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**ECONOMIC COMMISSION FOR EUROPE****MEETING OF THE PARTIES TO THE CONVENTION ON  
ACCESS TO INFORMATION, PUBLIC PARTICIPATION  
IN DECISION-MAKING AND ACCESS TO JUSTICE  
IN ENVIRONMENTAL MATTERS**

Procedures and mechanisms facilitating  
the implementation of the Convention:  
Reports on implementation

**IMPLEMENTATION REPORT SUBMITTED BY THE UNITED KINGDOM: 2014-2017**

*Article 10, paragraph 2, of the Convention requires the Parties, at their meetings, to keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties. Through decision I/8, the Meeting of the Parties established a reporting mechanism whereby each Party is requested to submit a report to each meeting of the Parties on the legislative, regulatory and other measures taken to implement the Convention, and their practical implementation, according to a reporting format annexed to the decision. For each meeting, the secretariat is requested to prepare a synthesis report summarizing the progress made and identifying any significant trends, challenges and solutions. The reporting mechanism was further developed through decision II/10, which addressed, inter alia, the issue of how to prepare the second and subsequent reports.*

## I. PROCESS BY WHICH THE REPORT HAS BEEN PREPARED

1. The process of preparing the National Implementation Report of the United Kingdom (UK) under the Aarhus Convention is extremely important to the UK. This Report has been prepared by the Department for Environment, Food and Rural Affairs (Defra), which is the lead UK department for the Aarhus Convention, in conjunction with other government departments and the Devolved Administrations in Scotland, Wales and Northern Ireland.
2. ~~The UK Government consulted on this Report from 2017. The consultation applied to England, Wales, Northern Ireland and Scotland and was publicly available on. In parallel to this, written views from organisations with a particular interest in the Convention were sought. The types of organisations consulted covered a range of interests, including environmental non-governmental organisations (NGOs), public authorities, think tanks and research bodies. Where appropriate, their views have been reflected in the drafting of this report.~~

## II. PARTICULAR CIRCUMSTANCES RELEVANT FOR UNDERSTANDING THE REPORT

- ~~2.3.~~ There are three separate legal systems in the United Kingdom: i) England and Wales, ii) Scotland and iii) Northern Ireland.

## III. LEGISLATIVE, REGULATORY AND OTHER MEASURES

### IMPLEMENTING THE GENERAL PROVISIONS IN PARAGRAPHS 2, 3, 4, 7 AND 8 OF ARTICLE 3

#### Article 3, paragraph 2

- ~~3.4.~~ Several general measures have been taken in the UK to ensure that officials and authorities behave properly in their relations with the public, including by providing appropriate assistance and guidance. Expected standards of conduct and service delivery have been extensively codified. Examples include the Civil Service Code ~~of~~ Conduct (<http://www.civilservice.gov.uk/about/values/cscodex/index.aspx>), the Northern Ireland Civil Service Code of Ethics (<http://www.dfpni.gov.uk/nics-code-of-ethics.pdf>) and the “Customer Service Excellence” scheme (<http://www.customerserviceexcellence.uk.com/>). A single, searchable internet website ([www.gov.uk](http://www.gov.uk)) has been created and will eventually provide access to all relevant information and services provided by government departments. A similar website operates in Northern Ireland ([www.nidirect.gov.uk](http://www.nidirect.gov.uk)).
- ~~4.5.~~ Information for people seeking access to environmental and other information through a Freedom of Information (FOI) request is available at the bottom of the webpages of all government departments, for example the general Defra webpage (<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>). The website’s search function allows all government publications to be searched, including published responses to information requests (<https://www.gov.uk/government/publications>)~~This includes both information about how to make an FOI request and a link to a searchable list of previous FOI releases~~ ([https://www.gov.uk/government/publications?departments%5B%5D=department-for-environment-food-rural-affairs&publication\\_type=foi-releases](https://www.gov.uk/government/publications?departments%5B%5D=department-for-environment-food-rural-affairs&publication_type=foi-releases)). Environmental data is brought

together under the data.gov.uk portal (<http://data.gov.uk/>) and forms the basis for a number of web based services.

6. The Information Commissioner's Office ([www.ico.org.uk/](http://www.ico.org.uk/)) has a statutory duty to provide guidance on the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Act 1998 ([www.ico.org.uk/](http://www.ico.org.uk/)) and to promote good practice. It also provides a range of guidance notes ([http://www.ico.org.uk/for\\_organisations/guidance\\_index](http://www.ico.org.uk/for_organisations/guidance_index)) and training products ([http://www.ico.org.uk/for\\_organisations/training](http://www.ico.org.uk/for_organisations/training)). The Scottish Information Commissioner (<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.asp>) has similar powers under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004, although data protection is not devolved and remains with the UK Information Commissioner.

~~5. Defra has an Environmental Information Unit, which can be contacted by email or via Defra's telephone helpline, and from which members of the public and public authorities can obtain guidance on environmental information access rights. The unit also delivers workshops and presentations to public authority staff to promulgate best practice in environmental information access rights.~~

7. The ~~new~~ Consultation Principles ~~for Government~~ were introduced in ~~July~~ 2012, ~~with updated principles added in 2016,~~ (<https://www.gov.uk/government/publications/consultation-principles-guidance>). The Principles outline what the public can expect from the Government when it ~~runs formal, written~~ runs consultation exercises on matters of policy or policy implementation. The principles include that consultations:

- should be clear and concise;
- should have a purpose;
- should be informative;
- are only part of the process of engagement;
- should last for a proportionate amount of time;
- should be targeted;
- should take account of the groups being consulted;
- should facilitate scrutiny.

~~6. Key areas of the new Principles are early and sustained stakeholder engagement, consultation periods which can range from 2 to 12 weeks, and a digital by default consultation process. Concerns were expressed by some elements of civil society in relation to the new Principles, including the pace and scope of change. However it is important to understand that these flexible consultation procedures are aimed at providing a more targeted approach, so that the type and scale of engagement is proportional to the potential impacts of the proposal.~~

8. ~~A guide to the procedures involved in environmental impact assessment (EIA) are published by the Department for Communities and Local Government (DCLG); (<https://www.gov.uk/government/publications/environmental-impact-assessment-circular-02-1999>). DCLG are also preparing a new online suite of National Planning Practice Guidance, which has been recently open to public testing and comment at the beta-testing stage at <http://planningguidance.planningportal.gov.uk/>. A guide~~ Guidance to the procedures involved in environmental impact assessment (EIA) in the context of town and country planning in England are published by the Ministry of Housing, Department for Communities and Local Government

~~(MHCLG):~~ (<http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/>). (<https://www.gov.uk/government/collections/planning-practice-guidance>). This forms part of ~~MHCLG~~'s online suite of Planning Practice Guidance, which was first published in March 2014 (<http://planningguidance.communities.gov.uk/blog/guidance/>).

The Government provides information and links on the provision of effective and accessible justice for all, in particular via the Community Legal Advice website (<https://claonlineadvice.justice.gov.uk/>), which gives guidance on how to access legal services, guidance on eligibility for publicly-funded advice services and information to help resolve problems in a range of categories of law. Information on the judicial system in Northern Ireland can be found at ~~<http://www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/the-justice-system.htm>~~. <https://www.nidirect.gov.uk/articles/introduction-justice-system>.

~~7.9.~~ The work of officials and public authorities is complemented by the work of several independent voluntary bodies, including Citizens Advice, which provides the gateway to a nationwide network of local Citizens Advice Bureaux ([www.adviceguide.org.uk/](http://www.adviceguide.org.uk/)) providing practical advice on legal system and individuals' rights.

### Article 3, paragraph 3

~~10.~~ The Government's central internet website for public services ([www.gov.uk](http://www.gov.uk)) contains information on the work of Defra (<https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>), ~~DCLGMHCLG~~ (<https://www.gov.uk/government/organisations/department-for-communities-and-local-government>), and ~~DECC~~ (<https://www.gov.uk/government/organisations/department-of-energy-climate-change>). The Department for Business, Energy and Industrial Strategy (<https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy>). The Environment Agency (<https://www.gov.uk/government/organisations/environment-agency>), which is the executive ~~agency non-departmental public body~~ for environmental issues in England, will move its web presence to the central [www.gov.uk](http://www.gov.uk) website during 2014. The [www.gov.uk](http://www.gov.uk) website includes information and advice relevant to all areas of environmental policy. There are also links to more detailed sources of information on particular subject areas.

~~8.11.~~ In Scotland, Scotland's Environment website aims to offer a single source of information on the state of the environment and through this supports increased public participation. This initiative – a partnership steered by the Scottish Government and supported by other public bodies and NGOs – has received EU life+ funding to support parts of the initiative, in particular for activities to enhance the level of public awareness and participation in environmental issues (<http://www.environment.scotland.gov.uk/>).

~~9.12.~~ Education about environmental issues features in the National Curriculum in schools within the geography and science curriculums. Information is available from the Department for Education (<https://www.gov.uk/government/organisations/department-for-education>). In addition, the curriculum includes a citizenship programme, which aims to ensure that all pupils:

- acquire a sound knowledge and understanding of how the United Kingdom is governed, its political system, and how citizens participate actively in its democratic systems of government; and

- develop a sound knowledge and understanding of the role of law and the justice system in our society and how laws are shaped and enforced.

~~10.13.~~ Various environmental bodies, enforcement agencies and other organisations run specific environmental awareness programmes, sometimes in conjunction with schools, for example:

- Local authority initiatives such as the campaigns run by Southwark Council on sustainability and energy saving for schools; (<http://www.southwark.gov.uk/environmentaleducation>).
- ~~DCLGMHCLG~~ supports a range of initiatives to promote strong, active and empowered communities, capable of defining problems and tackling them together or influencing public investment to address their priorities. These include the community rights provided through the Localism Act 2011. The Community Right to Bid helps to protect locally important community assets – anything from shops to community centres to pubs to amenity land. ~~The Right to Challenge enables communities to challenge to take over local services they think they can run differently and better.~~ Neighbourhood Planning enables local people to choose where they want new homes, shops and offices to go, to have their say on how new buildings look and what ~~amenities~~ infrastructure should be provided and to grant planning permission for the new buildings which they want to see built. This is supported further through programmes such as the Communities Fund in which we are giving projects working with their Local Authorities the opportunity to design and deliver services that can both deliver savings and a more tailored approach that is focused on outcomes that matter to local people. Information on the suite of Rrights available to communities can be found at [www.mycommunity.org.uk](http://www.mycommunity.org.uk). This was is supported further through programmes such as Our Place!, Delivering Differently In Neighbourhoods and the Communities Fund which gives communities and neighbourhoods the opportunity to take control and tackle local issues. This Using the Our Place! approach means putting the community at the heart of decision making and bringing together the right people—councillors, public servants, businesses, voluntary and community organisations, and the community themselves, to revolutionise the way a neighbourhood works <http://mycommunity.org.uk/> (<http://mycommunityrights.org.uk/>).

~~11.14.~~ Environmental education and awareness are integrated across UK public policy. Examples include:

- a) ~~Sustainable Development: The Government launched its new vision for Sustainable Development in 2011 and is mainstreaming Sustainable Development so that it is central to the way that policy is made, its buildings are run, and goods and services are purchased. Ministers have agreed an approach for mainstreaming Sustainable Development, which in broad terms consists of:~~
- ~~providing Ministerial leadership and oversight;~~
  - ~~leading by example;~~
  - ~~embedding Sustainable Development into policy; and~~
  - ~~transparent and independent scrutiny.~~
- ~~Our long term economic growth relies on protecting and enhancing the environmental resources that underpin it, and paying due regard to social needs. As part of our commitment to enhance wellbeing, we are measuring our progress as a country, not just~~

~~by how our economy is growing, but by how our lives are improving; not just by our standard of living, but by our quality of life.~~

a) **Sustainable Development:** Ministers have agreed an approach for mainstreaming Sustainable Development, which in broad terms consists of:

- Multidisciplinary specialists work closely with policy teams to ensure that evidence is properly considered and used in policy development. A new sustainable development policy diagnostic tool has been developed to help policy teams evaluate policy impacts across all aspects of sustainable development.
- Reviewing the uptake of sustainable development and environmental guidance in Impact Assessments (IAs) across all Departments.
- Supporting the reconstituted Natural Capital Committee. Embedding the assessment of natural capital in policy development training and working with HM Treasury to ensure all Departments take the same approach.
- Working with HM Treasury on the Green Book refresh process to improve the consideration of natural capital within it; and developing tools to make it easier for Departments to account for the value of nature in their decisions.
- Developing natural capital accounts for the UK in partnership with the Office for National Statistics.
- Publicly reporting cross-government performance against the Greening Government Commitments.
- Government Procurement is continuing to promote sustainable procurement through standing instructions within its policies and processes to consider all elements of good procurement practice.

b) ~~**The Natural Environment:** the Natural Environment White Paper (2011) includes ambitions to:~~

- ~~• see every child in England given the opportunity to learn about the natural environment;~~
- ~~• help people take more responsibility for their environment, putting local communities in control and making it easier for people to take positive action.~~

b) **Biodiversity:** Biodiversity 2020 has an outcome that by 2020, significantly more people will be engaged in biodiversity issues, aware of its value and taking positive action.

### **Article 3, paragraph 4**

~~12.15.~~ There are no general requirements for the recognition of associations, organisations or groups promoting environmental protection in the UK. A broadly liberal and inclusive approach is taken to their participation in public life, including in relation to environmental policy issues.

~~13.16.~~ Representatives of consumer groups and women's groups, as well as individuals acting in an individual capacity, are included in the current membership of environmental stakeholder groups (such as the Chemicals Stakeholder Forum), policy advisory bodies, or as lay or expert members,

as appropriate, on specialist advisory committees (such as the Hazardous Substances Advisory Committee or the Pesticides Residue Committee).

