

Comments on the UK's 3rd. progress response on Aarhus Convention compliance & Information relating to AKCC 2nd.Submission re decision V9/n of the Aarhus Compliance Committee.

In respect of the UK's progress report, various issues arise.

Re. Public Expense Orders.

Councils are representatives of the public. They are currently under such serious economic pressure that challenges to the Courts which would normally be undertaken, are rarely now made – thereby affecting access to justice. It is therefore of importance for the democratic process that they should also be recipients of caps for PEOs where Councils are the petitioners. It is of particular importance to include currently vulnerable Community Councils as their councillors have potentially joint and several exposure in court actions rather than being protected in the way local councillors are. This imposes a risk which is both patently unfair and undemocratic.

The inclusion is also needed for Non-Governmental Organisations with environmental protection interests as per Article 1(2)(e) of the EIA Directive - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:En:PDF> – as below:

“(e) ‘public concerned’ means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;”

Prior to any PEO requests, those suffering from negative effects of windfarms in Scotland fear the ongoing costs of Judicial Review - as in the case of Sneddons Law. By upholding the appeal to discharge condition 36, designed to protect private water supplies and/or provide alternative sustainable supplies of potable water which may be needed as a consequence of the Sneddon Law windfarm development, the Scottish Government appears to have jeopardised Human Rights under Article 8 to a clean, safe supply of water.

It should be noted that because the planning conditions discharged by an SG Reporter in February 2017 do not appear to meet the terms of planning law and guidance from the SG, the Council is unable to provide satisfactory enforcement.

This is clearly a serious situation likely to affect similar applications elsewhere in the country.

In respect of further information being provided as referred to in our last submission, a full analysis of results from Scottish Councils on questions relating to decision V9/n will not be possible in time for consideration. I am still awaiting clarification from North Ayrshire Council on whether they wish to withdraw their email from Kevin McGinn of 10th March in favour of different information. However, thus far it is clear the issues surrounding lack of public consultations required, exist.

Re. public participation under Article 7. In published findings and recommendations the Committee points out that a targeted consultation involving selected stakeholders, including Non Governmental Organisations, can usefully complement but not substitute for full public participation, as required by the Convention.

Bearing in mind that with a plan or programme related to the environment, councils are required to go through public participation, as outlined in Points 151 on of the Maastricht Recommendations:

https://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/ece_mp.pp_2014_2_add.2_eng.pdf

In respect of the above, please take into consideration attachment Examples 1. 2. and 3.

In Scotland South Ayrshire Council has been cited as an example of good practice for all councils required to submit Supplementary Guidance on wind farm development. This is not standard to all 32 councils - only those designated (by the Scottish Government without public consultation) as areas suitable for windfarm construction. In rural areas only National Parks and National Scenic Areas (again decided by the SG without public consultation) are exempt. All documents referred to can be accessed here:

<http://www.south-ayrshire.gov.uk/planning/windenergy.aspx>

The [South Ayrshire Local Development Plan](#) was adopted on the 23rd September 2014.

In their report on this plan the reporters, appointed by Scottish Ministers, concluded that a spatial framework for onshore wind farms should be developed and for this to be incorporated within appropriate supplementary guidance.

To help inform the drafting of this guidance the Council consulted in May 2015 on a number of issues. Views submitted on these issues can be viewed [here](#). The responses to this consultation were subsequently reflected in the content of draft Supplementary Guidance. The consultations on this document closed on 7 August 2015. The views received by the council can be [viewed here](#).

Examination of this public consultation may demonstrate to the Committee the pointlessness of consultations in Scotland. The ‘box ticking’ requirement of holding consultations is met - but only 6 members of the public have participated and their comments have been only ‘noted’ by the council.

It is important to appreciate that 23rd June -7th August 2015 did not allow time for one single community council to comment as it was the summer recess. To go from one page (page 47) in the LDP to a full 32 page Supplementary Guidance including extended spatial framework, is submitted to be unacceptable.

Comment in the consultation:

I am really disappointed that our council is considering so many areas to be suitable for wind farm development.

Also this consultation questionnaire is so complicated that many people will be put off completing it. It has taken me several attempts to get this far!

At any time before the supplementary guidance is adopted the Scottish Ministers may by notice require the authority to make such modifications to it as are specified in the notice or may direct the authority not to adopt and issue it.

There are alarming instances of pressure from developers being applied to planning authorities via threats/confirmation of appeals should a refusal for planning be made. One such example is from Scottish & Southern Energy (SSE) on their application for an extension to existing consent for the Hunterston 3 year development of an experimental offshore facility. As evidenced by the comment made in the attached minutes¹ (2.Planning Committee) that: ‘SK confirmed that if the planning application for the 2 year extension was refused by NAC it is likely that SSE would appeal the decision.’ (Note. NAC is North Ayrshire Council). The dire state of Council finances throughout Scotland is well known to developers, so

the effect of this statement has been judged by many to amount to an unacceptable threat clearly designed to achieve consent. This is a pattern emerging elsewhere.

Scotland has a National Renewable Energy Action Plan (NREAP) which wasn't subject to a Strategic Environmental Assessment (SEA). However, although the NREAP was followed by policy decisions that were subjected to SEA, if it is claimed that Scotland is basically compliant, what the Committee may consider relevant to V/9n is whether the Directive is properly transposed into UK law. If it is not, consequences over a wide range of issues will result.

At first sight, rules laid out in : <http://www.gov.scot/Publications/2013/12/9924/6> would seem reasonable. The question is, are they being fully complied with in respect of Aarhus regulations? In respect of renewable energy, the reality is that results on the ground have placed councils, as representatives of the public, in the invidious position of now often being unable to reflect the wishes of the communities to whom they bear planning responsibility. As previously described but worth repeating, Government Reporters are able to enforce changes to Local Development Plans which may not then be open to public consultation before adoption. Amongst others, Scottish Borders Council have found that resistance fails. Reports reflect the problem and disquiet as evidenced in the attached article.

Conclusion.

Being the bottom rung of the democratic ladder, Parish (U.K.)/Community Councils(Scotland) are the closest and best placed to experience the reality of impacts, both good and bad, of governmental policies being imposed. The Committee has the unenviable task of deciding whether such impositions as reported, breach Convention Articles on public participation and also affect the routes to access to justice. Despite improved compliance, Scotland we submit, is straying away from obligations via current methods of enforcing adoption of policy against the democratic rights of communities and their representatives.

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¹ Hunterston Liaison Group Minutes 27 March 2017