

ClientEarth's statement on the UK's compliance with decision V/9n and the proposals in draft decision VI/8k

1 Introduction

1. ClientEarth is one of three communicants¹ of communication ACCC/C/2008/33. It is also a co-claimant (with the Royal Society for the Protection of Birds and Friends of the Earth (**Observers**)) in legal proceedings² challenging the lawfulness of the recent amendments to the Aarhus Convention costs rules for judicial review in England and Wales.
2. We refer to the Statement of the Observers and ClientEarth of 3 August 2017. In this further Statement, ClientEarth (as a communicant), explains why the UK, at this critical time in its constitutional and legal history, has the ideal opportunity to implement the recommendations in Decision 9V/n (**Decision**) and the proposals in draft decision VI/8k.
3. ClientEarth welcomes the findings of the Aarhus Compliance Committee (**Committee**) in its report to the Sixth Session of the Meeting of the Parties to the Aarhus Convention (**MOP**), although it notes that the time limit for judicial review in England and Wales remains subject to judicial discretion, and is therefore not fair, equitable or clear. We also endorse all the Committee's recommendations.
4. Further, we welcome the opportunity to provide a statement to the MOP.

2 Background to the UK's non-compliance

5. As noted by the Committee, the UK has been slow to establish a costs system that meets its obligations under article 9, paragraph 3 of the Aarhus Convention (**Convention**). Nearly seven years after the Committee published its findings in communication ACCC/C/2008/33, UK claimants still face high and uncertain costs that remain prohibitively expensive. In addition, the time limit for bringing a judicial review in England, Wales and Northern Ireland remains subject to judicial discretion on the question of promptness.
6. We note that the UK has still failed to:
 - (i) carry out a complete and detailed review of its legal system to ensure that the allocation of costs in all court procedures that are subject to Article 9 is fair, equitable, and not prohibitively expensive (paragraph 8(a) of the Decision); or
 - (ii) introduce effective assistance mechanisms to remove or reduce financial barriers to access to justice (paragraph 8(b) of the Decision).
7. The UK has implemented piecemeal changes that aim to meet the minimum level of compliance required under EU law. It has chosen not to implement all its obligations under the Convention, as detailed in the decisions of the Committee.³ Further, changes

¹ Joint communicants are The Marine Conservation Society and Robert Lattimer.

² *RSPB(1), Friends of the Earth(2) and ClientEarth(3) v The Lord Chancellor and Secretary of State for Justice* (case number CO/1011/2017))

³ Decision ACCC/C/2008/33; and decision IV/9i and V/9n.

11 August 2017

made in February 2017 to the costs capping rules for environmental judicial reviews have further undermined the UK's compliance since the Decision was adopted.

3 UK government's commitment to the environment

8. Michael Gove, Secretary of State for Environment, Food and Rural Affairs has said: "*as we prepare to leave the EU we must give thought to how we can create new institutions to demonstrate environmental leadership and even greater ambition. Not least because we have to ensure that the powerful are held to account and progress towards meeting our environmental goals is fairly measured.*"⁴
9. This statement is welcome recognition of the governance gap the UK faces as it leaves the EU. The UK has so far stated that judicial review will fill the gap but that position runs contrary to the UK's actions in recent years, which have taken it further into non-compliance with the Convention, making it more difficult for citizens to hold the powerful to account when it comes to protecting the environment.
10. Brexit now offers the UK an opportunity to review all its legislative, administrative and procedural processes in order to implement necessary changes to ensure compliance with the Committee's longstanding findings and recommendations and to give full domestic effect to the Convention. The starting point must be the recognition of the vital role citizens and public interest organisations play in protecting the environment.

4 Conclusion

11. Over the next three years, as the UK prepares to leave the EU, and begins to reconsider its laws and procedures outside the EU framework, there can be no excuse for continued failure to comply with the recommendations of the Committee. As a first important step with respect to access to justice, we invite the UK to seize this opportunity to implement the long overdue changes to reduce financial barriers and ensure that the allocation of costs in all court procedures subject to article 9 is fair, equitable, and not prohibitively expensive
12. We therefore invite the MOP to adopt draft decision VI/8k and the UK government to take this opportunity to affirm its commitment to upholding its international obligations under the Convention and to enabling citizens to have a voice when it comes to protecting the environment.

⁴ Michael Gove, 'The Unfrozen Moment – Delivering A Green Brexit' (21 July 2017)
<https://www.gov.uk/government/speeches/the-unfrozen-moment-delivering-a-green-brex-it>

11 August 2017

Gillian Lobo
Lawyer ClientEarth
+44 (0)20 3030 5983
globo@clientearth.org
www.clientearth.org

ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

ClientEarth is funded by the generous support of philanthropic foundations, institutional donors and engaged individuals.

Brussels

Rue du Trône 60
5ème étage
1050 Bruxelles
Belgique

London

274 Richmond Road
London
E8 3QW
UK

Warsaw

ul. Żurawia 45
00-680 Warszawa
Polska

ClientEarth is a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, with a registered branch in Belgium, N° d'entreprise 0894.251.512, and with a registered foundation in Poland, Fundacja ClientEarth Prawnicy dla Ziemi, KRS 0000364218.