~~14.17.~~ The Civil Service Reform Plan (<https://www.gov.uk/government/organisations/civil-service-reform>) commits the government to improving policy making and implementation with a greater focus on robust evidence, transparency and engaging with key groups earlier in the process. As a result the government is improving the way it consults by adopting a more proportionate and targeted approach, so that the type and scale of engagement is proportional to the potential impacts of the proposal. The emphasis is on understanding the effects of a proposal and focusing on real engagement with key groups rather than following a set process. Further information on the Government's principles for engagement, [in addition to the examples above](#) - can be found at (<https://www.gov.uk/government/publications/consultation-principles-guidance>).

~~15.18.~~ Direct financial support to environmental associations or groups takes a variety of forms. Indirect support includes exemption from direct and indirect taxes for qualifying fund-raising activities by registered charities, as well as tax relief on charitable donations from individuals. The National Charities Database (<http://www.charityfinancials.com>) currently records more than 1,000 registered charities that include the pursuit of environmental aims within their objectives.

### Article 3, paragraph 7

~~16.19.~~ As a member of the European Union, the UK supports the appropriate application of the Convention to European Union legislation and bodies. It also continues to support the development of the participatory principles of the Convention, of Principle 10 of the 1992 Rio Declaration and of Paragraph 99 of the Rio+20 outcome document in international forums, including for example: the United Nations Conference on Sustainable Development (Rio+20); the ~~eleventh-thirteenth~~ meeting of the Conference of the Parties to the Convention on Biological Diversity; the ~~eighteenth-twenty-second~~ session of the Conference of the Parties to the United Nations Framework Convention on Climate Change ~~in 2012~~; and the Environment for Europe process, as well as in specific environment agreements, such as the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, the Rotterdam Convention and the Basel Convention.

~~17.20.~~ Examples of the active promotion by the UK at the international level of the practical application of the Convention's underlying principles include:

- a) Membership of the Partnership for Principle 10 ([www.pp10.org](http://www.pp10.org)), a group funding various projects throughout the world which aim to improve access to information, public participation and access to justice in environmental matters.

~~Sponsorship by Defra of a collaborative project between the United Nations Environment Programme (UNEP) and the UK Environment Agency, to utilise the Agency's experience and expertise in Geographic Information System (GIS) based electronic information services to help build capacity in the EECCA region for efficient and effective provision of environmental information~~

- b) The contribution of funding by the UK Department for International Development (DfID) to an independent study and the development of a practical guide on public participation and the Cartagena Protocol on Biosafety ([www.unep.ch/biosafety/old\\_site/development/devdocuments/PublicParticipationIDS.pdf](http://www.unep.ch/biosafety/old_site/development/devdocuments/PublicParticipationIDS.pdf) and [bch.cbd.int/database/record-v4.shtml?documentid=41530](http://bch.cbd.int/database/record-v4.shtml?documentid=41530)).

- c) The UK Ministry of Housing, Communities and Local Government~~Department for Communities and Local Government~~ part funded [www.communityplanning.net](http://www.communityplanning.net). This website, originally funded by DFID, provides detailed information and case studies on how people can effectively influence the planning and management of their environment.
- d) ~~In June 2010, the~~ The United Kingdom ~~became is~~ a signatory of the Charter of the Regional Environmental Center for Central and Eastern Europe (REC), an international organisation which supports the exchange of environmental information, encourages public participation in environmental decision-making and promotes cooperation between government, NGOs and other stakeholders (<http://www.rec.org/about.php?section=mission>). Defra has previously donated to REC initiatives, and the Foreign and Commonwealth Office has funded various regional initiatives through embassies in REC beneficiary countries. REC already works with UK partners via the British Embassy in Budapest and the Prince of Wales' Corporate Leaders Group.
- e) The Government worked closely with civil society and businesses in preparing for the UN Conference on Sustainable Development (Rio+20) in 2012 and senior representatives from both sectors were part of the UK official delegation. Meetings with stakeholders to share information and ideas took place before and during Rio+20 and at various levels of government – from the Deputy Prime Minister to official level. Since Rio+20, this regular engagement and information sharing has continued, including through the UK branch of the international coalition of NGOs on the post-2015 development agenda and a number of outreach events following the publication in May 2012 of the UN Secretary-General's High-Level Panel's report on the post-2015 development agenda. The UK Prime Minister co-Chaired the High-Level Panel and was instrumental in ensuring that its preparation involved extensive engagement with a wide range of stakeholders.
- ~~f) NGOs and stakeholder groups contributed to the development of UK positions for the implementation of the EU Timber Regulation, culminating in regular meetings between key stakeholders and officials in the Department for Environment, Food and Rural Affairs to discuss the UK implementation of the Regulation and the UK's position for the development of supplementary EU legislation (the EU Implementing Regulation and EU Delegated Regulation) and in the development of EU Guidance to assist operators and ensure consistent interpretation of the Regulation across the EU. This was complemented by other meetings with representatives of small and medium-sized enterprises (SMEs) and specialist trade groups.~~
- ~~g)f)~~ Defra officials convene an expert group for NGOs with an interest in the International Whaling Commission (IWC). The meetings are used to shape the UK's official position and two NGO representatives are nominated by the group to join the UK delegation for the IWC's bi-annual meeting.
- ~~h)g)~~ Formerly known as DECC but now a part of the Department for Business, Energy and Industrial Strategy (BEIS), conducts regular meetings with stakeholder organisations in order to take their views ahead of international meetings at all levels of the Department. ~~DECC-BEIS~~ holds meetings on topics including Fast Start finance, long-term climate finance, Monitoring Reporting and Verification, REDD and forests, governance and architecture, carbon markets, adaptation, technology and Intellectual Property Rights at appropriate junctures and according to international milestones. There was a contact point

in the UK delegation to the 2012~~6~~ UNFCCC negotiations with whom stakeholders could raise any concerns about public participation in the meeting.

~~Defra is an active member of the UN Task Force on Access to Information which aims to continue strengthening implementation of the Convention's provisions on access to information, including through promoting exchange of information, experiences, challenges and good practices concerning public access to environmental informa~~

~~i)h) The UK is a Party to the Convention on International Trade in Endangered Species (of Wild Fauna and Flora) - 'CITES' - which aims to ensure that trade in endangered species is sustainable. Species are listed on three appendices which afford different level of protection and trade is banned for the most endangered species apart from in certain exceptional circumstances. CITES is implemented in the EU by the EU Wildlife Trade Regulations 338/97 and 865/2006. A Through the CITES Joint Liaison Group (JLG) and CITES Sustainable Users Group (CSUG), Defra officials made up of meet with NGOs, traders in CITES specimens and other Government Departments and Agencies meets at least two to three times a year to discuss policy and implementation issues with Defra officials. Through these, JLG and CSUG members have the opportunity to feed into international meetings such as the CITES Conference of Parties and the various EU CITES meetings through the JLG.~~

~~j)i) Defra is keen to share knowledge on the Aarhus Convention, including recent participation at a seminar in Dublin organised by the Environmental Pillar. At this event, Defra presented its experiences of the Aarhus Convention to an audience of Irish officials and representatives of environmental NGO Defra currently covers the expenses of four academics and industry experts to enable them to attend meetings linked to the Montreal Protocol and provide expert advice to the Protocol parties.~~

~~k)j) Representatives of consumer groups and women's groups, as well as individuals acting in an individual capacity, are included in the current membership of environmental stakeholder groups (such as the UK Chemicals Stakeholder Forum), policy advisory bodies, or as lay or expert members, as appropriate, on specialist advisory committees (such as the Hazardous Substances Advisory Committee or the Expert Committee on Pesticide Residues in Food). In addition, it is established practice for such bodies to publish the papers for their meetings on their websites, and to admit members of the public who wish to attend these meetings.~~

~~l)k) Hosting/convening and or attending regular meetings with UK (and EU) NGOs, communicants and civil society in the London, Brussels, Geneva or via tele-conference to promote practical application of the Convention's underlying principles.~~

### Article 3, paragraph 8

~~18.21.~~ The UK has strengthened the access rights to information through powers of enforcement given to the office of the Information Commissioner (ICO) and the Tribunals Service. The ICO examines complaints from members of the public who feel that their request for information has not been dealt with properly by the public authority. The First-tier Tribunal (Information Rights), Upper Tribunal and, ultimately, the Supreme Court give further and higher levels of appeal. The ICO, Tribunals and the Supreme Court have powers to order public authorities to release information, and both the ICO and Tribunals are free of charge. The Scottish Information Commissioner has broadly similar powers, although the appeal procedure operates without a tribunal.

~~19-22.~~ We treat all members of the public equally, regardless of nationality, citizenship and domicile. Any person has equal access to the courts.

~~20-23.~~ Several legal and administrative measures are available in the UK to protect people from penalization, persecution or harassment in pursuing matters covered by the Convention. Some of these measures relate to the avoidance of discrimination against particular members of the public, such as at work or in the provisions of services (e.g., the Equality Act 2010). Others have more general application, or are based on fundamental human rights. Examples include the Protection from Harassment Act 1997, which makes it a criminal offence to behave in a way amounting to the harassment of another person, or the Human Rights Act 1998, which makes rights from the European Convention of Human Rights enforceable in UK courts (<https://www.gov.uk/government/topics/equality-rights-and-citizenship>). Or, in relation to Northern Ireland, <http://www.nidirect.gov.uk/index/information-and-services/government-citizens-and-rights/your-rights-and-responsibilities.htm>.

#### **IV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 3**

~~21-24.~~ No obstacles have been encountered.

#### **V. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE GENERAL PROVISIONS OF ARTICLE 3.**

~~22-25.~~ Not applicable.

#### **VI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 3**

~~23-26.~~ Please see information provided above.

#### **VII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO ENVIRONMENTAL INFORMATION IN ARTICLE 4**

~~24-27.~~ The provisions of Articles 4 and 5 of the Convention fall within the competence of the European Union, as do the related matters covered by Article 9, Paragraph 1, of the Convention.

~~25-28.~~ On 28 January 2003, Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC was adopted

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:EN:NOT>). Directive 90/313/EEC had previously established measures for the exercise of the right of the public to access environmental information.

~~26-29.~~ The preamble of Directive 2003/4/EC states that “Provisions of Community law must be consistent with that [Aarhus] Convention with a view to its conclusion by the European

Community” (paragraph 5) and that “Since the objectives of the proposed Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty.” (Paragraph 23)

~~27-30.~~ The European Union has therefore implemented article 4 of the Convention through this legislation. The UK was required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 February 2005. To do this, Defra introduced the Environmental Information Regulations 2004 (SI 2004/3391) which are the statutory provisions relating to public access to environmental information in England, Wales and Northern Ireland (<http://www.legislation.gov.uk/uksi/2004/3391/made>).

~~28-31.~~ In Scotland, separate arrangements are in place, provided for by the Environmental Information (Scotland) Regulations 2004 (SSI 2004/520) ([www.legislation.gov.uk/ssi/2004/520/pdfs/ssi\\_20040520\\_en.pdf](http://www.legislation.gov.uk/ssi/2004/520/pdfs/ssi_20040520_en.pdf)). In addition, the INSPIRE (Scotland) Regulations 2009 (SSI/2009/440 ~~amended by~~ ~~and~~ SSI/2012/284) aim to improve environmental policy making through improvements to spatial data sharing, availability and use.

~~29-32.~~ The Freedom of Information Act 2000 (and the 2002 Scottish Act) took effect on 1 January 2005, and has brought about significant changes to access to information held by public authorities ([http://www.ico.org.uk/for\\_organisations/freedom\\_of\\_information/guide](http://www.ico.org.uk/for_organisations/freedom_of_information/guide)).

~~30-33.~~ These legislative measures ensure compliance with the provisions mentioned in the above question.

## VIII. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 4

34. Member States of the European Union were under an obligation to report by 14 August 2009 to the European Commission on the experience gained in the application of European Directive 2003/4/EC on public access to environmental information. Defra’s report identified a number of issues relating to interpretation of the Directive, including the difficulty of distinguishing between environmental and non-environmental information on the basis of the current definition, the definition of public authorities, the definition of emissions and the scope of the “emissions override”, which remain relevant to the proper application of Article 4. Defra’s published report is available at this website

<http://webarchive.nationalarchives.gov.uk/20100910153802/http://www.defra.gov.uk/corporate/policy/opengov/eir/reports.htm>). As the Commission’s subsequent report in 2012 (available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0774:FIN:EN:PDF>) identifies, Court judgments are clarifying such matters of interpretation which will help implementation. ~~In this regard Case C-279/12 has recently offered guidance on the meaning of the term “public authority”.~~

## VII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 4

36. The ~~Ministry of Justice Cabinet Office~~ publishes statistics and reports on the performance of central government in the provision of access to information at: <https://www.gov.uk/government/collections/government-foi-statistics> <https://www.gov.uk/government/organisations/ministry-of-justice/series/government-foi-statistics>. Similar information is available from the Scottish Government at: <http://www.gov.scot/About/Information/FOI/Reporting>.

## VIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 4

37. Please see information provided above.

## IX. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON THE COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION IN ARTICLE 5

38. ~~Please note response under Section VII of Article 4. The provisions of Articles 4 and 5 of the Convention fall within the competence of the European Union, as do the matters covered by Article 9, paragraph 1.~~

39. ~~On 28 January 2003, Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC was adopted (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:EN:NOT>). Directive 90/313/EEC had previously established measures for the exercise of the right of the public to access environmental information.~~

40. ~~The preamble of Directive 2003/4/EC states that “Provisions of Community law must be consistent with that [Aarhus] Convention with a view to its conclusion by the European Community” (paragraph 5) and that “Since the objectives of the proposed Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty” (paragraph 23).~~

41. ~~The European Union has therefore implemented Articles 4 and 5 of the Convention through this legislation. The UK was required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 February 2005. To do this, Defra introduced the Environmental Information Regulations 2004, which are the statutory provisions relating to public access to environmental information in England, Wales and Northern Ireland (<http://www.legislation.gov.uk/ukxi/2004/3391/contents/made>).~~

42. ~~In Scotland, separate arrangements are in place through the Environmental Information (Scotland) Regulations 2004 (SSI 2004/520) (<http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm>). In addition, the INSPIRE (Scotland) Regulations (SSI/2009/440 and SSI/2012/284) aim to improve environmental policy making through improvements to spatial data sharing, availability and use.~~

43. The Public Sector Transparency Board, established in June 2010, is driving forward the Government's transparency agenda for releasing key public datasets and setting open data standards across the public sector. Minutes of its meetings are available at <https://www.gov.uk/government/policy-advisory-groups/public-sector-transparency-board>). The Public Sector Transparency Board has helped to make public data available and easy to find through a single easy to use online access point ([www.data.gov.uk](http://www.data.gov.uk)). One example of the data set emerging from this process is MAGIC a web-based interactive map service to bring together environmental information from across government (<http://www.magic.gov.uk>) The Cabinet Office also has a Transparency Team (<https://www.gov.uk/government/topics/government-efficiency-transparency-and-accountability>).

44. In addition:

- (a) The Department for Environment, Food and Rural Affairs (<https://www.gov.uk/defra>);
- (b) The English Environment Agency (<http://www.environment-agency.gov.uk>);
- (c) The Scottish Government (<http://www.scotland.gov.uk/Topics/Environment>);
- (d) The Welsh Government (<http://new.wales.gov.uk/topics/environmentcountryside/?lang=en>); and
- (e) The Department of ~~the Environment~~ Agriculture, Environment and Rural Affairs in Northern Ireland (<http://www.doeni.gov.uk/>) publish extensive amounts of information relating to the environment.

#### **Article 5, paragraphs 6 and 8**

45. The UK Government believes that changes to the way we produce, use and dispose of products and provide services can result in big reductions in the major environmental impacts. The Government's aim is to develop more integrated approaches to tackling product impacts right across their life cycle. This involves identifying product sectors with the most significant impacts and finding the best combination of market measures to bring about improvements. These measures include encouraging businesses to manage their impacts on the environment, raising public awareness and developing tools to improve green claims and other labelling. Information is available at <https://www.gov.uk/government/policies/encouraging-businesses-to-manage-their-impact-on-the-environment>.

46. The Waste and Resources Action Programme (WRAP) (funded by Defra, the Welsh Government and the Scottish Government) have set up the Product Sustainability Forum to encourage organisations to work collaboratively on product environmental information. The Forum is a collaboration of over 80 organisations including grocery and home improvement retailers and suppliers, academics, NGOs and UK Government representatives. It provides a platform to work together to measure, reduce and communicate the environmental performance of the grocery and home improvement products (<http://www.wrap.org.uk/content/product-sustainability-forum>). Data and information will be published and freely available on the internet. The Product Sustainability Forum is working with UNEP to develop collaborative actions with similar initiatives around the world.

47. Other bodies which provide information to the public, to enable them to make informed environmental choices about products and services, include:

- (a) The Food Standards Agency (<http://www.food.gov.uk/>);

- (b) The Department ~~for Business, Energy and Industrial Strategy of Energy and Climate Change~~ (<https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy>);
- ~~(c) The Department for Business, Innovation and Skills~~ (<https://www.gov.uk/government/organisations/department-of-energy-climate-change>);
- (d) The Chartered Trading Standards Institute (<http://www.tradingstandards.uk/>);
- (e) The Carbon Trust, which helps businesses and the public sector cut carbon emissions (<http://www.carbontrust.com/>).

### **Article 5, paragraph 9**

48. The Protocol on Pollutant Release and Transfer Registers (PRTRs) was adopted during the fifth “Environment for Europe” Ministerial Conference in May 2003. The European Union adopted a Regulation on the establishment of a European Pollutant Release and Transfer Register (E-PRTR), which came into force on 24 February 2006. The UK ratified the Protocol on 31 July 2009.

### **X. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 5**

49. No obstacles have been encountered.

### **XI. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 5**

50. Not applicable.

### **XII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 5**

51. See the relevant sections above.

### **XIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES IN ARTICLE 6**

52. The provisions of Articles 6, 7 and 9, Paragraph 2, of the Convention fall within the competence of the European Union, as do the related matters covered by Article 9, Paragraphs 2 and 4.

53. The European Union originally implemented these requirements largely through an amending instrument, adopted on 26 May 2003, “Directive 2003/35/EC of the European Parliament and of the Council, providing for public participation in respect of the drawing up of plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC” (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0035:EN:NOT>).

54. Directive 85/337/EEC concerned the assessment of the effects of certain public and private projects on the environment. Directive 85/337/EEC has been consolidated into Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/eu (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:EN:PDF>). Further amendments were made to Directive 2011/92/EU by Directive 2014/52/EU; this Directive came into force on 16 May 2017 ~~and~~, Directive 96/61/EC (consolidated as Directive 2008/1/EC) is being recast in Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:334:0017:0119:EN:PDF>). ~~— The amendments originally made to the 1985 and 1996 Directives are being incorporated into the revised Directives as they come into force.~~ The 2003 Directive also provided public participation provisions for other EU legislation including waste and nitrates requirements.
56. The preamble of Directive 2003/35/EC states that “Community law should be properly aligned with that Convention with a view to its ratification by the Community”, (para. 5) and that “Since the objective of the proposed action ... cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiary as set out in Article 5 of the Treaty” (para. 12).
57. The European Union therefore implemented Articles 6, 7 and 9, Paragraph 2, of the Convention through this legislation and these principles have been carried forward when it has been recast or consolidated. The UK has brought into force the laws, regulations and administrative provisions necessary to comply with this Directive. These include<sup>1</sup>:
- a. The Environmental Permitting (England and Wales) Regulations 2010;
  - b. The Environment Act 1995 ~~(e.25)~~;
  - c. Environmental Protection Act 1990 ~~(e.43)~~;
  - d. ~~The Pollution Prevention and Control (Miscellaneous Amendments) Regulations (Northern Ireland) 2006~~;
  - e. ~~Amendment of Pollution Prevention and Control Ordinance 2001~~;
  - f.e. The Pollution Prevention and Control (Public Participation etc.) (Scotland) Regulations 2012;
  - g.f. The Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2013;
  - h.g. Town and Country Planning Act 1990 ~~(e.8)~~;
  - h. ~~Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 as amended~~; The Town and Country Planning (Environmental Impact assessment) Regulations 2014<sup>7</sup>;
  - i. ~~and~~ The Town and Country Planning (Environmental Impact assessment) (Wales) Regulations 2016 for England and Wales respectively;
  - j. Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008;
  - k. The Infrastructure Planning (Environmental Impact Assessment) Regulations ~~2001~~<sup>79</sup> as amended<sup>2</sup>;

<sup>1</sup> References to legislation are as amended.

<sup>2</sup> DCLG is currently in the process of implementing European Directive 2014/52/EU; a recent consultation sought views on draft regulations which will replace the existing regulations implementing the requirements of the Environmental

- [l.](#) The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009;
- [l.m.](#) Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011;
- [m.n.](#) Environmental Impact Assessment (Scotland) Regulations 1999-~~as amended~~;
- [n.o.](#) Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003;
- [o.p.](#) ~~The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012~~ [The Planning \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2015](#);
- [p.q.](#) The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 ~~as amended~~;
- [q.r.](#) Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999-~~as amended~~;
- [r.s.](#) ~~Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2000 as amended~~;
- [s.t.](#) The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999-~~as amended~~;
- [u.](#) Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006;
- [t.v.](#) [The Drainage \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2017](#)
- [u.w.](#) The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010;
- [v.x.](#) Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999;
- [w.y.](#) ~~The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 2007~~;
- [x.z.](#) Highways (Assessment of Environmental Effects) Regulations 1999-~~as amended~~;
- [y.aa.](#) ~~The Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 1999~~;
- [z.bb.](#) The Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 2007;
- [aa.cc.](#) Environmental Impact Assessment (Scotland) Regulations 1999-~~as amended~~;
- [bb.dd.](#) The Harbour Works (Environmental Impact Assessment) Regulations 1999-~~as amended~~;
- [ee.ee.](#) Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003-~~as amended~~;
- [dd.ff.](#) The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;
- [ee.gg.](#) The Electricity Works (Environmental Impact Assessment) (Scotland) (Amendment) Regulations 2011;
- [ff.hh.](#) The Pipe-line Works (Environmental Impact Assessment) Regulations 2000-~~as amended~~;
- [gg.ii.](#) Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999-~~as amended~~;
- [hh.jj.](#) The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999-~~as amended~~;
- [ii.kk.](#) The Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010;
- [jj.ll.](#) The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999-~~as amended~~;
- [kk.mm.](#) The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006;
- [H.nn.](#) The Transport and Works (Assessment of Environmental Effects) Regulations 2000;
- [mm.oo.](#) The Transport and Works (Assessment of Environmental Effects) Regulations 2006;
- [nn.pp.](#) Transport and Works (Scotland) Act 2007;

- ~~oo-qq.~~ The Electricity Act 1989 (Requirement of Consent for Offshore Wind and Water Driven Generating Stations) (England and Wales) Order 2001;
- ~~pp-rr.~~ The Electricity Act 1989 (Requirement of Consent for Offshore Wind Generating Stations) (Scotland) Order 2002;
- ~~qq-ss.~~ The Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008;
- ~~rr-tt.~~ The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006;
- ~~ss-uu.~~ The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006;
- ~~tt-vv.~~ Marine Works (Environmental Impact Assessment) Regulations 2007 ~~as amended~~;
- ~~uu-ww.~~ The Water Resources (Environmental Impact Assessment) Regulations 2003 ~~as amended~~;
- ~~vv-xx.~~ The Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005 ~~as amended~~;
- ~~ww-yy.~~ Water Environment (Controlled Activities) (Scotland) Regulations 2011;
- ~~xx.~~ ~~The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006~~;
- ~~yy.~~ ~~The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006~~;
- ~~zz.~~ Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007;
- ~~aaa.~~ The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007;
- ~~bbb.~~ ~~The Channel Tunnel Rail Link (Assessment of Environmental Effects) Regulations 1999~~;
- ~~ccc.~~ The Town and Country Planning (Development Plan) (Amendment) Regulations 1997 ~~(revoked so far as they extend to England)~~; ~~The Town and Country Planning (Development Plan) Regulations 19~~
- ~~eee.~~ ~~The Town and Country (Local Planning) (England) Regulations 2012~~;
- ~~ddd.~~ ~~The Town and Country Planning (Local Development) (England) Regulations 2004~~;
- ~~eee.~~ Town and Country Planning (Local Development Plan) (Wales) Regulations 20059; ~~and The Town and Country Planning (Regional Planning) (England) Regulations 2004~~;
- ~~fff.~~ The Town and Country Planning (Scotland) Act 1997 ~~e-8~~;
- ~~ggg.~~ Town and Country Planning (Development Planning) (Scotland) Regulations 2008;
- ~~hhh.~~ ~~The Town and Country Planning (Transitional Arrangements) (England)~~
- ~~iii.~~ ~~Regulations 2004~~ ~~The Town Planning (Environmental Impact Assessment) (Amendment)~~
- ~~jjj-hhh.~~ ~~Regulations 2004~~ Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011; ~~The Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2006~~ ~~The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2006~~ ~~The Town and Country Planning (Environmental Impact Assessment) (Amendment) (England) Regulations 2008~~
- ~~kkk-iii.~~ Planning Act 2008;
- ~~lll-jjj.~~ The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009;
- ~~mmm-kkk.~~ The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;
- ~~nnn-lll.~~ Infrastructure Planning (Examination Procedures) Rules 2010;
- ~~ooo-mmm.~~ ~~Infrastructure Planning (Interested Parties) Regulations 2010~~ ~~The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015~~;
- ~~ppp-nnn.~~ Infrastructure Planning (Decisions) Regulations 2010;
- ~~qqq-ooo.~~ Infrastructure Planning (Compulsory Acquisition) Regulations 2010;
- ~~zzz.~~ ~~The Town & Country Planning (Development Management Procedure) (England) Order 2010~~ ~~The Town and Country Planning (Development Management Procedure) (England) Order 2015~~;
- aaaa. Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

The Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

**Article 6, paragraph 1**

58. The obligations under Part (a) of this paragraph are satisfied by elements of our national regulations which implement the EU Directive on integrated pollution prevention and control (the Industrial Emissions Directive 2010/75/EU), the Environmental Permitting (England and Wales) Regulations 2010 (<http://www.legislation.gov.uk/uksi/2010/675/contents/made>) and the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (<http://www.legislation.gov.uk/uksi/2011/1824/contents/made>). In the UK, all projects likely to have a significant effect on the environment are subject to control under EIA regimes which implement EU Directive 2011/92/EU as amended by Directive 2014/52/eu.
59. In ~~November~~ 2008, the UK Parliament passed new legislation in the form of the Planning Act 2008. This has been amended through the Localism Act 2011, which abolished the Infrastructure Planning Commission and transferred responsibility for decision making to the Secretary of State. Applications for development consent are now examined by an Examining Authority appointed by the Planning Inspectorate (<http://infrastructure.planningportal.gov.uk/>) on behalf of the Secretary of State, who makes recommendations to the Secretary of State for a final decision. ~~More recently, t~~
60. The Planning Act was amended by the Growth and Infrastructure Act 2013 (provisions for certification requirements and for special categories of land) ~~which will~~to help to deliver a more efficient, streamlined and democratically-accountable planning system for major infrastructure projects. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ensure that these applications are considered in accordance with the principles enshrined in the Directive. In the case of major infrastructure projects there are a number of provisions in the Planning Act 2008 which require an applicant to consult with the local community public (section 47) and to publicise the proposed application (section 48) and to take account of responses to consultation and publicity (section 49). In addition, the Secretary of State must have regard to the consultation report and the adequacy of any consultation representation received by it from a local authority consultee ~~must have regard to the adequacy of consultation~~ (section 55) when deciding whether to accept an application. The specific requirements have been prescribed in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

**Article 6, paragraph 11**

- 59.61. In March 2001 the European Union adopted Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms (GMOs) and repealing Council Directive 90/220/EEC ([http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=Directive&an\\_doc=2001&nu\\_doc=18](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2001&nu_doc=18)). The Directive is implemented in the UK by part VI of the Environmental Protection Act 1990 and regulations made under that Act (e.g. in respect of England and Wales, the GMOs (Deliberate Release) Regulations 2002: ([www.opsi.gov.uk/SI/si2002/20022443.htm](http://www.opsi.gov.uk/SI/si2002/20022443.htm))). Defra, the Scottish Government, ~~the Northern Ireland Executive~~ and the Welsh Government have functions and responsibilities in relation to the deliberate release of GMOs.

