministerial Conference in May 2003. The European Union adopted a Regulation on the establishment of a European Pollutant Release and Transfer Register (E-PRTR), which came into force on 24 February 2006. The UK ratified the Protocol on 31 July 2009.

### **XVII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5**

52. No obstacles have been encountered.

### **XIII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 5**

53. Defra has published a guide to help public authorities meet their responsibilities relating to the dissemination of environmental information.  
(<http://www.defra.gov.uk/corporate/policy/opengov/eir/pdf/article7report.pdf>)

### **XIV. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5**

54. See the relevant sections above.

**XV. LEGISLATIVE, REGULATORY AND OTHER MEASURES  
IMPLEMENTING THE PROVISIONS ON PUBLIC PARTICIPATION  
IN DECISIONS ON SPECIFIC ACTIVITIES IN ARTICLE 6**

55. The provisions of Articles 6, 7 and 9, Paragraph 2, of the Convention fall within the competence of the European Union, as do the related matters covered by Article 9, Paragraphs 2 and 4.

56. On 26 May 2003, “Directive 2003/35/EC of the European Parliament and of the Council, providing for public participation in respect of the drawing up of plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC” was adopted (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0035:EN:NOT>).

57. Directive 85/337/EEC concerns the assessment of the effects of certain public and private projects on the environment (<http://eur-lex.europa.eu/Notice.do?val=115894:cs&lang=en&list=172228:cs,115894:cs,&pos=2&page=1&nbl=2&pgs=10&hwords=&checktexte=checkbox&visu=#texte>) and Directive 96/61/EC concerns integrated pollution prevention and control (IPPC) (<http://eur-lex.europa.eu/Notice.do?val=344344:cs&lang=en&list=357668:cs,357665:cs,347098:cs,318023:cs,346670:cs,344345:cs,344344:cs,&pos=7&page=1&nbl=7&pgs=10&hwords=&checktexte=checkbox&visu=#texte>).

58. The preamble of Directive 2003/35/EC states that “Community law should be properly aligned with that Convention with a view to its ratification by the Community”, (para. 5) and that “Since the objective of the proposed action ...cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiary as set out in Article 5 of the Treaty” (para. 12).

59. The European Union has therefore implemented Articles 6, 7 and 9, Paragraph 2, of the Convention through this legislation. The UK has brought into force the laws, regulations and administrative provisions necessary to comply with this Directive. A number of changes have been made to existing domestic legislation, which are:

- a. The Pollution Prevention and Control (Public Participation) (England and Wales) Regulations 2005;
- b. The Environment Act 1995 (c.25);
- c. Environmental Protection Act 1990 (c.43);
- d. The Pollution Prevention and Control (Miscellaneous Amendments) Regulations (Northern Ireland) 2006;
- e. Amendment of Pollution Prevention and Control Ordinance 2001;
- f. Integrated Pollution Control and Air Pollution Control by Local Authorities;
- g. Environmental Protection: The Pollution Prevention and Control (Public Participation etc.) (Scotland) Regulations 2005;
- h. The Offshore Combustion Installations (Prevention and Control of Pollution) (Amendment) Regulations 2007;
- i. Town and Country Planning Act 1990 (c 8);
- j. Town Planning (Environmental Impact Assessment) Regulations 2000;

- k. The Town and Country Planning (Development Plan) (Amendment) Regulations 1997
- l. The Town and Country Planning (Development Plan) Regulations 1991;
- m. The Town and Country Planning (Local Development) (England) Regulations 2004;
- n. The Town and Country Planning (Regional Planning) (England) Regulations 2004;
- o. The Town and Country Planning (Scotland) Act 1997 c 8;
- p. The Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983;
- q. The Town and Country Planning (Transitional Arrangements) (England) Regulations 2004;
- r. The Town Planning (Environmental Impact Assessment) (Amendment) Regulations 2006;
- s. The Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2006;
- t. The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2006
- u. The Town and Country Planning (Environmental Impact Assessment) (Amendment) (England) Regulations 2008
- v. Planning Act 2008.
- w. [The Infrastructure Planning \(Environmental Impact Assessment\) Regulations 2009](#)
- x. The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
- y. Infrastructure Planning (Examination Procedures) Rules 2010
- z. Infrastructure Planning (Interested Parties) Regulations 2010
- aa. Infrastructure Planning (Decisions) Regulations 2010
- bb. Infrastructure Planning (Compulsory Acquisition) Regulations 2010
- cc. The Town & Country Planning (Development Management Procedure) (England) Order 2010
- dd. The Environment Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2005
- ee. The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007;
- ff. The Environmental Impact Assessment and Natural habitats (extraction of minerals by marine dredging) (Wales) Regulations 2007;
- gg. The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006;
- hh. The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006;
- ii. The Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007
- jj. The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 2007
- kk. The Environmental Impact Assessment (Forestry) (England and Wales) (Amendment) Regulations 2006;
- ll. The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2006;
- mm. The Environmental Impact Assessment (Scotland) Amendment Regulations 2006;
- nn. The Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England)(Amendment) Regulations 2005;

- oo. The Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (Wales) (Amendment) Regulations 2007;
- pp. The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007;
- qq. The Gas Transporter Pipeline Works (Environmental Impact Assessment) (Amendment) Regulations 2007;
- rr. The Harbour Works (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2007;
- ss. The Highways (Environmental Impact Assessment) Regulations 2007;
- tt. The Marine Works (Environmental Impact Assessment) Regulations 2007;
- uu. The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007;
- vv. Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006;
- ww. Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) Regulations (Northern Ireland) 2006;
- xx. The Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations 2006;
- yy. Statutory Rule 2006 No. 34 Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006;
- zz. The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2007;
- aaa. The Pipeline Works (Environmental Impact Assessment) (Amendment) Regulations 2007;
- bbb. The Water Resources (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2006;
- ccc. The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006;
- ddd. The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) (Amendment) Regulations 2007;
- eee. The Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 2007.

