

Opening Statement on behalf of the United Kingdom
to the 39th Meeting of the Aarhus Convention Compliance Committee
(Wednesday 12th December 2012)
Communication ACCC/C/2012/68

INTRODUCTION

1. The substance of the complaints made by the Communicant against the United Kingdom is that the relevant authorities within the central government administration of the United Kingdom and Scotland have failed to implement, and adhere to, the three pillars of the Aarhus Convention. It is claimed that in a number of different respects there has been a failure to ensure access to information, public participation in decision-making and access to justice.
2. The particular decision-making processes that have given rise to these complaints arise from two different functions being carried out, primarily by the Scottish Government, in relation to the development of onshore wind generation. The first decision-making process relates to the decision of the Scottish Ministers to grant development consent for a 60MW onshore wind farm known as Carraig Gheal; the development site for which is located on Fernoch Farm near Kilchrenan in Argyll and Bute in Scotland. The second decision-making process relates to the formulation of renewable energy policy by Government that supports the development of onshore wind farm generation, such as Carraig Gheal Wind Farm, in order to displace fossil fuel generation and thereby reduce greenhouse gas emissions.
3. The approach taken by the Communicant in making her complaints in relation to her rights under the Aarhus Convention is to point to other alleged failures on the part of the Scottish Government, which arise in relation to obligations on Member States under different EU Directives concerned with the assessment of environmental impacts associated with, among other things, large scale wind

farm development. The Communicant makes reference to, and relies upon, the obligations contained in:

- EU Directive 85/337/EEC (as amended) that makes provision for environmental impact assessment of projects;
- EU Directive 2001/42/EC on Strategic Environmental Assessment of plans and programmes;
- EU Directive 2009/147/EEC on the conservation of wild birds; and, separately,
- EU Directive 2009/28/EC in relation to preparation of National Renewable Energy Action Plans.

4. It is a significant feature of the Communicant's complaints in relation to the Aarhus Convention that the factual basis upon which she relies arises from the manner in which the Scottish Government, and to a much more limited extent the UK Government, discharged their obligations under these other Directives. It is apparent from the terms of the Communication submitted by Mrs. Metcalfe (together with the various supporting attachments) that the factual basis for most of her complaints stems from the decision-making process that has been carried through in relation to the statutory consents required for the Carraig Gheal Wind Farm. The Communicant does not agree with the outcome of that decision-making process and, in particular, the way in which the Scottish Ministers placed reliance upon renewable energy policy objectives when taking a decision to grant consent. The Committee will well understand the difference between re-visiting grievances that arise from the outcome of a project consenting process, as opposed to reviewing the adequacy of the procedures that were in place to enable the Communicant to participate effectively in that decision-making process.

5. Since the making of the decision to grant consent for the Carraig Gheal Wind Farm, the Communicant has pursued various courses of action to seek redress at European level, in relation to the alleged failures of the UK and Scottish Governments. With the exception of her complaints to the Information

Commissioner, she has not otherwise sought to invoke remedies that would be available to her in the national courts if she is correct in her assertion that the Party is in breach of its obligations under either the Aarhus Convention or the various EU Directives referred to above.

6. The final introductory point to be made on behalf of the UK Government is that in making the various complaints in respect of the three pillars of the Aarhus Convention, the Communicant cites various obligations in general terms, and under reference to earlier cases, in support of her case. There is a failure, however, to set forth the factual basis upon which it is claimed a breach of those obligations have occurred in relation to this case and her assertions are not substantiated by the information submitted to the Committee.

ARTICLES 4, 5 & 7

7. The alleged failures in relation to access to information and collection and dissemination of environmental information have been made by the Communicant both in relation to the decision-making process for the Carraig Gheal Wind Farm, and, the formulation of renewable energy policy in support of the development of such wind farms.
8. In respect of the decision-making process, the UK Government set out its response in the letter from Defra dated 8th October 2012. It is apparent from the information provided to the Committee that the Communicant does not have a proper understanding of the relevant facts. It is not the responsibility of Defra to act in place of the Information Commissioner. It is also clear from the summary of the correspondence with the Forestry Commission that the Communicant has refused to accept that the information she believes should be available is not available. Such a situation does not in itself result in a breach of Articles 4 & 5.
9. The complaints in relation to the development of the National Renewable Energy Action Plan, in particular, and renewable energy policy, more generally, are also related to the complaint made in relation to Article 7. The UK Government's position is set out in response to the first of the questions asked of the Party by

the Committee in its letter of 8th May 2012 to the Party. This response is provided in the letter of 8th October 2012. There is a distinction to be drawn between the procedures being followed by the Scottish Government and the UK Government. These procedural differences exist both in relation to granting development consent for onshore wind farms and in the formulation of government policy.

ARTICLE 6

10. The UK Government has explained the extensive public consultation exercise carried out as part of the consenting process for the Carraig Gheal Wind Farm, in response to the Committee's second and third questions to the Party. This response having been provided in the letter of 8th October 2012 to the Secretary to the Committee. The Communicant relies upon the role of the Forestry Commission in granting consent for the West Loch Awe Timber Haul Route as in some way interfering with her right to participate in the decision-making process. This alleged failure does not withstand scrutiny as the Forestry Commission had to adhere to the same consultation procedures because of its decision to treat the construction of the Timber Haul Route as an EIA development for the purposes of EU Directive 85/337/EEC. The fact that the Forestry Commission had a shared project objective with the developer of the wind farm does not by itself result in a breach of any duty under Article 6; or indeed any of the other Aarhus rights that the Communicant claims were contravened.

ARTICLE 9

11. The Communicant seeks to rely upon a general assertion that the UK Government is in breach of Article 9. The nature of this complaint demonstrates the Communicant's preference to rely upon general assertion rather than proper evidence to substantiate her claim.

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on behalf of the UNITED KINGDOM