## **XVI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 6**

~~60-62.~~ No obstacles have been encountered.

## **XVII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6**

~~61-63.~~ ~~61.~~ Fifteen Coastal Local Authorities became ‘pathfinders’ under the ‘Coastal Change Pathfinders’ Programme, supported by a fund totalling £11 million. Working in partnership with their communities, the Local Authorities road-tested new and innovative approaches to plan for and manage change on the coast. The Programme has now been evaluated and is providing ideas and evidence on how Local Authorities, in partnership with their communities, can develop policy on supporting community adaptation to coastal change in the future.

64. The government continues to recognise that coastal communities face particular challenges but have huge economic potential. Our key policy approaches reflect the importance of community involvement to support coastal regeneration. Since 2015 we have provided £1.46m to help establish 146 Coastal Community Teams covering the majority of the English coastline, including 28 new Teams announced on 20 January 2017. The Teams empower local partners and the local community take control of their own areas’ regeneration. The original 118 Teams published Economic Plans setting out locally agreed short term and longer term priorities to enable their area to promote jobs and economic growth. These plans will be updated by April 2017 along with the 28 new Teams who will be submitting their first plans. The Government has also invested over £120 million in projects through the Coastal Communities Fund which is helping to create or safeguard over 18,000 jobs, provide more than 12,000 training places and apprenticeships, and attract over £200 million of public/ private sector co-finance.

## **XVIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6**

62. See the relevant sections above.

## **XIX. PRACTICAL AND/OR OTHER PROVISIONS MADE FOR THE PUBLIC TO PARTICIPATE DURING THE PREPARATION OF PLANS AND PROGRAMMES RELATING TO THE ENVIRONMENT PURSUANT TO ARTICLE 7**

63. ~~The provisions~~Provisions in of Articles 6, 7 and 9, Paragraph 2, of the Convention fall within the competence of the European Union, as do the matters covered by Article 9, Paragraphs 2 and 4.

64. The European Union has implemented some of these requirements through Directive 2003/35/EC and its successor legislation and through Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment (<http://eur->

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:197:0030:0037:EN:PDF](http://lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:197:0030:0037:EN:PDF)), which applies to a wide range of public plans and programmes (e.g. on land use, transport, energy, waste and agriculture).

65. The UK was required to bring into force the laws, regulations and administrative provisions necessary to comply with the EU legislation and the relevant domestic legislation includes the following, [as amended where relevant](#):
- (a) The Air Quality Standards Regulations 2010;
  - (b) ~~The Air Quality Limit Values (Amendment) Regulations (Northern Ireland) 2004~~ [The Air Quality Standards Regulations \(Northern Ireland\) 2010](#);
  - (c) The Air Quality Standards (Scotland) Regulations 2010;
  - (d) The Air Quality Standards (Wales) Regulations 2010;
  - (e) The Environmental Assessment of Plans and Programmes Regulations 2004;
  - (f) Environmental Assessment (Scotland) Act 2005;
  - (g) The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004;
  - (h) The Environmental Assessment of Plans and Programmes Regulations ([Northern Ireland](#)) 2004 (~~Statutory Rule 2004 No 280~~);
  - (i) Part III of the Planning ([Northern Ireland](#)) ~~Order 1991~~ [2011](#);
  - ~~(j) Part III of the Planning (NI) Order 1991, as amended by S.I. 2003/430 (N.I.8);~~
  - (k) The Waste and Contaminated Land (Northern Ireland) Order 1997;
  - (l) ~~The Planning (Control of Major Accident Hazards) Regulations 1999~~ [The Planning \(Hazardous Substances\) Regulations 2015](#);
  - (m) The Planning (Development Plans) Regulations ([Northern Ireland](#)) 1991;
  - ~~(n) The Planning (Development Plans) Regulations (NI) 1991 (S.R. 1991 No.119, as amended by S.R. 1994 No.394;~~
  - ~~(o) The Planning (Development Plans) Regulations (NI) 1991 No 119 as amended by S.R. 2004 No.438;~~
  - (p) Planning and Compulsory Purchase Act 2004 (~~e 5~~);
  - (q) Planning and Compensation Act 1991 (~~e 34~~);
  - (r) Public Health (Air Quality) (Ozone) (Amendment) Rules 2005;
  - ~~(s) Public Health (Amendment No 2) Ordinance 2005 No 3510 of 29 December 2005, (No 71 of 2005);~~
  - (t) The Nitrate (Public Participation etc.) (Scotland) Regulations 2005;(u) ~~The Nitrates Action Programme Regulations (Northern Ireland) 2006;~~
  - ~~(v) The Protection of Water Against Agricultural Nitrate Pollution (Amendment) Regulations (Northern Ireland) 2005;~~
  - ~~(w) The Nitrate Pollution Prevention Regulations 2008;~~
  - (x) The Transfrontier Shipment of Waste Regulations 2007;
  - (y) The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006;
  - (z) The Transport and Works (Assessment of Environmental Effects) Regulations 2006;
  - (aa) Transport and Works (Scotland) Act 2007;~~The Nitrate Pollution Prevention (Wales) Regulations 2008~~
66. In Scotland, the Environmental Assessment (Scotland) Act 2005 has extended the requirements of Strategic Environmental Assessment (SEA) beyond those required by the original EU Directive (2001/42/EC). This has allowed the public to actively and meaningfully participate in the preparation of public plans, programmes and strategies, if they were likely to have significant environmental effects. The result being the public has had an opportunity to contribute to the

preparation of high level Scottish strategies. For example, Scotland's National Planning Framework, Climate Change Adaptation Strategy and National Transport Strategy.

67. The Scottish Government hosts an SEA Database, which provides information about all SEA activity in Scotland, since 2004 and is freely available to the public: <http://www.scotland.gov.uk/Topics/Environment/environmental-assessment/sea/SEAG>.
68. The Scottish Government has produced 'a basic introduction to SEA'. This guidance explains the purpose of the assessment process and is helpful to both SEA practitioners and the wider public: [www.scotland.gov.uk/Topics/Environment/environmental-assessment/sea/guidance/SEAGuidance/basicguidance](http://www.scotland.gov.uk/Topics/Environment/environmental-assessment/sea/guidance/SEAGuidance/basicguidance).
69. There are legal requirements to involve the public throughout the preparation of local ~~and regional~~ plans, as outlined in the Planning and Compulsory Purchase Act 2004 and detailed in the Town and Country Planning (Local Planning) (England) Regulations 2012; ~~and the Planning Act 2008 and detailed in the Infrastructure Planning (National Policy Statement Consultation) Regulations 2009~~. Neighbourhood planning is enabled under the Town and Country Planning Act 1990 and the Neighbourhood Planning (General) Regulations 2012.
70. The Equality Act 2010 places duties on public authorities to promote disability gender and race equality, which includes requirements to involve or consult the various equalities strands in the work of the authority.
71. The Planning Act 2008 created a new development consent regime for Nationally Significant Infrastructure Projects (NSIPs). The Act provides for a more efficient, transparent and accessible planning system for nationally significant projects in the field of transport, energy, water, waste and waste-water infrastructure. This regime provides for the Government to produce National Policy Statements (NPSs) that integrate environmental, social and economic objectives and provide clarity on the need for infrastructure. To date, ~~eight~~ there are twelve designated or proposed NPSs ~~have been designated~~, detailing Government policy on different types of infrastructure development, including ~~:- six~~ on energy; ~~one on~~ transport (ports); ~~one on~~ waste water; and ~~one on~~ hazardous waste. The regime aims to be more transparent and provide better opportunities for the public and local communities to get involved in decisions that affect them. There are three opportunities to become involved: the debate about what national policy means for planning decisions; the development of specific projects; and the examination of applications for development consent.
72. Substantial modernisation of the planning system in Scotland was introduced through the Planning etc. (Scotland) Act 2006 and associated secondary legislation. This includes opportunities for local people to be more involved in the planning system and improvements designed to contribute to efficiency, effectiveness and sustainable economic development. More information can be found at (<http://www.scotland.gov.uk/Topics/Built-Environment/planning>).

## **XX. OPPORTUNITIES FOR PUBLIC PARTICIPATION IN THE PREPARATION OF POLICIES RELATING TO THE ENVIRONMENT PROVIDED PURSUANT TO ARTICLE 7**

73. Please see Section XXIV below.

## **XXI. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 7**

74. ~~No obstacles have been encountered.~~ Compliance Committee findings on public participation in the United Kingdom's National Renewable Energy Plan (NREAP) were adopted by the Meeting of the Parties in 2014 : <http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fifth-meeting-of-the-parties-2014/united-kingdom-decision-v9n.html>. The United Kingdom took note of the recommendation to ensure that in future plans and programmes similar in nature to NREAPs are submitted to public participation in accordance with article 7.
75. In Scotland a petitioner for judicial review is required to demonstrate "sufficient interest" and "a real prospect of success" before the petition is allowed to proceed. This is the test of standing.

## **XXII. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 7**

76. Not applicable.

## **XXIII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 7**

77. See the relevant sections above.

## **XXIV. EFFORTS MADE TO PROMOTE EFFECTIVE PUBLIC PARTICIPATION DURING THE PREPARATION BY PUBLIC AUTHORITIES OF EXECUTIVE REGULATIONS AND OTHER GENERALLY APPLICABLE LEGALLY BINDING RULES THAT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 8**

78. Public participation in the preparation of plans that affect the environment is current practice in the UK.
79. ~~The **New** Consultation Principles for Government were introduced in July 2012 (<https://www.gov.uk/government/publications/consultation-principles-guidance>). See Section III above for further details. The New Principles outline what the public can expect from the Government when it runs formal, written consultation exercises on matters of policy or policy implementation. Key areas of the new Principles are early and sustained stakeholder engagement, consultation periods which can range from 2 to 12 weeks, and a digital by default consultation process.~~
80. Consultation lies at the heart of Strategic Environmental Assessments (SEAs) and all public strategies, plans and programmes that are likely to result in significant environmental effects once implemented, must have their likely effects assessed under the relevant regulatory regime. In Scotland, detailed guidance in the form of an SEA Tool Kit has been published and is available to all responsible authorities.

81. Local government and other partners have a tradition of involving communities in decisions and services and there is a lot of good practice across the UK. The localism agenda means that government is committed to devolving decision-making down to the most appropriate level, which in turn means that local councils and communities have a greater mandate to work together to shape the communities and services locally that they want to see. ~~The new community rights brought in through the Localism Act 2011 are key to this, providing for example, a right for a community group to challenge the way in which a service is delivered if they feel it could be done better.~~

## **XXV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 8**

82. No obstacles have been encountered.

## **XXVI. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 8**

83. Not applicable.

## **XXVII. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 8**

84. See the relevant sections above.

## **XXVIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO JUSTICE IN ARTICLE 9**

85. The following provisions govern this area of law in the UK.
86. Adequate and effective remedies, including injunctive relief in appropriate cases, are available.
87. In England and Wales and Northern Ireland an applicant/claimant must demonstrate sufficient interest and an arguable case in law to ~~access~~ pursue judicial review proceedings (see reference to where they meet the criteria laid down in national law). This “interest” is interpreted very widely.
88. In Scotland a petitioner for judicial review is required to demonstrate “sufficient interest” and “a real prospect of success” before the petition is allowed to proceed. This is the test of standing.
- ~~87.89. The position is now similar iIn Scotland. Following a decision in 2011 of the United Kingdom Supreme Court,<sup>3</sup> the test for standing for Scottish judicial reviews is “sufficient interest” a~~

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<sup>3</sup> See AXA General Insurance Ltd & Others v Lord Advocate & Others (Scotland) [2011] UKSC 46.

petitioner for judicial review is required to demonstrate “sufficient interest” and “a real prospect of success” before the petition is allowed to proceed. This is the test of standing.

88-90. In 2012, the Commission asked a number of experts based in different Member States to report on the implementation of Articles 9 (3) and (4) of the Aarhus Convention in 17 Member States of the European Union.<sup>4</sup> The report notes that courts in England and Wales have adopted over the past thirty years “a liberal approach to the interpretation of ‘sufficient interest’”. As a result, the report concludes that “there are very few modern examples of individuals or environmental groups being refused standing”.

89-91. Further information on the court system in England and Wales can be found at <http://www.judiciary.gov.uk/about-the-judiciary/introduction-to-justice-system>. Further information on the court system in Scotland can be found at <http://www.scotland.gov.uk/Topics/Justice/legal> and, for the court system in Northern Ireland, at <http://www.nidirect.gov.uk/the-justice-system>. <https://www.nidirect.gov.uk/articles/introduction-justice-system>.

