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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)

17 December 2019

Dear Ms Marshall,

Re: ACCC/C/2017/157 (United Kingdom) – response to communicant's comments of 10 December 2019

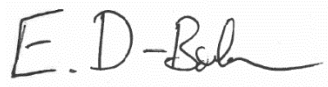
The United Kingdom would like to offer a clarification in response to the communicant's comments of 10 December 2019.

Rule 45.41 of the Civil Procedure Rules (CPR) has been amended by the Civil Procedure (Amendment No. 3) Rules 2019 (SI 2019/1118). The effect of this amendment includes that any challenge brought under section 288 of the Town and Country Planning Act 1990 comes within scope of the Environmental Cost Protection Regimes (ECPR), provided that the challenge is eligible for cost protection by virtue of being within scope of Article 9(1), 9(2) or 9(3) of the Convention.

That is because rule 45.41(2)(a) applies to 'judicial reviews' and to 'reviews under statute' and challenges brought under section 288 are 'reviews under statute'. A list of statutory reviews of planning matters can be found at paragraph 1.1 of Practice Direction 8C of the CPR, included in the Annex below.

For completeness, nothing in rule 45.41(3) affects the costs protection afforded to section 288 challenges. The effect of rule 45.51(3) is to provide that 'appeals' under section 289 TCPA 1990 ('Appeals to High Court relating to enforcement notices and notices under sections 207 and 215') and s.65 Planning (Listed Buildings and Conservation Areas) Act 1990 ('Appeals to High Court relating to listed building enforcement notices') are to be treated as 'reviews under statute'. Without rule 45.41(3) these appeals would not otherwise be eligible for protection under the ECPR.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'E.D. Balan', written on a light gray grid background.

Edward Donaldson-Balan
United Kingdom National Focal Point to the UNECE Aarhus Convention

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Annex

Civil Procedure Rules [EXTRACT]

PRACTICE DIRECTION 8C - ALTERNATIVE PROCEDURE FOR STATUTORY REVIEW OF CERTAIN PLANNING MATTERS

PARAGRAPH 1.1

1.1 This Practice Direction, which is made pursuant to rule 8.1(6), relates to claims for statutory review under—

- (a) section 287 of the Town and Country Planning Act 1990;
- (b) section 288 of the Town and Country Planning Act 1990;
- (c) section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- (d) section 22 of the Planning (Hazardous Substances) Act 1990; and
- (e) section 113 of the Planning and Compulsory Purchase Act 2004.

(The full Practice Direction is available at:

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part08/practice-direction-8c-alternative-procedure-for-statutory-review-of-certain-planning-matters>)