#### **Article 6, paragraph 1**

60. The obligations under Part (a) of this paragraph are satisfied by elements of our national regulations which implement the Community Directive on Integrated Pollution Prevention and Control Regulations 2000 (<http://www.legislation.gov.uk/uksi/2000/1973/contents/made>) and Environmental Impact Assessment (EIA) Regulations 1999 ([www.opsi.gov.uk/si/si1999/19990293.htm](http://www.opsi.gov.uk/si/si1999/19990293.htm)). The EIA Regulations 1999 were prepared with the Convention in mind, although the UK was not a Party at that time. In the UK, all projects likely to have a significant effect on the environment are subject to EIA procedures (according to EC Directive 85/337).

61. In November 2008 the UK parliament passed new legislation in the form of The Planning Act 2008. This Act provides for a separate body, the Infrastructure Planning Commission, (<http://infrastructure.independent.gov.uk/>) to consider applications for development consent for major infrastructure projects. To ensure that the UK complies

with the requirements of 85/337/EC new regulations have also been enacted. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ensure that these applications are considered in accordance with the principles enshrined in the Directive. In the case of major infrastructure projects there are a number of provisions in The Planning Act 2008 which require an applicant to consult with the public (section 47) and to publicise the proposed application (section 48) and to take account of responses to consultation and publicity (section 49). In addition, the Infrastructure Planning Commission is required to consider the adequacy of consultation (section 55) when deciding whether it should accept an application. The specific requirements have been prescribed in The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

### **Article 6, paragraph 11**

62. In March 2001 the European Union adopted Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms (GMOs) and repealing Council Directive 90/220/EEC. ([http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=Directive&an\\_doc=2001&nu\\_doc=18](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2001&nu_doc=18)). The Directive is implemented in the UK by part VI of the Environmental Protection Act 1990 and regulations made under that Act (e.g. in respect of England and Wales, the GMOs (Deliberate Release) Regulations 2002: ([www.opsi.gov.uk/SI/si2002/20022443.htm](http://www.opsi.gov.uk/SI/si2002/20022443.htm))). Defra, the Scottish Executive and the Welsh Assembly Government have functions and responsibilities in relation to the deliberate release of GMOs.

## **XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6**

63. No information was provided under this heading.

## **XVII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6**

64. Fifteen Coastal Local Authorities have become ‘pathfinders’ under the ‘Coastal Change Pathfinders’ Programme, supported by a fund totalling £11 million. Working in partnership with their communities, the pathfinders are road-testing new and innovative approaches to plan for and manage change on the coast. Local authorities are given the opportunity to test different approaches, and the local community are involved in the process in order to help them adapt to a changing coast line.

## **XVIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6**

65. See the relevant sections above.

**XIX. PRACTICAL AND/OR OTHER PROVISIONS MADE FOR THE PUBLIC TO PARTICIPATE DURING THE PREPARATION OF PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT PURSUANT TO ARTICLE 7**

66. The provisions of Articles 6, 7 and 9, Paragraph 2, of the Convention fall within the competence of the European Union, as do the matters covered by Article 9, Paragraphs 2 and 4.

67. On 26 May 2003, “Directive 2003/35/EC of the European Parliament and of the Council, providing for public participation in respect of the drawing up of plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC” was adopted.

([http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32003L0035](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32003L0035)).

68. Directive 85/337/EEC concerns the assessment of the effects of certain public and private projects on the environment (<http://eur-lex.europa.eu/Notice.do?val=115894:cs&lang=en&list=172228:cs,115894:cs,&pos=2&page=1&nbl=2&pgs=10&hwords=&checktexte=checkbox&visu=#texte>) and Directive 96/61/EC concerns integrated pollution prevention and control (<http://eur-lex.europa.eu/Notice.do?val=344344:cs&lang=en&list=357668:cs,357665:cs,347098:cs,318023:cs,346670:cs,344345:cs,344344:cs,&pos=7&page=1&nbl=7&pgs=10&hwords=&checktexte=checkbox&visu=#texte>).

69. The preamble of Directive 2003/35/EC states that “Community law should be properly aligned with that Convention with a view to its ratification by the Community”, (para. 5) and that “Since the objective of the proposed action ...cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiary as set out in Article 5 of the Treaty” (para. 12).

70. The European Union has therefore implemented Articles 6, 7 and 9, paragraph 2 of the Convention through this legislation, and has created a legal obligation on the UK, which ensures our compliancy with this Article.