90-92. In addition to the procedures described above, the UK Government is also a strong supporter of alternative dispute resolution and has introduced initiatives to encourage and promote its use in all civil disputes.

### **Article 9, paragraph 1**

91. — ~~Article 9, paragraph 1 is technically contingent on the obligations under pillar I and the adopted Directive 2003/4/EC on public access to environmental information (which includes provisions on access to justice). The Directive provides for internal reconsideration of the acts or omissions of the public authority, and this requirement has been adopted in the EIRs. The role of the Information Commissioner provides the relevant facility for a review by an independent and impartial body established by law. The Information Commissioner examines complaints from members of the public who feel that their request for information has not been dealt with properly by the public authority. The First tier Tribunal (Information Rights), Upper Tribunal and, ultimately, the Supreme Court give further and higher levels of appeal.~~

93. Article 9, paragraph 1 is technically contingent on the obligations under pillar I and the adopted Directive 2003/4/EC on public access to environmental information (which includes provisions on access to justice). The Directive provides for internal reconsideration of the acts or omissions of the public authority, and this requirement has been adopted in the EIRs.

94. The role of the Information Commissioner in England, and Wales {and Northern Ireland} provides the relevant facility for a review by an independent and impartial body established by law. The Information Commissioner examines complaints from members of the public who feel that their request for information has not been dealt with properly by the public authority. The First-tier Tribunal (Information Rights), Upper Tribunal and, ultimately, the Supreme Court give further and higher levels of appeal.

95. In Scotland, the Scottish Information Commissioner’s office promotes and enforces both the public’s right to ask for information held by Scottish public authorities, and good practice by

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<sup>4</sup> MACRORY and DAY (2012), *Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in 17 Member States of the European Union: United Kingdom*, [http://ec.europa.eu/environment/aarhus/access\\_studies.htm](http://ec.europa.eu/environment/aarhus/access_studies.htm)

authorities. The Commissioner is responsible for enforcing and promoting Scotland's freedom of information laws, including the Environmental Information (Scotland) Regulations 2004.

## Article 9, paragraph 2

92-96. This paragraph is technically contingent on the obligations under Article 6, of the Convention and the adopted Directive 2003/35/EC on public participation in the drawing up of plans and programmes (and successor EU legislation in Directives 2010/75/EU and 2011/92/EU).

93-97. Under Article 9, paragraph 2 of the Convention, NGOs which promote environmental protection and which meet requirements under national law are deemed to have “sufficient interest” to engage in review procedures. In England, Wales and Northern Ireland, if the interest of an applicant is not direct or personal, but is a general or public interest, it will be for the courts to determine whether or not the applicant has standing in accordance with a number of factors including the level of public importance of the issues raised and the applicant’s relationship to those issues. Section 31(3) of the Senior Courts Act 1981 and section 18(4) of the Judicature (Northern Ireland) Act 1978 provide that the court shall not grant leave for application for judicial review, “unless it considers that the applicant has a **sufficient interest** in the matter to which the application relates”. In determining whether public interest groups or NGOs specifically have sufficient interest to bring a challenge, the court will consider a number of factors including the merits of the challenge, the importance of vindicating the rule of law, the importance of the issue raised, the likely absence of any other responsible challenger, the nature of the breach and the role played by the group or body in respect of the issues in question. The criteria have come to be applied liberally; if an applicant has insufficient private interest in bringing an application, provided he or she raises a genuine and serious public interest, he or she will have standing.

94-98. In Scottish law, title (to be heard by a court) and interest (in the subject matter) is subject to substantive law, not only procedural rules. Scottish Statutory Instruments 510/2005 and 614/2006 transposing EU Directive 2003/35/EC included in secondary legislation provision ensuring environmental NGO and community or resident organisations’ assured interest in all cases engaging the Directives covering pollution prevention and control, and strategic environmental assessments. However, the common law basis of standing has also been widened in Scotland following the judgement of the UK Supreme Court in *AXA General Insurance Ltd & Others v Lord Advocate & Others (Scotland) [2011] UKSC 46*, which indicated that an applicant for judicial review should have “standing”. Lord Hope stated: “As for the substantive law, I think that the time has come to recognise that the private law rule that title and interest has to be shown has no place in applications to the court's supervisory jurisdiction that lie in the field of public law. The word “standing” provides a more appropriate indication of the approach that should be adopted.”<sup>5</sup>

99. In Scottish law, the test of “standing” is that a petitioner demonstrates “sufficient interest” and “a real prospect of success” before the petition is allowed to proceed.

## Article 9, paragraph 3

95-100. If an applicant has a direct personal interest in the outcome of the claim, he will normally be regarded as having sufficient interest in the matter. The term “interest” includes any

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3. [http://www.supremecourt.gov.uk/decided-cases/docs/UKSC\\_2011\\_0108\\_Judgment.pdf](http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2011_0108_Judgment.pdf), paragraph 62.

connection, association or interrelation between the applicant and the matter to which the application relates.

#### **Article 9, paragraph 4**

~~96.— The UK treats any member of the public equally, regardless of nationality, citizenship and domicile. Any legal person has equal access to the courts. However, as set out in the consultation paper *Transforming Legal Aid: delivering a more credible and efficient system*, we believe that limited public funds for civil legal aid should be targeted at those who have a strong connection to the UK. The government has therefore proposed that applicants for civil legal aid should in future have to satisfy a residence test.~~

~~97.— The court fees for bringing a judicial review in England and Wales are currently:~~

- ~~(a) £60 to apply for permission;~~
- ~~(b) £215 to bring a substantive case in the Administrative Court of the High Court, if permission is granted.~~

~~98.— Court fees in Scotland are made separately. The current fee for petitioning the Court of Session is £197. In Scotland, there is no requirement to apply for permission to petition the Court for judicial review and, consequently, there is no associated fee to apply for permission.~~

~~99.— The fees for Judicial Review in Northern Ireland are £200 for a leave application and £200 for notice of motion if leave is granted.~~

~~100.— The Government's firm view is that while it is right that there should be access to the courts, there is no automatic right of free access to the courts. Those who can afford to pay fees should be expected to do so. It would not be appropriate for taxpayers to bear the full cost of civil proceedings when those who bring these proceedings can afford to pay. We continue to look for ways to improve access to justice and to provide fair and simple means of resolving disputes. These include helping people to help themselves through better advice and information or through mediation.~~

~~101.— For England and Wales, the Ministry of Justice has a court fees strategy that aims to deliver a fair system which makes best use of the taxpayers' money and protects access to justice through a targeted system of remissions for the less well-off. A remission is available to people who are in receipt of specified means tested benefits; people whose income is below a certain level; or people whose financial commitments leave them with little or no disposable income. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, legal aid is available for environmental cases and judicial review, subject to the statutory tests of the applicant's means and merits of the case.~~

~~102.— For Judicial Review proceedings, funding is not normally available where the prospects of success are assessed as "borderline" (i.e. there are difficult disputes of fact, law or expert evidence; it is not possible to say that Prospects of Success are better than 50%). However, funding is currently available for "borderline" cases which concern matters of Significant Wider Public Interest. As part of the consultation *Transforming Legal Aid: delivering a more credible and efficient system*, the Government has proposed that in future, any case assessed as having borderline prospects of success would no longer receive legal aid funding for full representation. It has also proposed that providers should only be paid for work carried out for an application for permission to bring a Judicial Review (including a request for appeal to the Court of Appeal) if permission is granted by the Court. The consultation ended on 4 June 2013 and the Government is considering carefully all responses received.~~

103.— In addition, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 provides that legal aid will only be granted to an individual for judicial review cases where the claim has the potential to produce a real benefit for the individual, a member of the individual's family or the environment.

104.— Legal Aid is available in Northern Ireland for Judicial Reviews where the applicant satisfies a financial means test and a merits test. Depending on the level of their disposable income and their disposable capital, a person may be assessed as being financially eligible with a contribution.

105.— Although there is no exemption for applicants in receipt of legal aid, there is a general Northern Ireland Courts and Tribunals Service policy for remission and exemption of certain fees in place to assist those in receipt of state benefits or who feel they would suffer from hardship if they did pay the fee (<http://www.courtsni.gov.uk/en-GB/Publications/UsefulInformationLeaflets/Documents/Court%20Fees%20-%20Do%20I%20have%20to%20pay%20them%20A%20Civil%20Fee%20Guide%20for%20Court%20Users/TM%20CourtFeesDoIhaveto.pdf>).

106.— In Scotland, justice policy is devolved to the Scottish Ministers, who are also moving progressively towards full cost recovery of civil actions as a matter of policy because it is not appropriate for the general public to bear the cost of resolving civil disputes: access to justice remains assured through the continuing provision of civil legal aid and provisions for exemption from court fees for those in receipt of specified state benefits.

107.— The general principle in civil proceedings in the UK is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the court has wide discretion to make a different order, taking into account all the relevant factors. Furthermore, the court is not limited simply to ordering (or not ordering) costs against the losing party, but can make a range of different orders, such as that only a proportion of the other party's costs should be paid.

108.— The Civil Procedure Rules (CPR) (<http://www.justice.gov.uk/courts/procedure-rules/civil>) in England and Wales provide considerable flexibility to enable the court to give balanced consideration to all the circumstances, to reach decisions on costs in individual cases which are fair, and to meet the overriding objective of the CPR of dealing with cases justly. Similar flexibility is found in the provisions in Scotland and Northern Ireland. The Court of Appeal has given rulings and guidance in a range of cases relating to the interpretation of the CPR provisions.

109.— In addition to these general provisions, there are a variety of ways in which the courts can take action to ensure that costs are proportionate and fairly allocated. The CPR provides the courts with extensive case management powers to control and direct the course of proceedings to ensure that these are conducted on as timely and efficient a basis as possible. The courts also have extensive powers to control costs at different stages of the proceedings. As well as detailed provisions which govern the assessment of costs at the conclusion of proceedings, the CPR sets out the powers of the court to make an order capping costs in an individual case at any stage of the proceedings.

110.— Special provisions exist to limit the costs of judicial review proceedings. For example, the CPR provide that the courts will generally consider permission to proceed with judicial review proceedings without a hearing and that where there is a hearing, the court will not generally make an order for costs. In addition, costs awarded against a claimant who fails to obtain permission are generally limited to the costs of the defendant's acknowledgement of service.

111.— Provisions also exist for the court to make a Protective Costs Order (PCO) (a “Protective Expenses Order” in Scotland) at the outset of proceedings (or at any other stage) where the claim raises issues of public interest.

112.— Guidance on PCOs has been established by the Court of Appeal, which means that judges hearing judicial reviews in England and Wales are obliged by the doctrine of binding precedent (based on the hierarchy of the courts) to take it into account in considering any application for a PCO. These provisions on PCOs can help to provide certainty to a party as to their potential exposure to an adverse costs order if they are ultimately unsuccessful. This case law has also been followed and developed in the Court of Session in Scotland.

113.— The UK authorities have now codified the case law on PCOs into court rules in 2013 (in England and Wales as of 1 April 2013, and in Scotland as of 25 March 2013<sup>6</sup>). This codification has given added clarity and transparency to the law and the procedure for making an application for a PCO in respect of judicial reviews, thereby providing certainty for applicants at the outset of the proceedings about the costs they will face if their claim fails and certainty as to the modest costs of applying for a PCO. PCOs based on the case law continue to be available for other types of environmental challenge within the scope of the Convention. In Scotland, Protective Expenses Orders may still be awarded under the common law where an application does not fall within the scope of the new Rules of Court.

114.— In relation to England and Wales, the costs arising from civil litigation were considered in Lord Justice Jackson’s Review of Civil Costs, published in January 2010 (<http://www.judiciary.gov.uk/publications-and-reports/review-of-civil-litigation-costs>). The Government consulted on the Jackson recommendations in November 2010 and published its response in March 2011. The Government accepted the recommendations and these reforms have been taken forward in Part 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, which generally came into effect in April 2013. A review of the Civil Courts was carried out in Scotland by the Rt Hon Lord Gill, the Lord Justice Clerk. Amongst others, Lord Gill recommended that express power should be conferred upon the courts in Scotland to make special orders in relation to expenses in cases raising significant issues of public interest. That recommendation is likely to be superseded, as far as environmental cases are concerned, by the new rules of court referred to in paragraph 114.

115.— In Scotland, Sheriff Principal Taylor conducted a similar review into the cost and funding of litigation in Scotland. His report, a Review of Expenses and Funding in Civil Litigation in Scotland, was published on 11 September 2013 (<http://scotland.gov.uk/About/Review/taylor-review/Report>). The Scottish Government is also currently working with the Scottish Court Service, the Lord Presidents Office, and a range of other Scottish justice stakeholders to implement the recommendations of Lord Gill’s *Scottish Civil Courts Review*, which aims to make the Scottish civil court system generally more efficient, more proportionate and more cost effective. Indeed, one of the Review’s key recommendations has already been implemented: on 28 May 2013, the Scottish Civil Justice Council was established, with responsibility (among other things) for improving civil procedure rules and processes.

116.— The existing provisions in relation to court proceedings must also be considered in the context of the system of environmental law, and access to it, as a whole. This is because the system ensures that seeking redress through the courts is only one of the many routes open to the public in their search for environmental justice. The public can for example report potential breaches of environmental legislation to the appropriate regulator, for example in England to the Environment Agency, in Wales

4. Act of Sederunt (Rules of the Court of Session Amendment) (Protective Expenses Orders in Environmental Appeals and Judicial Reviews) 2013 (SSI 2013/81).

