Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland

19 July 2021

Dear Ms Marshall,

Re: Compliance Committee's draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement decision VI/8k

Thank you for your letter dated 5 July 2021 inviting comments on the Committee's draft report. We welcome the opportunity to provide comments, pursuant to paragraph 34 of the annex to decision I/7, prior to the and finalisation and adoption of the report and its submission to the seventh session of the Meeting of the Parties in Geneva between 18-20 October 2021.

General comments

1. We welcome the Compliance Committee's conclusions as set out in paragraph 183 of the draft report regarding the UK's compliance with Article 9(4) of the Convention and prohibitive expense[1], namely:

> *"(a) While welcoming the progress made in that direction, the UK has not yet met the requirements of paragraphs 2(a), (b) and (d) and 4 with respect to England and Wales;*
> *(b) While welcoming the progress made in that direction, the UK has not yet met the requirements of paragraphs 2(a), (b) and (d) with respect to Scotland;*
> *(c) While welcoming the significant progress made in that direction, the UK has not yet met the requirements of paragraph 2(a), (b), (c) and (d) with respect to Northern Ireland;*
> *(e) The Party concerned has not yet met the requirements of paragraph 6 of decision VI/8k, nor demonstrated any progress in that direction;"*

2. We also welcome the Committee's recommendations to the Meeting of the Parties that it reaffirm its decision VI/8k and requests the UK to, as a matter of urgency, take the necessary legislative, regulatory, administrative and practical measures to:

> *"(a) Ensure that the allocation of costs in all court procedures subject to article 9, including private nuisance claims, is fair and equitable and not prohibitively expensive;*
> *(b) Further consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice;*

[1] The relevant extracts of Decision VI/8k regarding prohibitive expense are set out in Annex A to this letter. We confine our comments to relevant provisions of Article 9(4) concerning prohibitive expense as that is the focus of our joint concerns

(c) Further review its rules regarding the time frame for the bringing of applications for judicial review in Northern Ireland to ensure that the legislative measures involved are fair and equitable and amount to a clear and transparent framework;
(d) Establish a clear, transparent and consistent framework to implement article 9(4) of the Convention;"

3. In particular, we welcome the requirement in paragraph 184 of the draft report for the UK to submit a **plan of action, including a time schedule**, to the Committee by 1 July 2022 regarding the implementation of the recommendations and provide detailed progress reports 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the recommendation. It is now over a decade since the Compliance Committee adopted its findings in Communication ACCC/C/2008/33 regarding prohibitive expense and the UK's progress has been disappointingly piecemeal, despite the adoption of Decision IV/9i, Decision V/9n and Decision VI/8k at the Meetings of the Parties to the Convention in 2011, 2014 and 2017 respectively. The requirement to provide the Committee with a phased plan of action is clearly necessary to ensure the UK makes meaningful and timely progress on compliance with these important provisions of the Convention.

4. We note the Committee has been unable to reach a conclusive view on some issues due to a lack of data (including variation of costs caps and cross-undertakings for damages). Some of us have submitted regular requests for data on Aarhus cases under the Environmental Information Regulations 2004 over the last ten years (including data on the number of cases issued annually, the number of challenges to the status of claims as Aarhus Convention claims, success rates and data on injunctive relief[2]) and each request for data appears to be treated like a new request. We urge the Committee to recommend that devolved administrations of the UK collect and publish data on environmental claims in a manner that enables the Committee, and civil society, to gain an accurate understanding of the position with regard to compliance with Article 9 of the Convention across the three jurisdictions of the UK. As well as making it easier to identify any issues, it would also further the objectives of the Convention for transparency in, and access to, environmental information, as outlined in Recital 9 to the Convention.

England and Wales

5. We welcome the Committee's concern that while the UK failed to undertake a review of the Environmental Cost Protection Regime (ECPR) in April 2020, the Government found resource and capacity to undertake a broader Independent Review of Administrative Law (including certain aspects of Judicial Review ("**JR**")) during the same time period. We welcome the recognition of the "*pressing need for the Party concerned to take the steps needed to meet the requirements of decision VI/8k in order to end its longstanding non-compliance with the Convention*" (paragraph 44).

