

## Communication B

Further to the information already submitted in the forms of the original Communication (to be referenced now as Communication A) and the response that is directly in response to DEFRA's submission, I need to inform the Committee of **material** developments that have taken place since Communication A was submitted in relation to my Complaint. These developments have fallen into four main areas: 1) new consultations; 2) FOI responses and 3) the on-line availability of Judicial Review decisions. The information below I shall refer to as Communication B for ease of reference for the completeness of the Complaint.

### Air Quality

1. On **23 November 2020**, DAERA launched a [Consultation](#) for the A Clean Air Strategy for Northern Ireland as a – Public Discussion Document where “The Department of Agriculture, Environment and Rural Affairs (DAERA) has launched a Discussion Document in advance of developing **the first** Clean Air Strategy for Northern Ireland.”  
Two points of note here are that a) this Consultation period overlapped with the Brexit date of departure, hence the Department had not addressed this issue in sufficient time to ensure the whole process of strategy development had completed before the 31 December 2020. Secondly, b) That it is their admission that there has **never been** to date any Clean Air Strategy for NI.
2. The [full 153-page Document](#) is available to comment on before 15 February 2021 and I intend to do so. However, major omissions and/or anomalies that I need to inform the Committee about as they also provide evidence in breaches of the Convention, are as follows:
3. That there is no reference to the locations of the air quality samples as indeed I have already noted in Communication A that there is no monitoring of air quality near my home within a seven miles radius given that I live only 200metres from a major international port, the monitoring is inadequate and not fit for purpose and therefore does not provide me with any relevant information pertaining to my environment risks. **Articles 4, 5, 7 of the Convention**
4. In Chapter 1 where the pollutants are shown, there is no reference to radioactive pollution/radiation (being both ionising and non-ionising) as listed in Table 1-2 on pages 13 and 14. In fact the word “radiation” is only cited once in the whole document on page nine with reference to ultraviolet radiation being a natural source of radiation. “Radiation” as defined in **Article 2, para 3b of the Convention** as an environmental factor that should be included in the “environmental information” that can be requested or challenged when invoking the Convention. **Articles 4, 5, 7 and 9 of the Convention**
5. Cited on page 27 of the [Document](#): “The pollutants measured at these sites are: nitrogen oxides, particulate matter, ground-level ozone, sulphur dioxide, heavy metals, benzene, carbon monoxide and polycyclic aromatic hydrocarbons”.
6. Below this paragraph it states that in complying with regulations... “The Department maintains a website, [www.airqualityni.co.uk](http://www.airqualityni.co.uk), which shows close to real-time monitored

air pollution data from 20 monitoring stations (see Figure 1-10). The Department also publishes an annual summary report on all the air quality monitoring that has taken place over the previous year. The most recent edition of this report (for 2017) shows that UK air quality objectives were met for all the above pollutants with the exception of nitrogen dioxide”.

7. However, if we look at where and what is monitored on the table on page 30 and in reference to the nearest monitoring point to the Port which is in Newry at least seven miles away, **only PM10** is listed. I have already referenced DEARA’s website link to the private organisation that is referred to in Communication A as Air Quality NI (see paragraphs j i and iv to ix). The active site lists also NO, NO2 and NOX but not others listed above. The site of the monitor is shown in a photograph [here](#) and does not in any way provide a real meaningful assessment of the air quality of my environment next to a Port seven miles away (nor does it allow for any assessment of the emissions of the nearby factories and canal in Newry where I walk as I do my shopping).
8. Further since the submission, the Port has installed further tanks of CO2 gas as part of their [CO2 Distribution Hub](#), which is within one mile from my house and downwind. CO2 is not listed as a pollutant on any of the documents and neither is it monitored by the Port itself. By not providing appropriate and relevant data on the air quality of my environment I believe that DAERA is in breach **of Articles 4, 5, 7 and 9 of the Convention**, where I cannot access accurate and meaningful information of those pollutants that could threaten the quality of my environment.

#### Other Consultations

9. [Further Consultations](#) that DAERA have been launched on the government website solely in the month of December are listed below. It is important to note that document c) is one which is fundamental to the holistic environmental protectionisms that we could be afforded and has not been addressed until this late hour of the Brexit “transition period”. The question arises as to the rationality of :
  - a. Proposal to Introduce a Protein Crops Payment Pilot Scheme for 2021 (Protein Crops)\*
  - b. Extension of the existing NIEA Regulatory Charging Policy from 1 April 2021 to 31 March 2023 (Charging Policy)\*
  - c. Environmental Plans, Principles and Governance for Northern Ireland – [Public Discussion Document](#) (Environmental Plans)
  - d. Sustainable Use of Pesticides: [Draft National Action Plan](#) (Pesticides)
  - e. Discussion Document on a [Climate Change Bill](#) (Climate Change)

