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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)

21 December 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)**

I refer to my correspondence dated 20 August 2018 and 7 November 2018 and set out below a formal response to the communication at caption. Whilst we had hoped to be in a position at this time to provide a more substantive response on our proposed course of action - and we have been making progress - we have been subject to some policy delays. Recognising the important work of Compliance Committee, we do not want to hold up your consideration should you wish to progress this now. Instead, we will provide a substantive update to this formal response at the earliest opportunity, as our proposed approaches are announced.

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 at caption 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)

2. As regards the first ground listed above, the Government has been taking steps to review the costs capping scheme for eligible environmental challenges and specifically on proposals within the scope of the Aarhus Convention. The September 2015 consultation “Costs Protection in Environmental Claims: Proposals to revise the costs capping scheme for eligible environmental challenges” sought views on the definition for an ‘Aarhus Convention claim’ and the types of claimant eligible for costs protection under the Environmental Costs Protection Regime.
3. Responses to the consultation were supportive of the principle to extend the Environmental Costs Protection Costs Regime to include those reviews under statute falling within scope of Article 9(3) of the Aarhus Convention. In responding the Government stated in November 2016 that 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”.
4. The UK Government is mindful of these views and is advanced in its consideration of what action would be appropriate and how this could be achieved through the Environmental Costs Protection Costs Regime. This matter will require collective Government agreement to a UK-wide decision before a final announcement. We will be happy to provide you with a further update on any developments in this regard as they progress. .
5. As regards the second ground listed above, we note that the Royal Society for the Protection of Birds v Secretary of State for Justice judgment was handed down in September 2017 [[2017] EWHC 2309 (Admin)]. The judge found that, in order to ensure compliance with EU law in relation to hearings of applications to vary costs caps in an Aarhus Convention claims, those hearings should be held in private in the first instance. The Government discharged its commitment to put the relevant Practice Direction changes to the Civil Procedure Rule Committee (CPRC) at its meeting in October 2017. However, no changes were made at that time in respect of the private hearings point because the CPRC was carrying out the open justice review, including examination of the provisions in the Civil Procedure Rules governing when hearings must be held in private, which led to the consultation in July 2018. That consultation closed in August [2018] and the Government is now considering the way forward and hopes to publish its response in the new year.

As outlined above, on both issues we will provide a further and substantive update or updates as we make progress, and keep the Compliance Committee informed.

Yours sincerely

Nikita Bhangu

United Kingdom National Focal Point to the UNECE Aarhus Convention