71. The UK was required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 25 June 2005. The changes made to existing domestic legislation are listed below:

- (a) The Air Quality Limit Values (Amendment) (England) Regulations 2004;
- (b) The Air Quality Limit Values (Amendment) Regulations (Northern Ireland) 2004;
- (c) The Air Quality Limit Values (Scotland) Amendment Regulations 2005;
- (d) The Air Quality Limit Values (Wales) (Amendment) Regulations 2005;



- (d) The Environmental Assessment of Plans and Programmes Regulations 2004 (Statutory Instrument 2004 No 1633);
- (e) The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (Scottish Statutory Instrument No 258);
- (f) Environmental Assessment (Scotland) Act 2005, which came into force on 20 February 2006 and repealed the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004, except in relation to those plans and programmes in Scotland whose first formal preparatory act was on or before 19 February 2006;
- (g) The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (Welsh Statutory Instrument No 1656 (W.170));
- (h) The Environmental Assessment of Plans and Programmes Regulations (NI) 2004 (Statutory Rule 2004 No 280);
- (i) Part III of the Planning (NI) Order 1991;
- (j) Part III of the Planning (NI) Order 1991, as amended by S.I. 2003/430 (N.I.8);
- (k) The Waste and Contaminated Land (Northern Ireland) Order 1997;
- (l) The Planning (Control of Major-Accident Hazards) Regulations 1999;
- (m) The Planning (Development Plans) Regulations (NI) 1991;
- (n) The Planning (Development Plans) Regulations (NI) 1991 (S.R. 1991 No.119, as amended by S.R. 1994 No.394);
- (o) The Planning (Development Plans) Regulations (NI) 1991 No 119 as amended by S.R. 2004 No.438;
- (p) Parts 1 and 2 of, and Schedule 8 to, the Planning and Compulsory Purchase Act 2004;
- (q) Planning and Compensation Act 1991 (c 34);
- (r) Public Health (Air Quality) (Ozone) (Amendment) Rules 2005;
- (s) Public Health (Amendment No 2) Ordinance 2005 No 3510 of 29 December 2005, (No 71 of 2005);
- (t) The Nitrate (Public Participation etc.) (Scotland) Regulations 2005;
- (u) The Nitrates Action Programme Regulations (Northern Ireland) 2006;
- (v) The Protection of Water Against Agricultural Nitrate Pollution (Amendment) Regulations (Northern Ireland) 2005;
- (w) The Protection of Water Against Agricultural Nitrate Pollution (England and Wales) (Amendment) Regulations 2006;
- (x) The Transfrontier Shipment of Waste Regulations 2007;
- (y) The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006;
- (z) The Transport and Works (Assessment of Environmental Effects) Regulations 2006;
- (aa) Transport and Works (Scotland) Act 2007;

72. There are legal requirements to involve the public through out the preparation of local and regional plans, as outlined in the Planning and Compulsory Purchase Act 2004 and detailed in The Town and Country Planning (Regional Planning) (England) Regulations 2004; and the Planning Act 2008 (The Act) and detailed in The Town & Country Planning (Local Development) (England) (Amendment) Regulations 2008.

73. The Disability Discrimination Act 2005, Equality Act 2006, and Race Relations (Amendment) Act 2000 place duties on public authorities to promote disability gender and race equality, which includes requirements to involve or consult the various equalities strands in the work of the authority.

74. The Planning Act 2008 introduced changes to the planning regime for Nationally Significant Infrastructure Projects (NSIPs). The Act provides for a more efficient, transparent and accessible planning system for nationally significant transport, energy, water, waste and waste-water infrastructure projects. This new regime provides for the Government to produce National Policy Statements (NPSs) that integrate environmental, social and economic objectives and provide clarity on the need for infrastructure. The new regime aims to be more transparent and provide better opportunities for the public and local communities to get involved in decisions that affect them. There are three opportunities to get involved: in the debate about what national policy means for planning decisions; in the development of specific projects; and the examination of applications for development consent. NPSs are being produced in a rolling programme; information on the current status of NPSs can be found at [www.direct.gov.uk/en/homeandcommunity/planning/theplanningsystem](http://www.direct.gov.uk/en/homeandcommunity/planning/theplanningsystem).

75. Substantial modernisation of the planning system in Scotland was introduced through the Planning etc. (Scotland) Act 2006 and associated secondary legislation. This includes opportunities for local people to be more involved in the planning system and improvements designed to contribute to efficiency, effectiveness and sustainable economic development. More information can be found at (<http://www.scotland.gov.uk/Topics/Built-Environment/planning>).

## **XX. OPPORTUNITIES FOR PUBLIC PARTICIPATION IN THE PREPARATION OF POLICIES RELATING TO THE ENVIRONMENT PROVIDED PURSUANT TO ARTICLE 7**

76. Public participation in the preparation of plans that affect the environment is current practice in the UK. Defra, along with other government departments, has signed up to a Consultation Code of Practice, produced by the Better Regulation Executive (<http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>), which outlines what the public can expect from the Government when it runs formal, written consultation exercises on matters of policy or policy implementation. Procedures for public consultation in response to proposed government policies are consistent with the requirements of the Convention.