#### Protein Crops

10. Those marked with an \* above are provided with a new format of a Screening form to screen the content against equality standards and human rights. At **a)** the Screening form is found [here](#) and does not attempt to screen against Human Rights, but only cite their reference. At boxes 8 and 9 it states that there is no detrimental impact on Human Rights nor does this Scheme provide for any opportunities. It seems that senior officers are misguided as to what Human Rights are at Article 8 and therefore have not ensured a proper Screening of the scoping of this Scheme. This in my opinion this response is a generic and endemic one across NI. Although these are new forms and include the Human Rights Act UK 1998, the processor of information does not properly invoke the Act in their decision-making. The process in my opinion has not changed to become effective but to

remain ineffective as before where Human Rights were not vetted against. My experience of public participation in decision-making and in judicial reviews has led me to the conclusion that neither influence any changes in decisions on fundamental generic practices. I believe this is contrary to **Articles 6, 7 and 9 of the Convention**.

#### Charging Policy

11. At **b)** the form is seen [here](#) and we can clearly see that the Human Rights elements is not again screened against although it is listed. This Policy incurs fines and/or fees for areas of pollution such as Radioactive Substances and Water Discharge Consents and in my opinion does invoke the Human Rights Act article 8 as allowing these to be discharged into the environment and only through paying a fine or fee, would not provide effective environmental protection against these potential contaminants and therefore not provide me any recourse to challenge these decisions to protect my environment where policies and laws are in place that allow such mechanisms to potentially destroy the environment. This is in breach of Article 9 of the Convention in my opinion where I am denied a challenge to remedy
12. Without challenging the decision in High Court to positively screen this decision I would not have any recourse that would be “expeditious” in nature and effective to remedy this process to ensure that it is screened appropriately against Human Rights and therefore may not be ratified as a policy. By having to follow this process at High Court, with my experience and observing others, I do not believe that the High Court challenge would provide any immediate or long term protection from these potential pollutants which in my opinion is in breach of **Article 9 of the Convention** where a pollutant would be deemed as lawful where this policy to be established.

#### Environmental Plans

13. At **c)** above this Consultation is the first of its kind with any reference to an EPA-like organisation for NI. [This document](#) was published on 10 December and launched as a public consultation on 20 December even though it relates to the Environmental Bill that was drafted in . However on page 3 by would have provided the opportunity to establish accountability and responsibility to one body for monitoring, assessing, reporting and enforcing environmental protection in NI under the name of an EOP. However, it seems that NI is once again lagging in establishing this system and demonstrating its inability to act proactively and instead only react to the UK as lead in legislature developments to only use this as the NI ‘business as usual’ process in addressing any changes necessary to protect our environment. In other words, NI has made no policy or plan for the fundamental strategic environmental protection governance in NI to date as, although Brexit has triggered this Complaint, Brexit should not have been a trigger to establish an effective and appropriate plan for NI. The process should have been in place prior to Brexit and therefore provide a seamless and effective transition through the Brexit process.
14. *“Whilst these principles [European Principles] are central to government policy, at a national level we do not currently set them down in one place, or define their role in policy-making or delivery. So, after the end of the transition period, if we are to maintain the current position we need to have a new framework in domestic law. It will remain government’s responsibility to set policy within the framework of these principles”.* (page 6) The example I have provided does not correlate with the latter part to this statement.

15. By not having these mechanisms in place prior to Brexit and even now, I am being disadvantaged to challenge decisions in a coherent manner and one where I can easily access information and ask for support in challenging decisions ie that no **independent** EPA exists to date. This is contrary to Articles **4, 5 and 9 of the Convention**.

#### Pesticides

16. At **d)** To demonstrate how the Ni legislative system works that obfuscates and threatens the protectionisms that **could be** enforced on our environment I will draw your attention to p.39 to the [Water \(Northern Ireland\) Order 1999](#) where this paper states “allows the Department of Environment Northern Ireland to establish water quality objectives in order to maintain and improve the quality of waters and makes it an offence to knowingly permit any polluting matter to enter a waterway or underground stratum, unless a relevant consent or authorisation is held.” When we look at this Statute we see that it did [not undergo an impact assessment](#) nor has this been updated since 1999.
17. Even though it cites on this page that there are no outstanding amendments, if we click on the yellow box we are referred to the SI of [The Waste Amendment Regulations EU Exit 2020](#) which does affect this legislation in providing the list of substances that can be discharged with a fine or consent. The latter SI has neither been assessed against human rights and [only assessed against equal rights](#)<sup>1</sup>. It is important to note that [at Article 7](#) in that where the list of hazardous substances that can be provided with consent or a fine under the former legislation referenced to EU Case Law dating to 2000 ie [Decision 2000/532/EC](#). By invoking this case law and not the EU Directive on Waste Management and/or the Water Framework Directive, Northern Ireland has disallowed any changes in legislation to further progress and therefore enhance protectionisms. I believe this in breach of **Article 9** of the Convention as I will not have any recourse to take to judicially review any decisions that pertain to the consent or fines attributed to water discharge consents as the national legislation allows the pollution of the environment as long as it has been given consent and or fined if no consent is given.