6. We support the Committee's findings of non-compliance with paragraphs 2 (a), (b) and (d) and paragraph 4 of Decision VI/8k with regard to the following issues:

   - **Type of claims covered** – We welcome the Committee's conclusion that the UK is not yet in compliance because some environmental claims (including private law claims such as private nuisance) are still not covered by the ECPR (paragraphs 46-48).

[2] See, for example, the joint report *A Pillar of Justice* based on data obtained from the Ministry of Justice and published by the RSPB and FoE in 2019 here

- **Default levels of costs caps - costs caps for unincorporated associations** – We support the Committee's conclusion that the application of costs caps to unincorporated associations and individuals representing them is presently unclear (paragraphs 53-56).

- **Variation of costs caps** – We share the Committee's concern about the lack of examples in which default costs cap have been varied downwards and we support the Committee's recognition that the default costs cap levels of £5,000 (individuals) and £10,000 (other) could only be acceptable if variation downwards is not only theoretically available but can be predictably relied upon in practice. The Committee also regrets the restricted provision of data on this point by the UK and notes that the relatively high proportion of cases in which defendants sought an increase in the costs cap may create a deterrent effect. We support the Committee's conclusion that the UK has failed to demonstrate that the rules and practice relating to variation of costs caps provide a clear and consistent framework guaranteeing that costs will be fair, equitable and not prohibitively expensive (paragraphs 57-68).

- **Schedule of claimant's financial resources and hearings on applications to vary costs caps** – we support the Committee's conclusion that as there is a risk potential claimants will be dissuaded from bringing a JR because their financial circumstances will be provided to the defendant and may be discussed in open court (paragraphs 69-79).

- **Costs for procedures with multiple claimants** – We welcome the Committee's recognition that there is no basis for the rule requiring separate costs caps for each claimant (particularly where claimants make the same legal arguments on the same factual basis) and that it is not undesirable for claimants to be able to share the costs burden for challenges within scope of the Convention (paragraphs 80-83).

- **Costs relating to the determination of an Aarhus claim** – we welcome the Committee's findings that, whether or not the amended rule has led to an increase in challenges in practice, it is unfair that claimants do not recover their full costs in the case of an unsuccessful challenge (paragraphs 87-91).

- **Costs protection on appeal** – We share the Committee's concern that the lack of any cost caps in CPR 52.19A fails to ensure sufficient clarity or costs protection for claimants in appeals regarding Aarhus claims. We would add that the Respondent Secretary of State argued (albeit unsuccessfully) for a reciprocal cost cap of £35,000 for Friends of the Earth in *R (oao Friends of the Earth & Othrs) v Secretary of State for Transport & Othrs*[3], expressly relying on the lack of any limit on the costs recoverable under CPR 52 to justify this. We would emphasise also, that the issue of lack of certainty on costs on appeal applies to proceedings in both the Court of Appeal and the Supreme Court. The latter has its own separate rules and procedures from the CPR. Under Practice Direction 13 para 2.2, the Supreme Court has a discretion to apply the provisions of "*CPR 3.19, CPR 45.43 or, as the case may be, CPR52.19 or CPR52.19A*" [4]. We welcome the Committee's recommendation that costs to be ordered on appeal, including any possible costs caps that may be introduced into CPR 52.19A, must recognize that the requirement not to be prohibitively expensive applies to the

[3] [2020] EWCA Civ 214

[4] https://www.supremecourt.uk/procedures/practice-direction-13.html

proceedings as a whole, encompassing all stages of the procedure (paragraphs 92-96). However, in practical terms, we would emphasise that multiple rounds of costs caps for claimants (i.e. with a different one at each stage of the court system) is not an appropriate mechanism to prevent proceedings being prohibitively expensive for claimants. This is because costs certainty needs to be provided to claimants *at the outset* of proceedings. Therefore, it is necessary for one, fully inclusive cost cap for claimants to be set in the High Court/first stage of proceedings, which covers all possible tiers.