## **XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7**

77. No obstacles have been encountered.

**XXII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 7**

78. No information was provided under this heading.

**XXIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7**

79. See the relevant sections above.

**XXIV. EFFORTS MADE TO PROMOTE EFFECTIVE PUBLIC PARTICIPATION DURING THE PREPARATION BY PUBLIC AUTHORITIES OF EXECUTIVE REGULATIONS AND OTHER GENERALLY APPLICABLE LEGALLY BINDING RULES THAT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 8**

80. Public participation in the preparation of plans that affect the environment is current practice in the UK.

81. Defra has signed up to a Consultation Code of Practice, produced by the Better Regulation Executive (<http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>), which outlines what the public can expect from the Government when it runs formal, written consultation exercises on matters of policy or policy implementation. Procedures for public consultation in response to proposed government policies are consistent with the requirements of the Convention.

82. Consultation lies at the heart of Strategic Environmental Assessments (SEAs) and all public strategies, plans and programmes that are likely to result in significant environmental effects once implemented, must have their likely effects assessed within the terms of the Environmental Assessments (Scotland) Act 2005. In Scotland, detailed guidance in the form of an SEA Tool Kit has been published and is available to all responsible authorities.

83. Local government and other partners have a tradition of involving communities in decisions and services and there is a lot of good practice across the UK. Each local authority must prepare community strategies, which contain legal obligations for public participation.

Furthermore, a duty to involve came into force on the 1<sup>st</sup> April 2009 (Section 138 of the Local Government and Public Involvement in Health Act 2007). The aim of the duty is to embed a culture of engagement and empowerment. This means that authorities consider, as a matter of course, the possibilities for provision of information to, consultation with and involvement of representatives of local people across all authority functions. (<http://www.communities.gov.uk/documents/localgovernment/doc/930696.doc>) The Local Democracy, Economic Development and Construction Act 2009 extended the 'duty to involve' to a wider range of public bodies. Local planning authorities are required to

produce a statement of community involvement. This statement explains how a local planning authority will engage the public throughout the planning process, including in the determination of planning applications.

84. In addition to information contained in Article 3 and 7 DCLG funds Planning Aid Services. Planning Aid Services provides free, independent and professional help, advice and support on planning issues to people and communities who cannot afford to hire a planning consultant. The service operates across all regions of the UK.

**XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8**

85. No obstacles have been encountered.

**XXVI. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 8**

86. Not applicable.

**XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8**

87. See the relevant sections above.

**XXVIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO JUSTICE IN ARTICLE 9**

88. The following provisions govern this area of law in the UK.

89. Adequate and effective remedies, including injunctive relief in appropriate cases, are available. In England and Wales an applicant/claimant must demonstrate sufficient interest and an arguable case in law to access judicial review proceedings (see ref to where they meet the criteria laid down in national law). This “interest” is interpreted very widely.

90. In Scotland, the claimant must show both title and interest, which means that a party has to show that there is some legal capacity and a direct interest in the subject matter. Some changes have therefore been needed to the Scottish law as a result of the requirements of Directive 2003/35/EC that NGOs should be deemed to have sufficient interest to access review proceedings. These changes have been made in transposing Directive 2003/35/EC with Scottish Statutory Instruments 510/2005 and 614/2006.

91. Research evidence from the Commission<sup>2</sup> to underpin its draft Directive on access to justice in environmental matters (see <http://ec.europa.eu/environment/aarhus/index.htm>) puts the UK among those Member States that take an “extensive approach” to legal standing before the administrative courts. This analysis suggests that, in recent years, the English courts have given an expansive interpretation to the criterion of “sufficient interest” for obtaining a hearing before the courts. It gives examples of environmental cases taken by a wide variety of complainants, including established NGOs, ad hoc pressure groups and individuals reflecting a community concern, in which legal standing has been granted because of the relevance of wider public interests.

92. Although the total number of cases of this kind is low, the Commission’s research points out that its data on “court cases” do not include any of the matters dealt with by administrative review, such as under the planning system, or under statutory “environmental appeals”. The research recognises that such review systems play an important part in our system of environmental law, and may be equivalent to environmental actions taken in other Member States through the courts.

93. Further information on the court system can be found at <http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/index.htm>.

94. In addition to the procedures described above, the UK Government is also a strong supporter of alternative dispute resolution and has introduced initiatives to encourage and promote its use in all civil disputes.

#### **Article 9, paragraph 1**

95. Article 9, paragraph 1 is technically contingent on the obligations under pillar I, and the adopted Directive 2003/4/EC on public access to environmental information (which includes provisions on access to justice). The role of the Information Commissioner (and his Scottish Counterpart) under the Freedom of Information Act (and the equivalent Scottish Act) provides the relevant review facility for environmental information.

#### **Article 9, paragraph 2**

96. This paragraph is technically contingent on the obligations under Article 6, of the Convention and the adopted Directive 2003/35 on public participation in the drawing up of plans and programmes.

97. Under Article 9, paragraph 2 of the Convention, NGOs which promote environmental protection and which meet requirements under national law are deemed to have “sufficient interest” to engage in review procedures. In England, Wales and Northern Ireland, if the interest of an applicant is not direct or personal, but is a general or public interest, it will be for the courts to determine whether or not the applicant has standing in accordance with a number of factors including the level of public importance of the issues raised and the applicant’s relationship to those issues. S31(3) of the Senior Courts Act

---

<sup>2</sup>DE SADELEER, DROSS and ROLLER (2002), *Access to Justice in Environmental Matters: Final Report*, pp.22

1981 provides that the court shall not grant leave for application for judicial review, "unless it considers that the applicant has a **sufficient interest** in the matter to which the application relates". In determining whether public interest groups or NGOs specifically have sufficient interest to bring a challenge, the court will consider a number of factors including the merits of the challenge, the importance of vindicating the rule of law, the importance of the issue raised, the likely absence of any other responsible challenger, the nature of the breach and the role played by the group or body in respect of the issues in question. The criteria have come to be applied liberally; if an applicant has insufficient private interest in bringing an application, provided he or she raises a genuine and serious public interest, he or she will have standing.

