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Ella Behlyarova
Secretary – Aarhus Convention
Economic Commission for Europe
Environment, Housing and Land Management
Division
Bureau 332
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Ella,

Re: UK observations on issues raised by the Communicant in their most recent letter (Ref ACCC/C/2009/38).

Please find enclosed the UK Government's observations on the issues raised by the communicant in their most recent letter to the Committee labelled 7th June 2010 by the Secretariat but dated 12th July 2010 by the Communicant.

Consultation

In relation to consultation, the purpose of the Communicant's letter appears to be to address the issue of public consultation on the Modern Transport System (MTS) and specifically consultation on the southern section of the Aberdeen Western Peripheral Route (AWPR).

It proceeds on the basis that the UK's position at the Hearing in March was (a) that the consultation to comply with Article 6 (4) of the Convention, was the consultation that was carried out on the MTS and (b) that it accepted that the public local inquiry was so limited in scope that it did not comply with Article 6 (4).

The UK Government wishes to place on the record, consistent with its position at the Hearing, that it does not accept that consultation to comply with Article 6(4) of the Convention was the consultation carried out during the MTS (and that alone). This point was dealt with in the written and oral submissions to the Committee which clearly demonstrated that considerable consultation has been undertaken throughout the development of the AWPR.

Equally, it is also not accepted by the UK Government that the public local inquiry did not comply with Article 6(4). The public have been given the opportunity to comment on the route

of the proposed AWPR promoted through the draft Schemes and Orders under the statutory process set out in the Roads (Scotland) Act 1984, which includes the opportunity to express objections and other comments in writing or to participate in the public local inquiry. Formal public exhibitions were also held at specific locations along the route to coincide with the publication of draft Schemes and Orders.

The draft Schemes and Orders necessarily related to one route only, being the preferred route selected at the culmination of years of detailed investigation and consultation. In objecting to the draft Scheme and Orders, it is open to an objector to argue that there is a better alternative to the proposed AWPR. A number of alternatives to the proposed AWPR were considered at public local inquiry. The Reporters found that none of the alternatives would have a clear overall advantage over the proposed scheme.

Furthermore, had the detailed consideration of the technical and environmental issues associated with the promoted scheme led the Reporters and the Scottish Ministers to conclude that the scheme as proposed should not proceed, then that decision could have been taken without prejudice to the general policy position that there was an established need in principle for a Special Road to the west of Aberdeen.

The UK Government's letter of 19 May 2010 clearly demonstrates that the Integrated Transport Strategy for the North East, which later became known as the Modern Transport System, was subject to significant public consultation during its development. The specific consultation carried out by NESEDP was augmented by consultation as part of Aberdeen City and Aberdeenshire Council's own Local Transportation Strategies, both of which contained specific reference to the Western Peripheral Route (including southern section).

Freshwater Pearl Mussels

The UK Government submit that the decision of the Scottish Information Commissioner should be seen and read in its full and proper context.

The decision supports the view of the UK Government that proper independent and transparent processes are in place to ensure effective operation of the FoI and EI regimes in accordance with UK law.

It should be noted that, although the Scottish Information Commissioner found that SNH had failed to deal with Dr Hawkins' request for information fully in accordance with the Environmental Information (Scotland) Regulations 2004, he accepted that disclosure of information that revealed the location of freshwater pearl mussel populations would, or would be likely to, harm the protection of that species, and found that SNH complied with the EIRs by withholding this information. The Commissioner required SNH to provide the withheld information to Dr Hawkins, subject to the removal of the information on the location of freshwater pearl mussels to which regulation 10(5)(g) was found to apply.

The UK Government does not accept that the absence of information from SNH necessarily prevented Dr Hawkins from presenting evidence on the risk that the scheme may create for freshwater pearl mussels.

Contrary to what the Communicants assert, the Commissioner did not support limited disclosure to Dr Hawkins and what is said about paragraph 33 of the decision requires to

be seen in the full context of paragraphs 27 to 34. Moreover, as indicated at the Hearing, disclosure on a limited basis to Dr Hawkins of population locations would not have assisted as – for that same reason - he could not have used that information in the public local inquiry.

Yours sincerely,

pp. Gisela Carr
On behalf of:

Jane Barton
UK National Focal Point

cc. Frances McCartney