- **Cross-undertakings for damages** - the Committee notes that the 2017 CPR amendments do not give any further clarity to applicants seeking interim injunctions as to: (a) whether a cross-undertaking will be required, and (b) if a cross-undertaking is required, what its level will be. We welcome the Committee's finding that this situation fails to meet the requirement in article 3(1) of the Convention for a clear, transparent and consistent framework to implement the provisions of the Convention. We note that the lack of data on the number of cross-undertakings required in Aarhus claims since May 2015 renders the Committee unable to conclude that the UK is compliant with the relevant provisions of the Convention (paragraphs 97-99).

- **Costs orders against or in favour of funders of litigation** – the Committee finds that provided sections 85 and 86 of the Criminal Justice and Courts Act 2015 are not brought into force with respect to Aarhus claims, the UK is compliant with the relevant provisions of the Convention (paragraphs 100-101).

- **Costs orders against or in favour of interveners** – we share the Committee's reservations about the Government's submission that in order to avoid a possible costs order an intervener could apply to become a party (thus being able to benefit from the Aarhus costs cap) on the basis that encouraging interveners to become parties would simply add additional cost for all parties to the proceedings. It would clearly deter participation in proceedings, given the far greater resource requirement to being a party to proceedings, as opposed to an intervener. This suggestion by the Government also completely ignores the unique value that interventions can bring to litigation. Interveners, which often include NGOs and charitable bodies, are able to make focused submissions or provide evidence on a particular issue in which they have expertise, and which otherwise would not come before the Court. It is notable that the Courts have on many occasions and across different legal fields recognised that interventions have assisted them in the resolution of complex legal issues[5]. While the Committee finds the UK has met the requirements of paragraphs 2(a), (b) and (d) and 4 of decision VI/8k with respect to interveners who intervene against the claimant in England and Wales, we support the Committee's finding that members of the public who join proceedings as interveners in <u>support</u> of the claimant are also entitled to benefit from the Convention's requirement that proceedings must not be prohibitively expensive (paragraphs 102-108).

- We would add three further points. Firstly, the recent changes to the CPR which came into force in May 2021 under Practice Direction 54A have made interventions more resource intensive than

[5] For example: *R (oao Campaign Against Arms Trade) v Secretary of State for International Trade & Othrs* [2019] EWCA Civ 1020 (interventions by Amnesty International, Human Rights Watch, Rights Watch UK and Oxfam International)*; Boyd v Ineos Upstream Limited & Othrs* [2019] EWCA Civ 515 (intervention by Friends of the Earth); and *R v Roberts & Others* [2018] EWCA Crim 2739 (interventions by Liberty and Friends of the Earth)

previously, and are likely to have a deterrent effect. For example, those seeking permission to intervene must now do this by way of application notice under Part 23, rather than simply by letter to the Court (as could be done in the High Court previously). This means that a Court fee is now payable; currently £255 in the High Court and £528 in the Court of Appeal. In addition, at the point of applying for permission, the prospective intervener must now provide any evidence upon which they intend to rely, and, if they want to make oral representations, a summary of those proposed representations. All of this significantly frontloads costs before the prospective intervener knows that they will actually be able to participate in the case.

- Secondly, we do not agree that it is common practice (as claimed by the Party Concerned) that the cost liability of an intervener is actually resolved at the point a party is given permission to intervene (paragraphs 102-104). Friends of the Earth's experience on several recent interventions has been that Defendants have refused to agree to an intervention on a "no order as to costs" basis (i.e. so that the intervener bears its own costs and is not liable for any other parties)[6]. Ultimately, this has meant that the risk of an order for costs against the intervener persists over the course of the proceedings; cost liability is not therefore "resolved" at the point of permission.

