Fiona Marshall
Environmental affairs Officer - Secretary to the Compliance Committee
Aarhus Convention Secretariat
United Nations Economic Commission for Europe

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Comment on United Kingdom's Second Progress Report Concerning Compliance with Decision V/9 of the Meeting of the Parties to the Aarhus Convention

The following comments are forwarded on behalf of the Moray Feu in Edinburgh, authors of communication ACCC/C/2010/53:

1 The new provisions in the Rules of the Court of Session (RCS 58A) in Scotland, put in place in March 2015, are welcomed as restricting liability to other parties expenses to £5000 if an appellant has been awarded a Protective Expenses Order before applying for a judicial review in environmental cases, and is ultimately unsuccessful in the case. The respondant's corresponding liability for the appellant's expenses being also limited to £30,000.

2 The prior test for prospect of success is also welcomed, but the imposition of a three month time limit is seen as a measure which strongly favours the developer in environmental cases.

3 A further restriction which also favours the developer in such cases, and which has been long resented by environmental campaigners in Scotland, remains in the existance of a *right of appeal* for the developer in an environmental case, but no right of appeal for the objector. In communication ACCC/C/2010/53 one key point was that access to extant and relevent environmental data held by the City of Edinburgh Council was deliberately delayed until after the decision to proceed with development had been taken. The general point is that if there is no balance in right of appeal, then the promoter of a development has longer to acquire data and more opportunities to employ information asymmetry in arguing their case. Such narrowing of the scope of environmental analysis necessarily reduces the quality of decision-making.

4 The authors of the aforementioned communication remain mystified as to why the case made for non compliance on *access to justice* was rejected by the Compliance Committee, but are nevertheless happy to contribute to the committees current efforts in this matter.

Yours Sincerely,

Alistair MacIntosh
Traffic Subcommittee
Moray Feu Residents Association

Dr Ashley Lloyd
Chair, Traffic Subcommittee
Moray Feu Residents Association