98. In Scottish law, title (to be heard by a court) and interest (in the subject matter) is subject to substantive law, not only procedural rules. Scottish Statutory Instruments 510/2005 and 614/2006 transposing EU Directive 2003/35/EC included in secondary legislation provision ensuring environmental NGO and community or resident organisations' assured interest in all cases engaging the Directives covering pollution prevention and control, and strategic environmental assessments.

### **Article 9, paragraph 3**

99. If an applicant has a direct personal interest in the outcome of the claim, he will normally be regarded as having sufficient interest in the matter. The term "interest" includes any connection, association or interrelation between the applicant and the matter to which the application relates.

### **Article 9, paragraph 4**

100. We will treat any member of the public equally, regardless of nationality, citizenship and domicile. Any legal person has equal access to the courts. We believe that court fees for bringing a case are reasonable, for example the fees for bringing a judicial review in England and Wales are currently:

- (a) £50 to apply for permission;
- (b) £180 to bring a substantive case in the Administrative Court of the High Court, if permission is granted.

101. Court fees in Scotland are made separately. The current fee for petitioning the Court of Session is £170. In Scotland, there is no requirement to apply for permission to petition the Court for judicial review and, consequently, there is no associated fee to apply for permission.

102. . The fees for Judicial Review in Northern Ireland are £200 for a leave application and £200 for notice of motion if leave is granted.

103. The Government's firm view is that while it is right that there should be access to the courts, there is no automatic right of free access to the courts. Those who can afford to pay

---

fees should be expected to do so. It would not be appropriate for taxpayers to bear the full cost of civil proceedings when those who bring these proceedings can afford to pay. We continue to look for ways to improve access to justice and to provide fair and simple means of resolving disputes. These include helping people to help themselves through better advice and information or through mediation.

104. For England and Wales, Ministry of Justice has a court fees strategy that aims to deliver a fair system that makes best use of the taxpayer's money and protects access to justice through a well-targeted system of remissions for the less well-off. A remission is available to people who are in receipt of specified means tested benefits, people whose income is below a certain level or people whose financial commitments leave them with little or no disposable income. Public funding (formerly civil legal aid) is available for environmental cases and judicial review, subject to the statutory tests of the applicant's means and merits of the case and where no alternative source of funding is available. This enables us to target resources towards those who need them the most.

105. For public interest cases, the Legal Services Commission (LSC) ([www.legalservices.gov.uk/](http://www.legalservices.gov.uk/)) which administers the Legal Aid Scheme in England and Wales has revised its definition of Wider Public Interest. The LSC will regard a case as having Wider Public Interest where it is satisfied that:

- (i) the case has the potential to produce real benefits for individuals other than the client (other than benefits to the public at large which normally flow from proceedings of the type in question); and
- (ii) the case is considered on its particular facts to be an appropriate case to realise those benefits.

106. For Judicial Review proceedings funding is not normally available where the prospects of success are assessed as "borderline" (i.e. there are difficult disputes of fact, law or expert evidence, it is not possible to say that Prospects of Success are better than 50%). However, funding is still available for 'borderline' cases which concern matters of Significant Wider Public Interest.

107. In addition in April 2010 the rules were changed so that legal aid would only be granted for judicial review cases where the claim would bring real benefits for the applicant or the applicant's family. In order to ensure that environmental challenges were not excluded, the rules specified that legal aid for judicial review would also continue to be available where the proceedings had the potential to bring real benefits for the environment. The LSC has also revised its guidance when looking at whether there is an alternative source of funding available for cases which have a significant wider public interest. The revised guidance sets out the LSC's approach to collecting contributions in public interest cases, with specific reference to the Aarhus Convention.

108. Legal Aid is available in Northern Ireland for Judicial Reviews where the applicant satisfies a financial means test and a merits test. Depending on the level of their disposable income and their disposable capital, a person may be assessed as being financially eligible

---

with a contribution. Although there is no exemption for applicants in receipt of legal aid, there is a general Court Service policy for remission and exemption of fees in place to assist those in receipt of state benefits or who feel they would suffer from hardship if they did pay the fee (<http://www.courtsni.gov.uk/NR/rdonlyres/DB65E415-A99D-4C16-BBB9-C6C3537FF826/0/TMCourtFeesDoIhaveto.pdf>).

109. In Scotland, justice policy is devolved to the Scottish Ministers, who are also moving progressively towards full cost recovery of civil actions as a matter of policy because it is not appropriate for the general public to bear the cost of resolving civil disputes: access to justice remains assured through the continuing (and recently enhanced) provision of civil legal aid and provisions for exemption from court fees for those in receipt of specified state benefits.

110. The general principle in civil proceedings in the UK is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the court has wide discretion to make a different order, taking into account all the relevant factors. Furthermore, the court is not limited simply to ordering (or not ordering) costs against the losing party, but can make a range of different orders, such as that only a proportion of the other party's costs should be paid.