- Thirdly, in our view the Court does not retain a complete and unfettered discretion not to award costs against an intervener. This is because under s.87 of the Criminal Justice and Courts Act 2015[7], a party can make an application for costs against an intervener, and the Court "*must*" grant this if it considers that *any* of the conditions in s.87(6) are made out. These conditions include if the intervener has acted unreasonably, but also, if the intervener's evidence and representations, taken as a whole, "*have not been of **significant** assistance to the court*" (own emphasis added). The Court can elect not to make a costs order against an intervener, but only if it considers there are exceptional reasons not to do so, as per s.87(7) of the CJCA 2015.

Scotland

7. While the Scottish Government appears to consider itself in compliance with Article 9(4) of the Convention, the Committee's draft report confirms that this is not the case. As mentioned above, the Committee has provided reasoned conclusions and recommendations for the UK to bring itself back into compliance with Article 9(4) of the Convention for over a decade. We urge the Scottish

[6] For example in *R (oao Sarah Finch) v Surrey County Council & Othrs* [2020] EWHC 3566 (Admin)

[7] Section 87 of the CJCA 2015, paras 5-7 are below:

*(5) On an application to the High Court or the Court of Appeal by a relevant party to the proceedings, if the court is satisfied that a condition described in subsection (6) is met in a stage of the proceedings that the court deals with, **the court must order the intervener** to pay any costs specified in the application that the court considers have been incurred by the relevant party as a result of the intervener's involvement in that stage of the proceedings.*

*(6) Those conditions are that— (a) the intervener has acted, in substance, as the sole or principal applicant, defendant, appellant or respondent; (b) the intervener's evidence and representations, taken as a whole, **have not been of significant assistance to the court**; (c) a significant part of the intervener's evidence and representations relates to matters that it is not necessary for the court to consider in order to resolve the issues that are the subject of the stage in the proceedings; (d) the intervener has behaved unreasonably.*

(7) Subsection (5) does not require the court to make an order if it considers that there are exceptional circumstances that make it inappropriate to do so. (own emphasis added)

Government to engage with the Committee's thoughtful deliberations and take immediate steps to bring itself into compliance with the Convention.

8. In common with the Ministry of Justice in England and Wales, the Scottish Government has not undertaken a review of the costs regime for Aarhus cases. This has resulted in a piecemeal approach, including the replication of certain flaws in the English/Welsh regime, in particular the adoption of arbitrary figures for adverse costs liability and the cross cap.

9. The PEO regime is fundamentally flawed in failing to recognise that the actual costs incurred by an unsuccessful petitioner are not limited to the £5,000 default cap (which is rarely reduced in practice and can be prohibitively expensive in itself for some claimants) on adverse costs liability, but also include their own legal costs (which routinely total £30,000 but are often significantly higher - thus making the process prohibitively expensive in practice). As such we consider there is a need to review and overhaul the costs regime in its entirety. In doing so consideration must be given to the overall costs faced by an Aarhus litigant – including their own costs should they lose the case – with options including introducing one-way cost shifting, exemption from court fees, and the reform of legal aid for Aarhus cases. Furthermore, steps should be taken to address the costs and liability faced by Aarhus third party interveners to remove the chilling effect.

10. **Type of claims covered** – we support the Committee's conclusion that the main problem remains the exclusion of private nuisance claims from the environmental costs protection regime (paragraphs 111 to 114). We note that the arguments made by the Scottish Government for the introduction of qualified one-way cost shifting in personal injury cases under the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 equally apply to all Aarhus claims.

11. **Level of cost caps** – we welcome the Committee's recognition that the introduction of powers under the 2018 PEO rules to vary the default costs cap up or down "on cause shown" introduces legal uncertainty and moves the Party further away from compliance with the Convention. We share the Committee's concern that the Party has failed to provide any information since its second progress report on how the caps are being applied in practice (paragraphs 115-120). We also highlight, as per comments at paragraphs 11 and 12 that the default level of both the cap and the cross cap is arbitrary, and as such does not reflect a realistic assessment of the overall costs faced by an Aarhus petitioner. As such a review of the cost regime as a whole is urgently needed.

