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Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance Committee
Economic Commission for Europe
Environment, Housing and Land Management Division
Bureau 348
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Ms Smagadi

Re: Decision IV/9i on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention, as adopted by the Meeting of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters at its fourth session

Thank you for your letter of the 9 May 2012, requesting that the UK provide further information on the steps it is taking in regards to Decision IV/9i. You informed us that the Compliance Committee would review this information at its thirty-seventh meeting (26-29 June 2012).

As the Compliance Committee is aware, the Ministry of Justice has been considering amendments to the Civil Procedure Rules to codify the case law on protective costs orders (PCOs). In our letter to the Compliance Committee of 15 February 2011, we explained that we were proposing that the court would make a protective costs order if it was satisfied that the costs would otherwise be prohibitively expensive. Where the applicant was an individual, the court was to proceed on the basis that a PCO should be made and a cost-cap of £25,000 would automatically apply. Applicants would not need to show any evidence of means in order to benefit from this cap. However, applicants would be able to apply for the protected costs order to be set at a lower level on income grounds.

Since then, the Ministry of Justice has considered the issue further and following discussions with other interested Ministries issued a public consultation paper, *Cost Protection for Litigants in Environmental Judicial Review Claims*, last autumn which invited comments on our proposals. In summary the main proposals set out in the paper were:

- The rules are to apply to judicial review cases falling under the Aarhus Convention, including those matters covered by the PPD. The rules are to apply in relation to all claimants in the same way, regardless of whether the claimant in a particular case is a natural or legal person;

- A PCO will obtained by making an application. However, the application need not be supported by grounds and evidence unless an order other than the "default order" (see below) is sought;

- A PCO will only be granted if permission to apply for judicial review is granted;

- Applications should normally be made at the same time as the application for permission/in the claim form. It will be decided on by the court when it considers whether to grant permission, and will normally be considered on the papers;

- The PCO will limit the liability of the claimant to pay the defendant's costs to £5,000, and also limit the liability of the defendant to pay the claimant's costs to £30,000;

- By way of exception, the defendant may apply for the cap to be removed – i.e. that there should be no costs capping because the claimant is not in need of costs protection - where information on the claimant's resources is publicly available. Consultees are also asked for their views on the possibility of allowing the cap to be raised as well as removed. An application to remove the cap may only be on the basis that the claimant has such resources available for litigation that access to justice is not in issue and no costs protection is required. This should be supported by such evidence as is publicly available, as the applicant will not be able to require the claimant to disclose his or her means;

- Costs of the PCO application will not be payable by either party if the PCO is applied for with default terms and is made in those terms (that is to say, there should be no additional costs element for a "default" application and order).

The consultation period closed on 18 January 2012 and we have since then been considering the replies and preparing a response. The content of that response is currently being considered within the UK Government and we hope that we will soon be able to publish it. Once the report has been published we will work with the Civil Procedure Rule Committee to give effect to the conclusions as soon as possible.

Regarding the issue of timeframes for the bringing of applications for judicial review, due consideration is currently being given as to what changes will be necessary to the rules to ensure compliance.

We will update the Compliance Committee as soon as the actions we plan to take to ensure compliance have been confirmed, and in any event no later than February 2013, as agreed in Meeting of the Parties Decision IV/9i.

Regards

Barbara Anning