111. The Civil Procedure Rules (CPR) ([http://www.justice.gov.uk/civil/procrules\\_fin/](http://www.justice.gov.uk/civil/procrules_fin/)) in England and Wales provide considerable flexibility to enable the court to give balanced consideration to all the circumstances, to reach decisions on costs in individual cases which are fair, and to meet the overriding objective of the CPR of dealing with cases justly. Similar flexibility is found in the provisions in Scotland and Northern Ireland. The Court of Appeal has given rulings and guidance in a range of cases relating to the interpretation of the CPR provisions.

112. In addition to these general provisions there are a variety of ways in which the courts can take action to ensure that costs are proportionate and fairly allocated. The CPR provides the courts with extensive case management powers to control and direct the course of proceedings to ensure that these are conducted on as timely and efficient a basis as possible. The courts also have extensive powers to control costs at different stages of the proceedings. As well as detailed provisions which govern the assessment of costs at the conclusion of proceedings, the CPR sets out the powers of the court to make an order capping costs in an individual case at any stage of the proceedings.

113. Special provisions exist to limit the costs of judicial review proceedings. So for example the CPR provide that the courts will generally consider permission to proceed with judicial review proceedings without a hearing and that where there is a hearing, the court will not generally make an order for costs. In addition costs awarded against a claimant who fails to obtain permission are generally limited to the costs of the defendant's acknowledgement of service.

114. Provisions also exist for the court to make a Protective Costs Order (PCO) – (a “protected order for expenses” in Scotland) – at the outset of proceedings (or at any other stage) where the claim raises issues of public interest. Guidance on PCOs has been

---



established by the Court of Appeal, which means that judges hearing judicial reviews in England and Wales are obliged by the doctrine of binding precedent (based on the hierarchy of the courts) to take it into account in considering any application for a PCO. These provisions on PCOs can help to provide certainty to a party as to their potential exposure to an adverse costs order if they are ultimately unsuccessful. The UK authorities are currently working to codify the case law on PCOs into court rules. This codification will give added clarity and transparency to the law and the procedure for making an application for a PCO, thereby providing certainty for applicants at the outset of the proceedings about the costs they will face if their claim fails and certainty as to the modest costs of applying for a PCO. It is anticipated that these rules will be in place by April 2011.

115. Decisions of the Court of Session have confirmed that protective expenses orders are available in Scotland. The Court of Session Rules and new rules of court are in preparation to regulate the award of such orders in environmental cases. Decisions of the Court of Session have confirmed that protective expenses orders are available in Scotland. The Court of Session Rules Council has considered and recommended draft rules on such orders in environmental cases (minutes from the relevant meeting of the Council are available at [http://www.scotcourts.gov.uk/session/rules\\_council/Meeting%20of%2011%20Oct%202010.pdf](http://www.scotcourts.gov.uk/session/rules_council/Meeting%20of%2011%20Oct%202010.pdf)) The Scottish Government has made these draft rules available to the European Commission for comment.

116. In relation to England and Wales, the costs arising from civil litigation were considered in Lord Justice Jackson's Review of Civil Costs, published in January 2010. (<http://www.judiciary.gov.uk/publications-and-reports/reports/review-of-civil-litigation-costs/index?knownurl=http%3a%2f%2fwww.judiciary.gov.uk%2fpublications-and-reports%2freports%2freview-of-civil-litigation-costs>.) This independent report includes a wide range of recommendations aimed at making the costs of civil litigation more proportionate, including in the area of Judicial Review. The Ministry of Justice will shortly be consulting on the key recommendations. A review of the Civil Courts was carried out in Scotland by the Rt Hon Lord Gill, the Lord Justice Clerk. Amongst many other things, Lord Gill recommended that express power should be conferred upon the courts in Scotland to make special orders in relation to expenses in cases raising significant issues of public interest. That recommendation is likely to be superseded, as far as environmental cases are concerned, by the new rules of court referred to in paragraph 114.

117. The existing provisions in relation to court proceedings must also be considered in the context of the system of environmental law, and access to it, as a whole. This is because the system ensures that seeking redress through the courts is only one of the many routes open to the public in their search for environmental justice. The public can, for example, report potential breaches of environmental legislation to the appropriate regulator, for example in England and Wales to the Environment Agency, and in Scotland to the Scottish Environment Protection Agency or in Northern Ireland, directly to the Department of the Environment. Similarly, they can make a complaint to the local authority regarding a statutory nuisance and the authority is under a duty to investigate the problem. Neither of these routes involves any expense on behalf of the complainant. There

---

are also various appeal procedures in place relating to the many different regulatory regimes, some of which give interested members of the public the right of appeal. Also, with regard to access to environmental information, the relevant Information Commissioner offers a review procedure which involves no expense.

#### **Article 9, paragraph 5**

118. The UK has engaged in extensive activity to provide information to the public on accessing administrative and judicial review procedures, and to remove any financial and other barriers to access to justice or to consider how they could be removed.

119. The Government provides information and links ([www.justice.gov.uk/](http://www.justice.gov.uk/)) on the provision of effective and accessible justice for all, in particular via Community Legal Advice website (<http://www.communitylegaladvice.org.uk/index.jsp>), which gives guidance on how to access legal services, details regarding eligibility for publicly-funded advice services and information to help resolves problems in a range of categories of law.