12. **Cost protection on appeal** – the Committee is correct in concluding that, based on Chapter 58A.8, when the respondent appeals, the petitioner's costs will remain capped at £5,000 and the respondent's cross-cap at £30,000, total for both proceedings. In contrast, when the petitioner appeals, they must re-apply for a new PEO and if successful, a new cap of £5,000 and cross-cap of £30,000 will apply. On this basis, we support the Committee's finding that while the UK has met the requirements of paragraphs 2(a), (b) and (d) of decision VI/8k with respect to cost protection in appeals brought by respondents, it has not yet done so with respect to appeals brought by petitioners. We would, however, also point out that the question as to whether the PEO covers court fees and interveners costs is not restricted to costs on appeal (paragraph 122) as they apply to the overall PEO / costs regime. As such, the key questions that the party must answer are: (i) does the £5,000 cap include liability for the other sides court fees and any interveners costs, and if not how does the party intend to protect Aarhus claimants from these additional expenses; and (ii) does the £30,000 cross-cap also cover court fees and any costs arising from responding to third party interventions and if so is the default set at an appropriate level given the high cost for Aarhus litigants including solicitors and counsel, and court fees (which alone can run into 5 figures) (paragraphs 121-124).

Issues arising since the revised 2018 PEO Rules

13. **Definition of prohibitively expensive** – we welcome the Committee's comments in paragraph 126.

14. **PEO application procedures and costs** – we support the Committee's wider concerns in this section, including the requirement for applicants to provide information about the terms on which the applicant is represented (paragraph 128), the requirement to provide an estimate of the expenses of each other party (paragraph 129) and the potential deterrent effect of the absence of confidentiality on applicants (paragraph 130).

15. **Interveners** – we welcome the Committee's concern that applicants may be exposed to additional costs of interveners and consequently considers that the failure of the caps to be inclusive of any order to pay the costs of interveners does not meet the requirements of 2(a), (b) and (d) decision VI/8k (paragraph 134). Additionally, we highlight (as per our submission of October 2020[8]) that similar to the situation in England and Wales, third-party public interest interveners in judicial reviews at the Court of Session who are not parties may be found liable for other parties' costs: as per Rules of Court 58.19, the question of liability is entirely at the courts discretion and may remain undetermined until the conclusion of proceedings.[9] Aarhus interveners should be covered by the cost protection regime: we urge the Committee to extend its findings in paragraph 108 of the report (regarding England and Wales) to Scotland.

16. **Court fees** – we support the Committee's conclusion that court fees must be included within the costs protection regime because the requirement to ensure that costs are not prohibitively expensive applies to the costs of the proceedings in their entirety (paragraph 136). As per comments at paragraph 15, the Party must confirm that the £5,000 cap includes liability for the other sides court fees, and if not, explain how it intends to protect Aarhus petitioners from these expenses. It must also address the question of whether the £30,000 cross cap includes court fees and if so whether it is set at an appropriate level given the high cost for Aarhus litigants including solicitors and counsel, and court fees (which alone can run into 5 figures), if not how it intends to protect Aarhus petitioners from these expenses.

17. Legal Aid – we welcome the Committee's request to the Scottish Government to provide the text of the relevant provisions of the forthcoming Bill on legal aid for its consideration (paragraph 138).

<u>Northern Ireland</u>

18. In common with England and Wales and Scotland, the position remains that the Northern Ireland Government has not acted to bring private nuisance claims within the scope of The Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 and the Committee's conclusion on this is welcomed.

