



Department
for Environment
Food & Rural Affairs

Area 3B, Nobel House
17 Smith Square
SW1P 3JR

T: 03459 335577
helpline@defra.gov.uk
www.gov.uk/defra

Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance
Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland
(By email only)

12 November 2019

Dear Ms Marshall

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom regarding access to justice in the context of the Environmental Cost Protection Regime (ACCC/C/2017/157)

I refer to your email of 4 November 2019, following on from my correspondence of 8 March 2019 which provided a substantive update to the formal response of 21 December 2018. This correspondence confirms the steps taken to meet the commitment given in that update in respect of the alleged non-compliance with Article 9(3) because the Environmental Cost Protection Regime (ECPR) does not extend to planning challenges brought under s.288 of the Town and Country Planning Act 1990. This letter should be read in conjunction with the update of 8 March.

The UK Government confirmed that the preferred route to addressing the issue of cost protection in planning challenges brought under s.288 of the Town and Country Planning Act 1990 would be through a legislative amendment to bring reviews under statute, which concern national law relating to the environment engaging Article 9(3), within the ECPR.

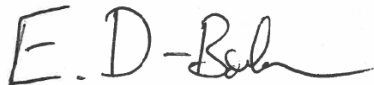
The Civil Procedure Rule Committee (CPRC), an advisory non-departmental public body sponsored by the Ministry of Justice which is responsible for making the Civil Procedure Rules (CPR), subsequently considered the UK Government request to amend the cost protection provisions and agreed to bring forward the necessary amendment to the ECPR.

This amendment was made and came into force on 1 October. It extends the same procedures, limitations and cost caps apply to Article 9(3) statutory reviews as

currently applies in respect of Article 9(1), 9(2) and 9(3) judicial reviews and Article 9(1) and 9(2) statutory reviews.

For ease of reference I include a link to the relevant regulations (<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part45-fixed-costs>) and include the relevant extract for rule 45.41 as an annex to this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'E.D-Balan' with a stylized flourish at the end.

Edward Donaldson-Balan

United Kingdom National Focal Point to the UNECE Aarhus Convention

Annex

Civil Procedure Rules [EXTRACT]

VII COSTS LIMITS IN AARHUS CONVENTION CLAIMS

Scope and interpretation

45.41

(1) This section provides for the costs which are to be recoverable between the parties in Aarhus Convention claims.

(2) In this Section—

(a) "Aarhus Convention claim" means a claim brought by one or more members of the public by judicial review or review under statute which challenges the legality of any decision, act or omission of a body exercising public functions, and which is within the scope of Article 9(1), 9(2) or 9(3) of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998 ("the Aarhus Convention");

(b) references to a member or members of the public are to be construed in accordance with the Aarhus Convention.

(3) This Section does not apply to appeals other than appeals brought under section 289(1) of the Town and Country Planning Act 1990 or section 65(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which are for the purposes of this Section to be treated as reviews under statute.

(Rule 52.19A makes provision in relation to costs of an appeal.)

The Aarhus Convention is available on the UNECE website at <https://www.unece.org/env/pp/welcome.html>.)