

Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom regarding access to justice in connection with waste management (ACCC/C/2016/142)

Additional Observer Statement from Peter Silverman MA MSc

A. Misrepresenting the EPA S91 notice period

Paragraph 37 of the communication of 24th November from the United Kingdom quotes the Implementation Guide as saying: “Moreover, fairness requires that the public be duly informed about the review procedure...”

I wish to point out that the public in the UK have been misinformed by our government about the EPA S91 (*Summary proceedings by persons aggrieved by litter*) in regard to the notice period.

EPA S91(5) says: Before instituting proceedings under this section against any person, the complainant shall give to the person not less than **five days** written notice of his intention to make the complaint and the notice shall specify the matter complained of.

EPA S89 (7) says: The Secretary of State shall prepare and issue a code of practice for the purpose of providing practical guidance on the discharge of the duties imposed by subsections (1) and (2) above.

Paragraph 9.5 of the Code of Practice on Litter and Refuse (2016 updated 2019) produced by Department for Environment, Food and Rural Affairs says:

Duty bodies that allow their land to fall below acceptable standards for longer than the allowed response time may be subject to a Litter Abatement Order (section 91) issued under the Environmental Protection Act 1990.

The tables immediately below 9.5 shows the allowed response times for “trunk road lay-bys” and “motorway verges” as “14 days” and “28 days or as soon as reasonably possible” respectively. See page 21 and 23.

Availability of Judicial Review

The very first Code of Practice on Litter and Refuse from 1990 (1) stated on page 4:

Secondly, a citizen aggrieved by the persistent failure or wilful refusal of a duty body to discharge its duty would be entitled to apply to the High Court or, in Scotland, to the Court of Session, for Judicial Review of that body's actions.

However, in both the 2016 and the 2016 /2019 Codes no mention is made of the option of a Judicial Review

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(1) <https://www.cleanhighways.co.uk/wp-content/uploads/2016/06/LCOP-1990.pdf>