19. Also welcomed is the Committee's conclusion that there is insufficient clarity over the applicability of the rule that on the grant of an interim or emergency injunction the applicant party should be required

---

8 https://unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8k_UK/Correspondence_with_Observer/frObs_RSPB_etc_VI.8k_29.10.2020/frObs_RSPB_etc_VI.8k_29.10.2020_cover_letter.pdf

9 https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=5d3152a8_22

to give a cross undertaking to pay damages incurred by the respondent consequent on the injunction, if it is not upheld at the full hearing of the matter. It is readily apparent that in the context of many environmental challenges such an undertaking is a major deterrent to applicants. The Court does have a discretion not to require such an undertaking but potential applicants cannot know until the end of the interim hearing how and if that will be exercised. Regulation 5 of The Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013, by requiring the Court to consider whether a cross undertaking would make the proceedings prohibitively expensive, simply leaves this a factor to be taken into account by the Court, still leaving a potential applicant uncertain as to the outcome. The Department of Justice has no means of investigating cases not brought on account of such uncertainty – which certainly occurs – to assess its impact.

20. Paragraph 2(c) of Decision VI/8k concerned the time limits for bringing a public law challenge to the High Court. Order 53 Rule 4(1) of the Court of Judicature Rules (NI) 1980 was amended in 2018 and now reads:

> *"An application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made."*

21. This is a considerable and much welcomed improvement on the previous version of this rule. However, the consistent view of the Courts has been that grounds for an application arise when the decision under challenge is formally made. In many (but not all) cases this is a public act but the degree of publicity attending such decisions varies enormously depending on the type of decision and public body involved as does the knowledge required of the affected public to "be on the alert" and/or to "know where to look." Not all decisions are made public (for instance decisions in 2020 by the Department of infrastructure to extend the period for compliance with planning enforcement notices for activities for which, at that time, there was no extant planning consent). Should there be appreciable delay in a potential applicant learning of the decision which leads to a late application then the applicant is dependant on the Court's discretion to extend time.

22. The Committee's conclusions in relation to the assessment of costs at appeal level requiring the appellate court to consider prohibitive expense in relation to the entire course of the litigation – i.e. at first instance and appeal are noted and also have resonance for Northern Ireland, as the 2013 Regulations, cited above, do not make this clear.

23. On reviewing the course of this complaint it is worth reflecting on the comments made in our submission to the Committee on 31 October 2018, as they related to Northern Ireland:

> *The Cost Protection Regulations only address part of the affordability problem. They do not address the difficulty an applicant may have in being able to afford their own legal costs in the event that they lose the case. Given the expense involved in High Court challenges these in themselves are a significant obstacle to access to environmental justice. There is no sign of any public policy initiatives being taken to address this, such as:*
>
> *(1) Amending the Legal Aid rules which currently deny assistance where a number of members of the public have a similar interest in objecting to or challenging a policy, project or development with the result that financial assistance from public funds is rarely available to fund environmental legal challenges even where the applicant would otherwise qualify for such assistance;*

(2) Examining the application of the costs indemnity rule in environmental cases. This prevents those acting for successful applicants recovering a fair commercial level of costs from the respondent in successful cases where they have agreed a concessionary level of costs with their clients. Contingency and 'no win no fee' arrangement are unlawful in Northern Ireland;

(3) Removing certain cases from the jurisdiction of the High Court to less expensive fora. A large number of environmental law issues in this jurisdiction arise in relation to planning decisions. At present objectors, unlike developers, have no right of appeal to the Planning Appeals Commission, which is a specialist forum dealing with such matters. It is also, in general, a less expensive forum than the High Court.

24. Despite the welcome progress made in relation to the adverse costs protection regime in Northern Ireland, the issue highlighted above remains unaddressed. This explains why a significant number of applicants have felt obliged to bring applications to the High Court, in major environmental challenges, without the benefit of any legal representation. The adverse costs protection regime has enabled them to manage the risks of costs being awarded against them in the event of losing. It has done nothing to assist them in accessing legal representation that they can afford. Accordingly, in many cases access to environmental justice remains prohibitively expensive.