120. Community Legal Advice Direct provides legal information and details of how to access legal services and obtain the financial aid to do so.  
(<http://www.communitylegaladvice.org.uk/index.jsp>)

121. In 2003, Defra also contributed funding and assistance for the development of the *Handbook on Access to Justice under the Aarhus Convention* – which offers practical guidance and case study examples to assist with the implementation of Article 9 of the Convention. ([www.unece.org/env/pp/a.to.j/handbook.final.pdf](http://www.unece.org/env/pp/a.to.j/handbook.final.pdf))

122. Defra has gathered information on the broad topic of “justice in environmental matters” , including information on some research projects which were partly or wholly funded by Defra  
(<http://www.defra.gov.uk/environment/policy/international/aarhus/pdf/compliance-summary.pdf>)

123. In 2003, Defra provided support and assistance to the Magistrates Association, in the preparation of “Costing the Earth”, a toolkit offering guidance and information for sentencers and anyone else concerned about environmental crime.  
([http://www.magistrates-association.org.uk/dox/Press%20Statements/1253176216\\_costing\\_the\\_earth\\_launch\\_final.pdf?PHPSESSID=8f8esb63k2vt4r4l128vfuv483](http://www.magistrates-association.org.uk/dox/Press%20Statements/1253176216_costing_the_earth_launch_final.pdf?PHPSESSID=8f8esb63k2vt4r4l128vfuv483))

#### **XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9**

124. A significant number of stakeholders have highlighted that financial difficulties remain in bringing environmental cases. Responsibility for civil costs issues in England and Wales rests with the MOJ, and over the last year, Defra and the MOJ officials have been examining these issues. The Compliance Committee under the Aarhus Convention

---

has recently adopted findings in relation to two cases concerning the UK: in relation to the costs of court procedures (in Northern Ireland Case 2008/27 and England and Wales Case 2008/33) and the uncertainty surrounding time limits for judicial review (in England and Wales Case 2008/33); ([http://www.unece.org/env/pp/compliance/C2008-33/Findings/C33\\_Findings.pdf](http://www.unece.org/env/pp/compliance/C2008-33/Findings/C33_Findings.pdf)) and. ([http://www.unece.org/env/pp/compliance/C2008-27/Findings/C27\\_Findings.pdf](http://www.unece.org/env/pp/compliance/C2008-27/Findings/C27_Findings.pdf)) In addition, the European Commission has also issued a Reasoned Opinion in relation to the UK's implementation of the requirements under the Public Participation Directive in relation to costs.

125. The MOJ for England and Wales and the relevant authorities in Scotland and Northern Ireland are now working to make court rules to govern the making of PCOs ('protective expenses orders' in Scotland). These rules will be based on current case law, including the law as set out in *Garner vs Elmbridge Borough Council* [2010] EWCA Civ 1006], and are anticipated to be adopted by April 2011. The MOJ has also launched a public consultation, running from 15 November 2010 to 14 February 2011, on the other key recommendations of Lord Justice Jackson's Review of Civil Costs (<http://www.justice.gov.uk/consultations/jackson-review-151110.htm>) which recommended, inter alia, a move to qualified one way cost shifting (a view also put forward in the Sullivan update report <sup>3</sup>).

126. The MOJ for England and Wales is also currently consulting publicly on cross undertakings in damages in environmental judicial review cases, an issue raised by the Aarhus Convention Compliance Committee in the context of the cost of proceedings in the UK (<http://www.justice.gov.uk/consultations/docs/cross-undertakings-in-damages-in-environmental-judicial-review-claims.pdf>). Consideration is being given to how to deal with this issue in Northern Ireland. Cross undertakings are not a feature of the law in Scotland

127. The MOJ is also looking at the issue of time limits for judicial review proceedings, and is in discussion with the judiciary and other interested parties about the issue.

### **XXX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 9**

128. No further information was provided under this heading.

### **XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 9**

129. See the relevant sections above.

---

**XXXII. CONTRIBUTION OF THE IMPLEMENTATION OF THE CONVENTION TO THE PROTECTION OF THE RIGHT OF EVERY PERSON OF PRESENT AND FUTURE GENERATIONS TO LIVE IN AN ENVIRONMENT ADEQUATE TO HIS OR HER HEALTH AND WELL-BEING**

130. The United Kingdom made the following declaration on ratifying the Convention: “The United Kingdom understands the references in article 1 and the seventh preambular paragraph of this Convention to the “right” of every person “to live in an environment adequate to his or her health and well-being” to express an aspiration which motivated the negotiation of this Convention and which is shared fully by the United Kingdom. The legal rights which each Party undertakes to guarantee under article 1 are limited to the rights of access to information, public participation in decision-making and access to justice in environmental matters in accordance with the provisions of this Convention”.

**XXXIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON GENETICALLY MODIFIED ORGANISMS PURSUANT TO ARTICLE 6bis AND ANNEX I bis**

131. Member States and the European Community (now the European Union) agreed to the amendment to enhance the obligations placed on parties with regard to public participation in decision-making on GMOs adopted at the second Meeting of the Parties to the Convention 25<sup>th</sup>-27<sup>th</sup> May 2005 in recognition that some United Nation Economic Commission for Europe (UNECE) countries outside the EU have minimal provisions for public consultation on decisions to approve GMOs in their national legal frameworks, and that some of these countries have been strong supporters of an international framework.

