

Jeremy Wates
United Nations Economic Commission for
Europe
Room 330
Palais des Nations
CH-1211
GENEVA 10
Switzerland

Our Ref: FMcC/ROAS001/001

Your Ref:

Date: 31 March 2010

Dear Sirs,

**ROADSENSE
COMPLAINT REF ACCC/C/2009/38**

We are writing with the further information as requested by the Committee following our appearance at the hearing on 17th March 2010. You may recall that the complaint by RoadSense falls under several headings.

On the issue of access to environmental information, the Committee asked us to provide copies of the correspondence relating to the request and copies of the responses from both Scottish Natural Heritage (SNH) and the Scottish Information Commissioner (SIC).

We attach copies of the requests to SNH dated 23rd June and 14th July 2008, and SNH's responses of 15th July and 5th August 2008. We also attach the letter from the SIC dated 2nd September 2009 and our response to SIC dated 22nd September 2009.

Although there has been further correspondence with the SIC, this has been mainly on administrative matters and we have not included it on the basis we do not wish to overburden the Committee.

We also include, for the Committee's information, a short paper written by Professor Tony Hawkins of RoadSense setting out conservation issues relating to the freshwater pearl mussel.

The Committee also asked for a copy of our oral submission, which is attached.

Lastly, we would wish to draw the Committee's attention to the issue of consultation on the Aberdeen Western Peripheral Route. The Committee may recall that it is our position that the Public Inquiry process cannot be used to show compliance with Article 6 (4). This was because the Public Inquiry process started from the position that the road would be built, and the policy decision behind the wisdom of building the road could not be challenged. The UK Government accepted this was the case, and argued that a consultation in 2002/2003 on the Modern Transport System (the MTS) was the opportunity for the public to be consulted on the 'no road' option.

We have done some research on the consultation on the MTS. It appears that there was public engagement on the principal of the route on the northern leg of the route. The Committee may recall that the northern leg, whilst still opposed by individuals and communities on that section, has been relatively static and has not had the history of changing route options that has happened on the southern leg. The River Dee, containing the pearl mussel populations, is located in the southern leg.

There has been insufficient time to obtain a response to our environmental information request on what, if any, consultation was carried out on the southern leg of the route. However, we have been told verbally by Rab Dickson, Transport Strategy Manager of NESTRANS (the transport partnership for Aberdeen City and Shire) that he cannot recall there being a formal consultation on the MTS. If this is the case, then it would appear that the UK Government's reliance on the MTS as giving the public the opportunity to argue for the 'no road' option is fundamentally flawed. We will forward further information on this point as soon as it is available, but wish to draw this to the Committee's attention as it does not seem that the UK Government can rely on the consultation on the MTS as complying with Article 6 (4).

Yours sincerely,

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Solicitor

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Enclosures:

1. Information request to SNH dated 23rd June 2008;
2. Information request to SNH dated 14th July 2008;
3. Response from SNH dated 15th July 2008;
4. Response from SNH dated 5th August 2008;
5. Response from SIC dated 2nd September 2009;
6. RoadSense's response to SIC dated 22nd September 2009;
7. Paper written by Professor Tony Hawkins on the pearl mussel;
8. Text of oral submissions.