#### Climate Change Bill

18. At e) This document at [page 24](#) states that “Northern Ireland is extremely well placed to take advantage of the opportunities that will accrue from the promotion of renewable energy technology and, indeed, other green technologies” yet nowhere in this document does it define what these “other green technologies” are nor what “green” means.
19. It does not for example exclude the use of nuclear energy and acknowledge their environmental considerations. Neither does it provide for any assessment of the increase in the use of electricity across NI which potentially could increase the risk of non-ionising radiation emissions. Without any public body responsible for ensuring our protection against such threats as nuclear waste contamination (as is the case in Carlingford Lough) I am not given the opportunity to challenge any decision on the matter of the use of nuclear energy nor for the increase in electricity supply and consumption. This I believe is contrary to **Articles 4,5 and 9 of the Convention**.

#### Freedom Of Information Requests

20. I had requested information as to the “upgrade” of our electricity network across Ni as a potential non-ionising radiation threat to the environment as this coincides with the roll out of 5G across NI and indeed, the world. As this is happening now in NI, I deem this is an urgent matter and one that should be dealt with expediency (invoking Article 51c of

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<sup>1</sup> From the Explanatory memorandum found at:  
<https://www.legislation.gov.uk/nisr/2020/284/memorandum/contents>

the Convention) as the information could confirm that there is a real “imminent threat to human health”.

21. My request reads as follows:

*“Pursuant to the FOI Act 2000, I would like to request the following information: NIE is currently undertaking an “upgrade of low voltage cables” across Northern Ireland.*

*1) What is the a) purpose and b) the main drivers of this regional upgrade?*

*2) What are the materials that are being removed and what is their composition?*

*3) What will the new materials be comprised of?*

*4) What are the potential impacts of this upgrade to the a) network, b) supply, c) voltage and d) cost to the consumer?*

*5) Can you provide information on the safety of the installation of these new materials (in combination with other street furniture and/or electrical or other type of devices within buildings) to consumers in our homes and in the streets and what are the precautions that should be taken to mitigate any risks?*

*6) Who is the public body or bodies responsible for the new infrastructure and its potential impact on the public?”*

22. I originally directed my question to the [Department for infrastructure](#) who signposted me to the Department of the Economy. Subsequently I submitted the same request to the [latter Department of the Economy](#) who, in [their response](#) advised that they do not hold any of the information and signposted me to Northern Ireland Electricity Networks (a private organisation) and to my local Council whom I then requested a [similar FOI request](#). The Council confirmed they hold “no information” in relation to my request.

23. This process demonstrates how the fundamental system has failed in allowing me to exercise my rights under the Aarhus Convention in all of the three pillars as no public body (it appears) is accountable for the “upgrade of electricity” across Ni and therefore if any risk does arise with “interaction among these elements” listed at Article 2, para 3a then I have no body to challenge in Court as I do not have presently, if the process in Court was effective. I believe this demonstrates breaches in **Articles 4, 5 and 9 of the Convention and also the generality of the Convention.**

#### Previous Judicial Reviews

24. Further to my original Communication where I stated that my Judgement was not available on line (paragraph f on p5) a new site has been created and documents were put on line on 30 October 2020. I was not informed I have only come across this site in other research. The date you can see if you right click on any of the judgements and see the date of “last modified” under “inspect”. I can now share these and other Aarhus LiP cases here as evidence that no person has effectively made any progress with protecting our environment:

- a. My [Judgement at Appeal Court](#) that is not listed as others are on the website as having any respondents. [My Judgement at High Court](#) that claimed I had no evidence and that the case was unarguable even though I had three days of a leave hearing against three Respondents. I was also denied further progression.
- b. Bill Donnelly had also attempted to protect the environment in an Aarhus case in 2015 at High Court, [2017 at Appeal Court](#) and again in [2020](#) to bring another case which was denied leave based on being “unarguable”.
- c. Chris Murphy was another LiP who attempted to protect the environment in an Aarhus case in [2016](#) and also went to [Appeal Court](#) without any success and denied further progression.

- d. Gordon Duff has repeatedly attempted to bring Aarhus cases and has brought one of this complaints to the Aarhus Compliance Committee no [ACCC/C/2020/180](#).

I am certain there are others to add here so this list is only exemplary.

25. To conclude, I will emphasise that this case is a critical one, at a critical time for NI within the UK and outside the EU. To provide strategic direction and therefore mitigate against a potentially high number of applications from NI that will focus on individual matters in the future, I seek that NI is not discriminated against and that we are afforded an independent Environmental Protection Agency (EPA) and a Marine Management Organisation (MMO) as are the other nations within the UK and Ireland and that legislation, policies and procedures are in place that are effective in achieving their purpose and on par with, or more stringent than, that of EU Directives and that they continue to be so. Only then can we who live in NI be given a fair and uncompromised environmental governance that will enable the UK as a Party to the Convention to comply with it effectively, or at the very least to work towards achieving that aim.

Signed



Dated 24 January 2021