~~to Natural Resources Wales, in Scotland to the Scottish Environment Protection Agency and in Northern Ireland directly to the Department of the Agriculture, Environment and Rural Affairs. Similarly, they can make a complaint to the local authority regarding a statutory nuisance and the authority is under a duty to investigate the problem. Neither of these routes involves any expense on behalf of the complainant. There are also various appeal procedures in place relating to the many different regulatory regimes, some of which give interested members of the public the right of appeal. Also, with regard to access to environmental information, the relevant Information Commissioner offers a review procedure which involves no expense.~~

~~In Scotland, the Scottish Government consulted on a draft Courts Reform (Scotland) Bill from 27 February to 24 May 2013.<sup>7</sup> Section 84 provides for Judicial Review and introduces a time limit on applications which is expected to make the process both quicker and cheaper. In addition, following consultation in the autumn of 2012, the Scottish Government introduced the Regulatory Reform (Scotland) Bill on 28 March 2013.<sup>8</sup> Section 40 of the Bill introduces a statutory appeal process for licensing decisions by the Scottish Ministers in relation to applications for offshore electricity generating systems with a capacity of no less than 1 megawatt where ministerial consent under section 36 of the Electricity Act 1989 is also required. This provision is also aimed at making the review process both quicker and less expensive~~

~~101. The UK treats any member of the public equally, regardless of nationality, citizenship and domicile. Any legal person has equal access to the courts.~~

~~102. The court fees for bringing a judicial review in England and Wales are currently:~~

- ~~i. £ 154 to apply for permission;~~
- ~~i-ii. £385 for a request to reconsider at a hearing a decision on permission; and~~
- ~~iii. £770 to bring a substantive case in the Administrative Court of the High Court, if permission is granted (£385 if permission is granted at a reconsideration hearing).~~

~~103. Court fees in Scotland are made separately. The most up-to-date fees may be found at: <https://www.scotcourts.gov.uk/taking-action/court-fees>.~~

~~104. The current fees for Judicial Review in Northern Ireland are £200 for a leave application and £200 for notice of motion if leave is granted. Regulations made on 16 January 2017 will introduce a phased increase to most civil court fees in Northern Ireland from 1 April 2017 (the first such increase since 2007). The fees applicable to judicial reviews (and statutory reviews) within the scope of the Aarhus Convention will, however, be exempt from the increase and retained at current levels (see Article 4 of the Court of Judicature Fees (Amendment) Order (Northern Ireland) 2017). The fees for other judicial reviews in Northern Ireland will from 1 April 2017 be increased by 10% to £220 for a leave application and £220 for notice of motion if leave is granted (although this is currently under review) (further increases of 7.5% and 5% will be effective from 1 April 2018 and 1 April 2019 respectively).~~

~~105. The UK Government's firm view is that while it is right that there should be access to the courts, there is no automatic right of free access to the courts. Those who can afford to pay fees should be expected to do so. It would not be appropriate for taxpayers to bear the cost of civil proceedings when those who bring these proceedings can afford to pay. We continue to look for ways to improve access to justice and to provide fair and simple means of resolving disputes.~~

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5. <http://www.scotland.gov.uk/Resource/0041/00415376.pdf>

6. [http://www.scottish-parliament.uk/S4\\_Bills/Regulatory%20Reform%20\(Scotland\)%20Bill/b26s4-introd.pdf](http://www.scottish-parliament.uk/S4_Bills/Regulatory%20Reform%20(Scotland)%20Bill/b26s4-introd.pdf)

These include helping people to help themselves through better advice and information or through mediation.

117.106. For England and Wales, the Ministry of Justice has a court fees strategy that aims to deliver a fair system which makes best use of the taxpayers' money and protects access to justice through a targeted system of remissions for the less well-off. Fee remissions are available to those whose disposable capital and gross monthly income are within the limits specified. A person who qualifies for help under the scheme may have the fee remitted either in part or in full. Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, legal aid is available for environmental cases and judicial review, subject to the statutory tests of the applicant's means and merits of the case. Legal aid is available subject to the statutory means and merit of the cases.

107. Legal aid in England and Wales will only be granted to an individual for judicial review cases where the claim has the potential to produce a real benefit for the individual, a member of the individual's family or the environment.

Legal Aid is available in Northern Ireland for Judicial Reviews where the applicant satisfies a financial means test and a merits test. Depending on the level of their disposable income and their disposable capital, a person who is granted legal aid may be required to make a contribution towards the cost of funding their case. ~~may be assessed as being financially eligible with a contribution.~~

108. Although there is no exemption for applicants in receipt of legal aid, there is a general Northern Ireland Courts and Tribunals Service policy for remission and exemption of certain fees in place to assist those in receipt of state benefits or who feel they would suffer from hardship if they did pay the fee <http://www.courtsni.gov.uk/en-GB/Services/CourtFees/Documents/Court%20%20Tribunal%20Fees%20-%20Do%20I%20have%20to%20pay%20them.pdf> (~~<http://www.courtsni.gov.uk/en-GB/Publications/UsefulInformationLeaflets/Documents/Court%20Fees%20-%20Do%20I%20have%20to%20pay%20them%20A%20Civil%20Fee%20Guide%20for%20Court%20Users/TM%20CourtFeesDoIhaveto.pdf>~~).

109. In Scotland, justice policy is the responsibility of the Scottish Government. As in England and Wales, the view of the Scottish Government is that it would not be appropriate for taxpayers to bear the cost of civil proceedings when those who bring these proceedings can afford to pay. The civil courts therefore operate on the principle that court fees should cover the costs of operating the civil justice courts system ~~The Scottish Ministers are also moving progressively towards full cost recovery of civil actions as a matter of policy because it is not appropriate for the general taxpayer to bear the cost of resolving civil disputes.:~~ ~~a~~ Access to justice remains assured through the continuing provision of civil legal aid and provisions for exemption from court fees for those in receipt of specified state benefits.

110. The general principle in civil proceedings in the UK is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the court has wide discretion to make a different order, taking into account all the relevant factors. Furthermore, the court is not limited simply to ordering (or not ordering) costs against the losing party, but can make a range of different orders, such as that only a proportion of the other party's costs should be paid.

111. The Civil Procedure Rules (CPR) (<http://www.justice.gov.uk/courts/procedure-rules/civil>) in England and Wales provide considerable flexibility to enable the court to give balanced consideration to all the circumstances, to reach decisions on costs in individual cases which are fair, and to meet the overriding objective of the CPR of dealing with cases justly. Similar flexibility is found in the provisions in Scotland and Northern Ireland. The Court of Appeal has given rulings and guidance in a range of cases relating to the interpretation of the CPR provisions.
112. In addition to these general provisions, there are a variety of ways in which the courts can take action to ensure that costs are proportionate and fairly allocated. The CPR provides the courts with extensive case management powers to control and direct the course of proceedings to ensure that these are conducted on as timely and efficient a basis as possible. The courts also have extensive powers to control costs at different stages of the proceedings. As well as detailed provisions which govern the assessment of costs at the conclusion of proceedings, the CPR sets out the powers of the court to make an order capping costs in an individual case at any stage of the proceedings.
113. Special provisions exist to limit the costs of judicial review proceedings. For example, the CPR provide that the courts will generally consider permission to proceed with judicial review proceedings without a hearing and that where there is a hearing, the court will not generally make an order for costs relating to that hearing. In addition, costs awarded against a claimant who fails to obtain permission are generally limited to the costs of the defendant's acknowledgement of service.
114. The respective UK authorities have introduced legislation in respect of costs protection for certain cases that come within the scope of the Convention, which can be used to limit the potential liability of an unsuccessful claimant to pay the defendant's litigation costs. This codification has given added clarity and transparency to the law and the procedure for making an application for costs protection in these cases, thereby providing certainty for applicants at the outset of the proceedings about the costs they will face if their claim fails. Protective costs orders (PCOs) based on the case law continue to be available for other types of environmental challenge within the scope of the Convention.
115. In 2013, an ~~England and Wales~~, Environmental Costs Protection Regime ('ECPR') for England and Wales was introduced, which fixed the costs that a court could order an unsuccessful claimant to pay to other parties (£5,000 for individuals and £10,000 for organisations; defendants' liability for claimants' costs was similarly capped, at £35,000~~costs protection in relevant Aarhus Convention judicial review cases is governed by the CPR.~~<sup>9</sup> Claimants' liability to pay defendants costs in these cases is automatically capped at £5,000 for claimants who are individuals and at £10,000 for claimants which are organisations. In September 2015, the government consulted on proposals aimed at providing greater flexibility, clarity of scope and certainty within the regime (Costs Protection in Environmental Claims: Proposals to revise the costs capping scheme for eligible environmental challenges). Following the consultation outcome, the last Government introduced some adjustments to the ~~environmental costs protection regime (ECPR)~~, which came into effect on 28 February 2017. The February 2017 changes introduced several new provisions, which included: (i) extending the scope of the ECPR to cover a wider range of cases - including environmental reviews under statute engaging EU law, as well as judicial reviews; (ii) giving courts the power to vary the level of the costs cap from their default levels; (iii) a provision that when considering an application to vary the cap,

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<sup>9</sup> Section VII of Part 45 of the CPR

~~the court must take into account the amount of court fees payable by the claimant in determining whether the variation (or a failure to make it) would render the proceedings “prohibitively expensive” for the claimant; and (iv) a requirement for the Court of Appeal to grant costs protection in appropriate cases. The key changes to the 2017 regime include: the ECPR will be extended to statutory reviews covered by EU law; to allow for variation (up or down) from their default level; there is an express provision in considering varying a cap, the court would have to take into account the amount of court fees payable by the claimant; and there is now a requirement for the Court of Appeal to grant costs protection in appropriate cases, applying the same criteria for determining what is prohibitively expensive as the court at first instance.~~

~~—Following the introduction of those changes, proceedings for judicial review was brought by a group of environmental NGOs, challenging the rules on limited grounds relating to aspects of the process involved in the revised costs protection regime, rather than the fundamental substance of that new regime. A hearing took place on 19 July 2017 with judgment given on 15 September. In summary, the High Court concluded that the current regime is compliant with EU law in that claimants are not expected to pay above their means to bring claims. The Government won on two out of three grounds of challenge, but the court also concluded that the rules would benefit from clarification in some respects to reflect the agreed understanding of how they are intended to work and make them more clearly compliant with EU law. In accepting the High Court’s recommendation, the Government has made some further amendments to the ECPR, which came into force on 6 April 2018. The rules are being revised to provide that clarification, and the revised rules will come into force in 2018.~~

~~—and the Government awaits the court’s decision.~~

116. PCOs based on case law continue to be available for other types of environmental challenge within the scope of the Convention. Guidance on PCOs has been established by the Court of Appeal, which means that judges hearing judicial reviews in England and Wales are obliged by the doctrine of binding precedent (based on the hierarchy of the courts) to take it into account in considering any application for a PCO. These provisions on PCOs can help to provide certainty to a party as to their potential exposure to an adverse costs order if they are ultimately unsuccessful.

~~118.117.~~ In Scotland, rules were introduced with effect from 25 March 2013 and amended with effect from January 2016<sup>10</sup>. As costs are known as expenses under Scots law, the rules provide for Protective Expenses Orders (PEOs). These rules cover statutory appeals as well as judicial review. The rules also make provision for the objective and subjective elements set out in the judgment to be considered with criteria consistent with the judgment. The rules expressly apply to cases which are within the scope of Articles 9(2) and 9(3) of the Aarhus Convention. The aim is to ensure a clearer alignment with the obligations under the Aarhus Convention.: for example, PEO eligibility is defined by reference to “members of the public”.

118. The relevant rules that apply in Northern Ireland (the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013) came into force on 15 April 2013. They provide cost protection for applicants in judicial reviews and statutory reviews to the High Court in Northern Ireland of decisions within the scope of the Aarhus Convention. Claimants’ liability to pay

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4. Act of Sederunt (Rules of the Court of Session Amendment) (Protective Expenses Orders in Environmental Appeals and Judicial Reviews) 2013 (SSI 2013/81) and Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 4) (Protective Expenses Orders) 2015. The rules as amended may be found at: <https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

defendants costs in these cases is automatically capped at £5,000 for claimants who are individuals and at £10,000 for claimants which are organisations. The Regulations also clarify the factors the court must take into consideration when a cross-undertaking in damages is required in the context of an application for an injunction in such a case and empower the court to make costs orders for payment to a charity promoting *pro bono* representation when the applicant is represented *pro bono*. The Regulations were amended by the Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017. The amendments made provision for the court, on an application by the applicant, to decrease the amount of costs recoverable from the applicant if not doing so would make the costs of the proceedings prohibitively expensive for the applicant. Provision was also made to allow the court, on application by the applicant, to increase the costs recoverable from the respondent if not doing so would make the costs of the proceedings prohibitively expensive for the applicant. The 2017 Regulations also provided that in respect of the costs of an appeal of a decision in an Aarhus Convention case, the court hearing the appeal would have the same powers as those of the original court to decrease costs recoverable from an applicant, increase costs recoverable from the respondent and in cases where the applicant is represented in whole or in part free of charge to order that the respondent to make a payment in respect of recoverable costs as it considers just to support the provision of free legal services. The 2017 Regulations also seek to clarify the meaning of “prohibitively expensive”.

