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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)

20 August 2018

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)

The United Kingdom reiterates, without repeating, its comments on admissibility of 9 March 2018 in relation to the present Communication which concerns a challenge to the UK's Environmental Costs Protection Regime (ECPR). What follows below should be read in conjunction with those observations.

1. The communication identifies two main grounds of non-compliance:
 - (i) non-compliance with Article 9(3) because the ECPR does not extend to planning challenges brought under s.288 of the Town and Country Planning Act 1990; and
 - (ii) non-compliance with Article 9(3) due to the “chilling effect” that the disclosure of private financial information will have, since claimants will be reluctant to bring environmental challenges.
2. In respect of the current exclusion of Article 9(3) reviews under statute from the ECPR, in September 2015 the Government consulted on proposals to revise the costs capping scheme for eligible environmental challenges and specifically on proposals within the scope of the Aarhus Convention. In November 2016, in response to this consultation, the Government stated it did not “propose to extend the Environmental Costs Protection Regime to Article 9(3) reviews under statute at this stage because it wishes to consider more fully how best to address these cases, including whether there might be an alternative way of ensuring that the costs of these cases are not prohibitively expensive for claimants”.¹
3. This remains the case, and the present Communication provides further material for the Government to consider. At this stage we can confirm that this consideration has progressed

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/569588/costs-protection-in-environmental-claims-govt-response.pdf

and we anticipate that we will be in a position to respond more fully to the Committee in advance of its November meeting.

4. In respect to the “chilling effect”, in July 2017 the High Court of England and Wales required that all hearings for an application to vary a cost cap should be held in private until further notice.² Interim arrangements were put in place by the Administrative Court (which includes the Planning Court) to ensure that litigants, lawyers and court staff are aware of Aarhus Convention costs capping arrangements. These arrangements were published on the judiciary website on 13 December 2017.³
5. Making these changes permanent would require amendment to the relevant Practice Direction to the Civil Procedure Rules. This change was not taken forward immediately because the Civil Procedure Rule Committee (CPRC) was already undertaking a comprehensive open justice review, which included examination of the provisions in the Civil Procedure Rules governing when hearings must be held in private. On 12 July 2018 we published a consultation on proposed changes proposed as a result of this review.⁴ This consultation closes on 23 August 2018. We will of course take into account the present Communication in considering the responses received.

Yours sincerely

Nikita Bhangu

United Kingdom National Focal Point to the UNECE Aarhus Convention

² [RSPB and others v Secretary of State for Justice](#) [2017] EWHC 2309 (Admin), at paragraph 57

³ <https://www.judiciary.gov.uk/publications/aarhus-convention-costs-capping-arrangements/>

⁴ <https://consult.justice.gov.uk/digital-communications/part-39-civil-procedure-rules-proposed-changes/>