Concluding remarks

25. Please do not hesitate to contact us should the Committee have any questions arising from this submission.

Yours sincerely,

England and Wales
Carol Day and Rosie Sutherland, the RSPB
Will Rundle and Katie de Kauwe, Friends of the Earth England, Wales and Northern Ireland

Scotland
Mary Church, Friends of the Earth Scotland
Emilia Hanna and Benjamin Christman, Environmental Rights Centre for Scotland

Northern Ireland
Roger Black, C & J Black Solicitors, Northern Ireland

Annex A

Relevant provisions of Decision VI/8k - Compliance by United Kingdom with its obligations under the Convention

Adopted by the Meeting of Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters at its sixth session

The Meeting of the Parties

…

Endorses the following findings of the Committee with respect to decision V/9n:

(a) Regarding paragraphs 8 (a), (b) and (d) of decision V/9n, that:
(i) With respect to England and Wales, while the 2017 amendments to the costs protection system in England and Wales introduced some positive improvements, the 2017 amendments overall appear to have moved the Party concerned further away from meeting the requirements of paragraphs 8 (a), (b) and (d) of decision V/9n;
(ii) Concerning Scotland, the Party concerned has not yet fulfilled the requirements paragraphs 8 (a), (b) and (d) of decision V/9n, though the significant steps taken by the Party concerned to date in that direction are welcome;
(iii) With regard to Northern Ireland, the Party concerned has not yet fulfilled the requirements of paragraphs 8 (a), (b) and (d) of decision V/9n, though the considerable progress made by the Party concerned to date in that direction is welcome;

and in the light of its above findings, expresses its concern at the overall slow progress by the Party concerned in establishing a costs system which, as a whole, meets the requirements of paragraphs 8 (a), (b) and (d) of decision V/9n;

(b) That the Party concerned has fulfilled the requirements of paragraphs 8 (c) and (d) of decision V/9n with respect to time limits for judicial review in England and Wales and Scotland, but that, while welcoming the steps taken, the Party concerned has not yet fulfilled the requirements of paragraphs 8 (c) and (d) of decision V/9n with respect to time limits for judicial review in Northern Ireland;
(c) That the Party concerned has not yet met the requirements of paragraph 9 of decision V/9n and that the lack of progress by the Party concerned during the intersessional period in gives rise to concern;

2. Reaffirms its decision V/9n and requests the Party concerned to, as a matter of urgency, take the necessary legislative, regulatory, administrative and practical measures to:

(a) Ensure that the allocation of costs in all court procedures subject to article 9 is fair and equitable and not prohibitively expensive;
(b) Further consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice;
(c) Further review its rules regarding the time frame for the bringing of applications for judicial review in Northern Ireland to ensure that the legislative measures involved are fair and equitable and amount to a clear and transparent framework;
(d) Establish a clear, transparent and consistent framework to implement article 9, paragraph 4, of the Convention;

(e) Ensure that in future, plans and programmes similar in nature to national renewable energy action plans, if prepared, are submitted to public participation as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention;

3. Endorses the finding of the Committee with regard to communication ACCC/C/2012/77 that the Party concerned failed to comply with article 9, paragraph 4, of the Convention since the cost order awarded against the communicant in that case made the procedure prohibitively expensive;

4. Recommends that the Party concerned ensure that its Civil Procedure Rules regarding costs are applied by its courts so as to ensure compliance with the Convention;

5. Endorses the finding of the Committee with regard to communications ACCC/C/2013/85 and ACCC/C/2013/86 that, by failing to ensure that private nuisance proceedings within the scope of article 9, paragraph 3, of the Convention, and for which there is no fully adequate alternative procedure, are not prohibitively expensive, the Party concerned fails to comply with article 9, paragraph 4, of the Convention;

6. Recommends that the Party concerned review its system for allocating costs in private nuisance proceedings within the scope of article 9, paragraph 3, of the Convention and undertake practical and legislative measures to overcome the problems identified in paragraphs 109 to 114 of the Committee's findings on communications ACCC/C/2013/85 and ACCC/C/2013/86 to ensure that such procedures, where there is no fully adequate alternative procedure, are not prohibitively expensive;

…

9. Requests the Party concerned:
(a) To submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;
(b) To provide such further information as the Committee may request in order to assist it to review the progress of the Party concerned in implementing the above recommendations;
(c) To participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered;

10. Undertakes to review the situation at its seventh session.