~~119. The relevant rules that apply in Northern Ireland (the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013) came into force on 15 April 2013. They provide cost protection for applicants in judicial reviews and statutory reviews to the High Court in Northern Ireland of decisions within the scope of the Aarhus Convention. The Regulations also clarify the factors the court must take into consideration when a cross-undertaking in damages is required in the context of an application for an injunction in such a case and empower the court to make costs orders for payment to a charity promoting *pro bono* representation when the applicant is represented *pro bono*.~~

119. The Regulations were amended on 23 January 2017 by the Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 which came into force on 14 February 2017 and apply to proceedings commenced after that date (see <http://www.legislation.gov.uk/nisr/2017/27/contents/made>). The Regulations as amended provide that, if an applicant loses, the maximum amount of costs that can be recovered from it will continue to be capped at current levels (£5,000 where the applicant is an individual and £10,000 in other cases) but be capable of being lowered if necessary to avoid prohibitive expense to the applicant. They provide that, if an applicant wins, the amount of costs that can be recovered by it from the respondent can be increased from the current cap of £35,000, again if this is necessary to avoid prohibitive expense to the applicant. The Regulations as amended also provide that, in deciding whether a cap is prohibitively expensive, the court should have regard to the *Edwards* principles and any court fee that the applicant is liable to pay. They apply a separate cap to appeals in Aarhus Convention cases which is set at the same levels as is applied to first instances cases and the court has the same flexibility to vary the caps on appeal. The amended Regulations also make it clear that only applicants that are members of the public (and not public bodies) are entitled to costs protection. The term ‘the public’ is defined with reference to the definition provided by the Aarhus Convention.

120. Moreover, the amended regulations provide that, in deciding whether to require a cross undertaking in damages in an Aarhus case, the court must have regard to the need for the undertaking not to be such that it would make continuing with the case prohibitively expensive. They direct the court to apply the *Edwards* principles when considering whether continuing with

proceedings would be prohibitively expensive. They also make it clear that the provisions they contain in relation to cross-undertakings in damages only apply to an applicant for an interim injunction who is a member of the public (as defined by the Convention).

121. In relation to England and Wales, the costs arising from civil litigation were considered in Lord Justice Jackson's Review of Civil Costs, published in January 2010 (<http://www.judiciary.gov.uk/publications-and-reports/review-of-civil-litigation-costs>). The Government consulted on the Jackson recommendations in November 2010 and published its response in March 2011. The Government accepted the recommendations and these reforms have been taken forward in Part 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, which generally came into effect in April 2013. A review of the Civil Courts was carried out in Scotland by the Rt Hon Lord Gill, the Lord Justice Clerk. Amongst others, Lord Gill recommended that express power should be conferred upon the courts in Scotland to make special orders in relation to expenses in cases raising significant issues of public interest. That recommendation is likely to be superseded, as far as environmental cases are concerned, by the new rules of court referred to in paragraph 114.

122. The existing provisions in relation to court proceedings must also be considered in the context of the system of environmental law, and access to it, as a whole. This is because the system ensures that seeking redress through the courts is only one of the many routes open to the public in their search for environmental justice. The public can for example report potential breaches of environmental legislation to the appropriate regulator, for example in England to the Environment Agency, in Wales to Natural Resources Wales, in Scotland to the Scottish Environment Protection Agency and in Northern Ireland directly to the Department of Agriculture, Environment and Rural Affairs. Similarly, they can make a complaint to the local authority regarding a statutory nuisance and the authority is under a duty to investigate the problem. Neither of these routes involves any expense on behalf of the complainant. There are also various appeal procedures in place relating to the many different regulatory regimes, some of which give interested members of the public the right of appeal. Also, with regard to access to environmental information, the relevant Information Commissioner offers a review procedure which involves no expense.

## **Article 9, paragraph 5**

~~120-123.~~ The UK has engaged in extensive activity to provide information to the public on accessing administrative and judicial review procedures, and to remove any unnecessary financial and other barriers to access to justice or to consider how they could be removed.

~~121-124.~~ The Government provides information and links ([www.justice.gov.uk/](http://www.justice.gov.uk/)) on the provision of effective and accessible justice. Details regarding eligibility for publicly-funded advice services and information to help resolve problems in specific categories of law can be found via [www.gov.uk/legal-aid](http://www.gov.uk/legal-aid). Here, members of the public have access to the online information tool 'Can I get legal aid?' (<https://www.gov.uk/check-legal-aid>). This supports members of the public to check whether they might be eligible for legal aid and to signpost them to other sources of information or advice to help people resolve their problems.

~~122-125.~~ Information on applying for judicial review in Northern Ireland and on proceedings in the High Court in Northern Ireland is available at <http://www.courtsni.gov.uk/en-GB/Services/jr/Pages/default.aspx>. and <http://www.courtsni.gov.uk/en-GB/Services/jr/Pages/default.aspx>.

[GB/Publications/UsefulInformationLeaflets/Documents/personal-litigant-guide/Personal%20Litigants%20Guide.pdf](#).

~~123-126.~~ In 2013, Defra [has](#) contributed to the editing of an [European Commission's](#) 'eJustice fact sheet' on provisions for access to justice in the UK, which was originally drafted and coordinated by the Commission and which will be made available online soon [at https://e-justice.europa.eu/content\\_access\\_to\\_justice\\_in\\_environmental\\_matters-300-en.do](https://e-justice.europa.eu/content_access_to_justice_in_environmental_matters-300-en.do)

## XXIX. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF ARTICLE 9

~~127.~~ Responsibility for civil costs issues in England and Wales rests with the [MOJ Ministry of Justice \(MOJ\)](#). Compliance Committee findings on costs were adopted by the Meeting of the Parties in ~~2011-2014~~ (decision IV/9~~in:—~~). The European Commission has pursued infringement proceedings against the United Kingdom in relation to the implementation of the requirements under the Public Participation Directive on costs. ~~The MOJ for England and Wales and the relevant authorities in Scotland and Northern Ireland amended the court rules on costs in 2013. These govern the making of PCOs ('protective expenses orders' in Scotland) in respect of judicial reviews at first instance and are based on case law, including the law as set out in *Garner v Elmbridge Borough Council* [2010] EWCA Civ 1006. These rules were adopted on 1 April 2013.~~ [The MOJ for England and Wales and the relevant authorities in Scotland amended the court rules on costs in 2013. The rules govern the award of costs protection \('protective expenses orders' in Scotland\) in respect of judicial reviews at first instance and are in part based on case law, including the law as set out in \*Garner v Elmbridge Borough Council\* \[2010\] EWCA Civ 1006. These rules were adopted on 1 April 2013. On 15 April 2013, similar provision was made in Northern Ireland \(see the Costs Protection \(Aarhus Convention\) Regulations \(Northern Ireland\) 2013 which have recently been amended \(see above\)\).](#)

~~124.~~ [The Government has reformed civil litigation funding and costs in England and Wales. This concerns the way that civil cases are funded and the costs involved in bringing those cases. These reforms are in part as a result of changes in legislation \(Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012\) which came into effect on 1 April 2013. More details can be found at \[http://www.justice.gov.uk/civil\\\_justice\\\_reforms\]\(http://www.justice.gov.uk/civil\_justice\_reforms\).](#)

~~125.~~ [Between 24 November 2010 and 24 February 2011, the MOJ for England and Wales undertook a public consultation on cross undertakings in damages in environmental judicial review cases, an issue raised by the Aarhus Convention Compliance Committee in the context of the cost of proceedings in the UK \[https://consult.justice.gov.uk/digital-communications/damages\\\_environmental\\\_judicial\\\_review\\\_claims\]\(https://consult.justice.gov.uk/digital-communications/damages\_environmental\_judicial\_review\_claims\). The MOJ for England and Wales received few responses as a result of the consultation, and therefore no further action with regard to cross undertakings in damages in environmental judicial review cases was taken immediately. The MOJ for England and Wales subsequently amended the rules of court and supporting practice directions, which came into force on 1 April 2013.](#)

~~126-128.~~ [The MOJ for England and Wales has ~~recently~~previously amended the time limit for judicial reviews in relation to planning decisions, for which statutory appeal procedures are also available. The time period for commencing a claim for judicial review has been changed to six weeks in order to bring it into alignment with that for the statutory appeal procedure, and for such cases, the requirement that the judicial review claim be commenced "promptly" has been](#)

removed. Together with the cases involving assertion of rights under EU law, where the requirement of “promptness” is in any event disapplied, Aarhus cases where that requirement would potentially apply are unlikely to arise in practice.

~~127. The Department of Justice in that jurisdiction has, however, consulted on a proposal that there should be no requirement to bring judicial review proceedings promptly in any case in that jurisdiction (albeit that ultimately any amendment of the relevant court rules will be a matter for the Northern Ireland Court of Judicature Rules Committee).~~

~~— Since the Uniplex case, the courts in Northern Ireland have also been disappling the promptitude requirement in judicial review challenges on EU grounds. The Department of Justice in that jurisdiction has, however, consulted on a proposal that there should be no requirement to bring judicial review proceedings promptly in any case in that jurisdiction. Following consultation, the Northern Ireland Court of Judicature Rules Committee has made the Rules of the Court of Judicature (Northern Ireland) (Amendment) 2017 which removes the promptitude requirement. This amendment will come into effect on 8<sup>th</sup> January 2018. Since the Uniplex case, the courts in Northern Ireland have also been disappling the promptitude requirement in judicial review challenges on EU grounds. In a consultation issued on 22 June 2015, the Department of Justice in Northern Ireland proposed to remove the requirement for all judicial review cases. The consultation closed on 14 September 2015 and a summary of response to it was published on 7 December 2015. As the proposal impacts on other Northern Ireland Departments, it was considered and agreed by the Northern Ireland Executive on 24 March 2016. This was followed by Assembly elections in May 2016. In September 2016, the Civil and Family Justice Review Group was established to carry out a fundamental review the current procedures for the administration of civil and family justice in Northern Ireland (including those for judicial review). In its preliminary report, published in October 2016, the Group recommended that the ‘promptly requirement’ be abolished. It is expected to issue its final report soon. Subject to the outcome of that report and the views of incoming ministers (following the further recent Assembly election), it is intended that the Court of Judicature Rules Committee (the body responsible for making the relevant court rule changes) will be invited to consider the matter.~~

### XXX. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 9

~~128-129.~~ Not applicable.

### XXXI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 9

~~129-130.~~ See the relevant sections above.

### XXXII. CONTRIBUTION OF THE IMPLEMENTATION OF THE CONVENTION TO THE PROTECTION OF THE RIGHT OF EVERY PERSON OF PRESENT AND FUTURE GENERATIONS TO LIVE IN AN ENVIRONMENT ADEQUATE TO HIS OR HER HEALTH AND WELL-BEING TO HIS OR HER HEALTH AND WELL-BEING

~~130.131.~~ The United Kingdom made the following declaration ~~up on ratifying signing~~ the Convention, ~~confirmed upon ratification~~: “The United Kingdom understands the references in article 1 and the seventh preambular paragraph of this Convention to the “right” of every person “to live in an environment adequate to his or her health and well-being” to express an aspiration which motivated the negotiation of this Convention and which is shared fully by the United Kingdom. The legal rights which each Party undertakes to guarantee under article 1 are limited to the rights of access to information, public participation in decision-making and access to justice in environmental matters in accordance with the provisions of this Convention”. ~~This declaration was reiterated by the United Kingdom in the 2014 Maastricht Declaration.~~

### **XXXIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON GENETICALLY MODIFIED ORGANISMS PURSUANT TO ARTICLE 6bis AND ANNEX I bis**

~~131.132.~~ Member States and the European ~~Community (now the European Union)~~ agreed to the amendment to enhance the obligations placed on parties with regard to public participation in decision-making on GMOs adopted at the second Meeting of the Parties to the Convention 25-27 May 2005 in recognition that some United Nation Economic Commission for Europe (UNECE) countries outside the EU have minimal provisions for public consultation on decisions to approve GMOs in their national legal frameworks, and that some of these countries have been strong supporters of an international framework.

~~132.133.~~ The requirements of the amendment, that is Article 6bis and Annex I bis, were already given effect in the European Union by the main EU instruments governing the deliberate release of genetically modified organisms to the environment: Directive 2001/18/EC and Regulation (EC) 1829/2003. As the UK had fully transposed these instruments, there was no need for additional UK legislation to be introduced in order to implement the requirements of the amendment. Directive 2001/18 is transposed into the law of England, Scotland and Wales by Part VI of the Environmental Protection Act 1990 (~~1990 c 43~~) and in England only by the Genetically Modified Organisms (Deliberate Release) Regulations 2002 (~~SI 2002/2443~~), in Scotland only by the Genetically Modified Organisms (Deliberate Release) (Scotland) Regulations 2002 (~~SSI 2002/541~~), in Wales only by the Genetically Modified Organisms (Deliberate Release)(Wales) Regulations 2002 (~~SI 2002/3188 (W.304)~~), and into the law of Northern Ireland by Genetically Modified Organisms (Northern Ireland) Order 1991 and the Genetically Modified Organisms (Deliberate Release) (Northern Ireland) Regulations 2003 (~~SI 2003/167~~). ~~EU-~~ Regulation 1829/2003, which is directly applicable in Member States, is enforced in England through the Genetically Modified Food (England) Regulations 2004 (~~SI 2004/2335~~) in Wales through the Genetically Modified Food (Wales) Regulation (~~SI 2004/3220~~), in Scotland through the Genetically Modified Food (Scotland) Regulations (~~SSI 2004/432~~) and in Northern Ireland through the Genetically Modified Food (Northern Ireland) Regulations (~~SI 2004/385~~).

~~133.134.~~ ~~European Union- EU~~ Member States therefore recognise the importance and value of participation by stakeholders and the public in consideration of applications for approval of genetically modified crops.

~~134.135.~~ All new applications to market traits for GM feed or food since 2004 have been made under Regulation 1829/2003 which sets out a requirement for a mandatory written 30-day public

consultation period that must happen before the GM traits for food or feed use can be approved at EU level for marketing.

135-136. Transparency and public participation is a fundamental principle contained within the regulation:

- the European Food Safety Authority (EFSA) puts the summary data of application dossiers on their website;
- EFSA allows public access to all non-confidential parts of a dossier;
- EFSA publishes its scientific opinion on an application on its website for public consultation;
- the European Commission offers an e-mail alert service to publicise the start of the consultation period;
- the European Commission publishes all resulting public comments on its website and distributes them to Member States before they vote on whether to authorise the product;
- the FSA provides details of the EFSA website on its website so that any members of the public who wish to participate in these consultations can do so;
- Commission Decisions on applications are published on the Commission website.