132. The requirements of the amendment, that is Article 6bis and Annex I bis, were already given effect in the European Union by the main EU instruments governing the deliberate release of genetically modified organisms to the environment: Directive 2001/18/EC and Regulation (EC) 1829/2003. As the UK had fully transposed these instruments, there was no need for additional UK legislation to be introduced in order to implement the requirements of the amendment. Directive 2001/18 is transposed into the law of England, Scotland and Wales by Part VI of the Environmental Protection Act 1990 (1990 c 43) and in England only by the Genetically Modified Organisms (Deliberate Release) Regulations 2002 (SI 2002/2443), in Scotland only by the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (SSI 2002/541), in Wales only by the Genetically Modified Organisms (Deliberate Release)(Wales) Regulations 2002 (SI 2002/3188 (W.304)), and into the law of Northern Ireland by Genetically Modified Organisms (Northern Ireland) Order 1991 and the Genetically Modified Organisms (Deliberate Release) (Northern Ireland) Regulations 2003 (SI 2003/167). Regulation 1829/2003, which is directly applicable in Member States, is enforced in England through the Genetically Modified Food (England) Regulations 2004 (SI 2004/2335) in Wales through the Genetically Modified Food (Wales) Regulation (SI 2004/3220), in Scotland through the Genetically Modified Food (Scotland) Regulations (SSI 2004/432) and in Northern Ireland through the Genetically Modified Food (Northern Ireland) Regulations (SI 2004/385).

133. European Union Member States therefore recognise the importance and value of participation by stakeholders and the public in consideration of applications for approval of genetically modified crops.

134. All new applications to market traits for GM feed or food since 2004 have been made under Regulation 1829/2003 which sets out a requirement for a mandatory written 30-day public consultation period that must happen before the GM traits for food or feed use can be approved at EU level for marketing.

135. Transparency and public participation is a fundamental principle contained within the regulation:

- the European Food Safety Authority (EFSA) puts the summary data of application dossiers on their website
- EFSA allows public access to all non-confidential parts of a dossier
- EFSA publishes its scientific opinion on an application on its website for public consultation
- the European Commission offers an e-mail alert service to publicise the start of the consultation period
- the European Commission publishes all resulting public comments on its website and distributes them to Member States before they vote on whether to authorise the product.
- The FSA provides details of the EFSA website on its website so that any members of the public who wish to participate in these consultations can do so
- Commission Decisions on applications are published on the Commission web site

136. In the case of GM research trials each Member State takes its own decisions in accordance with Directive 2001/18/EC. For applications in the UK the relevant Competent Authority invites public representations relating to any risks of damage being caused to the environment by the proposed release. In England, the invitation to make representations to the Defra Secretary of State in relation to England and the Welsh Ministers in relation to Wales, including a full copy of the application (excluding commercial in confidence information) is made on the public register and is repeated on the Defra website at [www.defra.gov.uk](http://www.defra.gov.uk). Applications for research trials in Scotland, Wales and Northern Ireland must be handled by the Devolved Administrations for these countries but will follow the same procedure, with an invitation to make representations to the relevant minister for the territory concerned. The respective websites for the Devolved Administrations are <http://www.scotland.gov.uk>, <http://wales.gov.uk/?lang=en> and [www.doeni.gov.uk](http://www.doeni.gov.uk). The public register maintained by Defra covers all UK applications. The period of each consultation has been set at a mandatory minimum of 48 days (the 48 day period comes from the fact that details of Part B applications must be placed on the public register within 12 days of receipt and that the period of consultation must not end less than 60 days from the date the application was received).

137. Applicants are also required to advertise their application in a national newspaper. The advertisement must contain information on the GMO, and the location, dates and purpose of the intended release. It should also mention that details of the application will

be placed on the public register and that the Secretary of State will invite representations on safety issues raised by the proposed release. The applicant is also required to inform a number of organisations of the application, including the local authority, the parish (community) council, the Environment Agency and English Nature.

138. Upon receipt of representations they are assessed to identify whether any scientific issues have been raised that have not already been considered by the Advisory Committee on Releases to the Environment (ACRE - the statutory scientific expert committee in the UK). If such issues are raised they would be brought to the Committee's attention to be taken into account alongside other relevant evidence. Among other things, ACRE's advice to the authorities on all research trial applications contains a response to the public representations. ACRE's advice is available on the public register and published on the ACRE website, as are the minutes of every Committee meeting. Details of every site with an active consent are also provided. All respondents are notified of the outcome of applications.

#### **XXXIV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 6bis AND ANNEX I bis**

139. No obstacles have been encountered.

#### **XXXV. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6bis AND ANNEX I bis**

#### **XXXVI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6bis**

140. As stated above the relevant web sites for the UK are:

[www.defra.gov.uk](http://www.defra.gov.uk)

<http://www.scotland.gov.uk>

<http://wales.gov.uk/?lang=en>

[www.doeni.gov.uk](http://www.doeni.gov.uk)

141. The EU register of approvals can be found at:

[http://ec.europa.eu/food/dyna/gm\\_register/index\\_en.cfm](http://ec.europa.eu/food/dyna/gm_register/index_en.cfm)

\*\*\*\*\*