136-137. In the case of GM research trials, each Member State takes its own decisions in accordance with Directive 2001/18/EC. For applications in the UK, the relevant Competent Authority invites public representations relating to any risks of damage being caused to the environment by the proposed release. In England, the invitation to make representations to the Defra Secretary of State in relation to England and the Welsh Ministers in relation to Wales, including a full copy of the application (excluding commercial in confidence information), is made on the public register and is repeated on the gov.uk website (<https://www.gov.uk/genetically-modified-organisms-applications-and-consents>). Applications for research trials in Scotland, Wales and Northern Ireland must be handled by the Devolved Administrations for these countries but will follow the same procedure, with an invitation to make representations to the relevant minister for the territory concerned. The respective websites for the Devolved Administrations are <http://www.scotland.gov.uk>, <http://wales.gov.uk> and <https://www.daera-ni.gov.uk>. The public register maintained by Defra covers all UK applications. The period of each consultation has been set at a mandatory minimum of 48 days (the 48 day period comes from the fact that details of Part B applications must be placed on the public register within 12 days of receipt and that the period of consultation must not end less than 60 days from the date the application was received).

137-138. Applicants are also required to advertise their application in a national newspaper. The advertisement must contain information on the GMO, and the location, dates and purpose of the intended release. It should also mention that details of the application will be placed on the public register and that the Secretary of State (or devolved Ministers) will invite representations on safety issues raised by the proposed release. The applicant is also required to inform a number of organisations of the application, including the local authority, the parish (community) council, the Environment Agency, Natural England and their equivalent bodies in Scotland, Wales and Northern Ireland as appropriate.

138-139. Upon receipt of representations, they are assessed to identify whether any scientific issues have been raised that have not already been considered by the Advisory Committee on Releases to the Environment (ACRE - the statutory scientific expert committee in the UK). If

such issues are raised they would be brought to the Committee's attention to be taken into account alongside other relevant evidence. Among other things, ACRE's advice to the authorities on all research trial applications contains a response to the public representations. ACRE's advice is available on the public register and published on the ACRE website, as are the minutes of every Committee meeting. Details of every site with an active consent are also provided. All respondents are notified of the outcome of applications.

**XXXIV. OBSTACLES ENCOUNTERED IN THE IMPLEMENTATION OF THE PROVISIONS OF ARTICLE 6bis AND ANNEX I bis**

~~139.140.~~ No obstacles have been encountered.

**XXXV. FURTHER INFORMATION ON THE PRACTICAL APPLICATION OF THE PROVISIONS OF ARTICLE 6bis AND ANNEX I bis**

~~140.141.~~ Not applicable.

**XXXVI. WEBSITE ADDRESSES RELEVANT TO THE IMPLEMENTATION OF ARTICLE 6bis**

~~141.142.~~ The relevant web sites for the UK are:

- <https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs>;
- <http://www.scotland.gov.uk>;
- <http://wales.gov.uk/?lang=en>;
- [www.daera-ni.gov.uk](http://www.daera-ni.gov.uk)
- ~~[www.doeni.gov.uk](http://www.doeni.gov.uk)~~

~~142.143.~~ The EU register of approvals can be found at:  
[http://ec.europa.eu/food/dyna/gm\\_register/index\\_en.cfm](http://ec.europa.eu/food/dyna/gm_register/index_en.cfm).

## XXXVII. FOLLOW UP ON ISSUES OF COMPLIANCE

144. The 54<sup>th</sup> Meeting of the Parties in 2011—2014 adopted decision IV/9i— 9n (<http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fifth-meeting-of-the-parties-2014/united-kingdom-decision-v9n.html>—~~<http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppcc/envppccimplementation/fourth-meeting-of-the-parties-2011/united-kingdom-decision-iv9i.html>~~), in which the findings of the Compliance Committee in respect of decision IV/9i and communications ACCC/C/2010/53 and ACCC/C/2012/68 ACCC/C/2008/23, ACCC/C/2008/27 and ACCC/C/2008/33—were endorsed and the United Kingdom's progress in implementing the recommendations and constructive ongoing engagement was welcomed.
145. In relation to decision IV/9i the Compliance Committee found that the United Kingdom had made serious and active efforts to implement the Compliance Committee's recommendations but that the points of non-compliance had not yet been fully addressed.
146. The Committee found, in relation to article 9, paragraph 4, that measures were still needed to ensure that the costs for all court procedures subject to article 9 in England and Wales, Scotland and Northern Ireland are not prohibitively expensive, in particular, by providing clear legally binding directions from the legislature or the judiciary to this effect.
147. The Committee found in the light of that finding that the United Kingdom still needed to sufficiently consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice, as required by article 9, paragraph 5.
148. The Committee also found that clear time limits for the filing of all applications for judicial review within the scope of article 9 of the Convention in England and Wales, Scotland and Northern Ireland, and a clear date from when the time limit started to run were needed to comply with article 9, paragraph 4.
149. Finally, the Committee found that legislative, regulatory and other measures were needed to establish a clear, transparent and consistent framework to implement article 9, paragraph 4, to ensure compliance with article 3, paragraph 1.
150. New rules, adopted across the jurisdictions of the United Kingdom in 2013, provide for cost protection for claimants in Aarhus Convention claims. Judgments given in cases after the rules were adopted have led to the United Kingdom government and devolved administrations to review those rules:
- ~~143.~~ Following that review, a number of changes have been made to the relevant regulations for Northern Ireland by the Costs Protection (Aarhus Convention) (Amendment) Regulations (Northern Ireland) 2017 (see above for details).
151. With regard to the recommendation included in paragraph 8(b) of decision V/9n, the United Kingdom emphasises paragraph 34(o) of the Report of the 5th session of the Meeting of the Parties to the Convention:

“[The Meeting of the Parties provisionally adopted] Decision V/9n on compliance by the United Kingdom (ECE/MP.PP/2014/CRP.6/Rev.1), concluding upon the proposal of the Chair of the Meeting of the Parties that footnotes 2, 3 and 4 of the draft decision as agreed by the Working Group of the Parties at its eighteenth meeting (ECE/MP.PP/2014/CRP.6) would be removed from the text of the decision and reflected instead in the present report. To that end, the Chair of the Meeting of the Parties, with the United Kingdom’s agreement, asked to record that the United Kingdom’s position with respect to paragraphs 2 (b) and 8 (b) of the draft decision was set out in the United Kingdom’s letter of 21 March 2014, and that the United Kingdom’s position with respect to paragraph 3 was set out in its letter of 5 March 2014. The United Kingdom also expressed concerns regarding the reopening of text in the draft decision already agreed by the Working Group of the Parties.”

152. The United Kingdom’s letter of 21 March 2014<sup>11</sup> set out the United Kingdom’s views on what is required by article 9(5) of the Convention and that these requirements had already been met in the context of the allegations of non-compliance originally considered by the Committee. The United Kingdom’s position remains the same.

153. The United Kingdom also refers to its statement of 30 June 2014<sup>12</sup> at the 5th session of the Meeting of the Parties under agenda item 5(b), expressing concerns about the removal of footnotes that clarified the United Kingdom’s position being removed from the final text of the decision, despite having been agreed by the Working Group of the Parties.

154. In communication ACCC/C/2010/53, the Compliance Committee did not accept the allegations of non-compliance relating to articles 5, 6, 7 or 9 of the Convention. The Committee made a finding of non-compliance on the grounds that the requested raw data was not provided to the public, but also stated that the United Kingdom was no longer in non-compliance because the raw data was subsequently provided to the public. The United Kingdom did not agree that a finding of non-compliance should have been made in this case because it was clear that domestic remedies had not been utilised by the communicant. These concerns were expressed in a letter to the Compliance Committee dated 5 March 2014.<sup>13</sup> The 5th Meeting of the Parties did not include the Committee’s recommendations in relation to this communication in decision V/9n and the United Kingdom considers this matter closed.

155. In communication ACCC/C/2012/68, the Compliance Committee did not accept the allegations of non-compliance relating to articles 4, 5, 6 and 9 of the Convention, nor the allegations of non-compliance with article 7 relating to the Scottish Government’s renewable energy policy. The Committee made a finding of non-compliance in relation to the public participation for the United Kingdom’s National Renewable Energy Action Plan, in relation to article 7. The United Kingdom, in its 2014 progress report, reiterated its awareness of the obligations under article 7 and the need to act in compliance with them where they apply.

~~144. In communication ACCC/C/2008/23 the Compliance Committee found an instance of *stricto sensu* non-compliance with article 9(4) regarding the way in which costs were ordered to be paid, but there was no evidence to substantiate that this was due to a systemic error and no recommendations were made.~~

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<sup>11</sup> [http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/United\\_Kingdom/frUK\\_21.03.2014.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP4decisions/United_Kingdom/frUK_21.03.2014.pdf)

<sup>12</sup> [http://www.unece.org/fileadmin/DAM/env/pp/mop5/Statements/MOP5-5b-UK\\_statement\\_on\\_item\\_5\\_b\\_.pdf](http://www.unece.org/fileadmin/DAM/env/pp/mop5/Statements/MOP5-5b-UK_statement_on_item_5_b_.pdf)

<sup>13</sup> [http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-53/Correspondence%20with%20Party%20concerned/frUKC53\\_05Mar2014/frUKC53\\_05.03.2014.pdf](http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2010-53/Correspondence%20with%20Party%20concerned/frUKC53_05Mar2014/frUKC53_05.03.2014.pdf)

- ~~145. In communication ACCC/C/2008/27 the Compliance Committee found the quantum of costs prohibitively expensive and the manner of allocating costs unfair, breaching article 9(3) and (4). It recommended that: “the Party concerned review its system for allocating costs in applications for judicial review within the scope of the Convention, and undertake practical and legislative measures to ensure that the allocation of costs in such cases is fair and not prohibitively expensive”.~~
- ~~146. In communication ACCC/C/2008/33 the Compliance Committee found, following an analysis focused on procedures and costs associated with a judicial review, that article 9(4) was breached by failing to ensure that the costs of court procedures were not prohibitively expensive and ensuring clear time limits for the filing of an application for judicial review, and that there was a breach of article 3(1) by not having taken the necessary legislative, regulatory and other measures to establish a clear, transparent and consistent framework to implement article 9(4). In relation to article 9(5), which requires parties to consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice, the Committee found that the system did not do this. It recommended that the United Kingdom review its system for allocating costs in environmental cases within the scope of the Convention so that they are fair and equitable and not prohibitively expensive and that a clear and transparent framework is provided. The Committee also recommended reviewing the rules regarding the time frame for bringing applications for judicial reviews to ensure that these are fair and equitable and amount to a clear and transparent framework.~~
- ~~147. The Ministry of Justice consulted on changes to the Civil Procedure Rules in England and Wales and these came into force in April 2013. Where a claimant indicates in their claim form that it is an Aarhus Convention claim (and this is not successfully challenged by the defendant) the parties may not be ordered, throughout first instance proceedings, to pay costs exceeding the following amounts: an individual claimant: £5,000; other claimants: £10,000; a defendant: £35,000. The Rules were also amended to require the court to have particular regard to avoiding making continuing with a claim prohibitively expensive when making an order requiring an undertaking in damages.~~
- ~~148. In Northern Ireland, following a public consultation, the Department of Justice introduced similar changes on costs through the Costs Protection (Aarhus Convention) Regulations 2013. Concerns have been expressed regarding some differences between the jurisdictions of the United Kingdom in relation to costs. It is, however, important to respect the devolution settlement and to recognise that there are three separate legal systems in the UK with different approaches to implementation.~~
- ~~149. Following a consultation, the Scottish Government amended the Rules of the Court of Session with effect in Scotland from March 2013. In applications concerning challenges under EU public participation legislation, any protective expenses order must limit the applicant’s liability to the other side’s costs to £5,000 and the respondent’s liability to £30,000. The court may, on application, lower the applicant’s maximum liability or raise the respondent’s maximum liability.~~
- ~~150. In relation to timing, in England and Wales for judicial reviews relating to planning decisions for which statutory appeals are also available, the time period for commencing a claim for judicial review has been aligned with that for the statutory appeal procedure, and for those cases the requirement that the judicial review claim be commenced “promptly” has been removed. The~~

requirement for “promptness” is disappplied in relation to cases involving the assertion of rights under EU law.

~~151-156.~~ Progress reports on decision ~~IV/9i~~V/9n were provided to the Compliance Committee in ~~March 2012~~ December 2014, November 2015 and April 2017, and responses to specific questions from the Committee were provided in April 2016. ~~September 2012 and February 2013,~~ and the issue was further discussed at the Committee’s 41<sup>st</sup> Meeting in June 2013.

~~152.~~ Since the changes mentioned above came into force the Court of Justice of the European Union gave its judgment in *Edwards*, a reference from the UK Supreme Court on the access to justice requirements associated with the term “prohibitively expensive” as it is used in EU legislation implementing the Convention. The Court found that there is an objective element to the criteria for deciding on costs — the costs must neither exceed the financial resources of the person concerned nor appear to be “objectively unreasonable”. It found that there is also a subjective element, meaning that a court, when considering a costs award, may also take into account: the situation of the parties concerned; whether the claimant has a reasonable prospect of success; the importance of what is at stake for the claimant and for protection of the environment; the complexity of the relevant law and procedure; the potentially frivolous nature of the claim; the existence of legal aid or a costs protection scheme. The UK Supreme Court has applied this guidance to the circumstances of the case and found that the figure of £25,000 was neither subjectively or objectively excessive.