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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

19th July 2021

Dear Ms Marshall,

Re: Draft report of the Aarhus Convention Compliance Committee (ACCC) concerning Decision VI/8k of the Meeting of the Parties on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention.

1. Thank you for your letter of 5th July enclosing the committee's draft report concerning Decision VI/8k, and for the opportunity to attend the open session hosted by the Committee on Friday 9th July. We thank the Committee for clarification on what the upcoming procedures will be for the Decision, what next steps will be taken following the submission of written comments and the procedures following the Meeting of the Parties in October.

2. We would like to draw the attention of the Committee to the fact that we have had less than ten working days to digest a detailed review across multiple government departments and UK administrations. The result is that we are not in a position to provide a comprehensive response to the draft report, and as such will be confining our comments to general observations and points of fact on the report. Looking further ahead as we prepare for the Meeting of the Parties in October, we will be carefully considering the report's detailed findings, as well as comments and responses from communicants and observers.

Costs issues – England and Wales

3. We are pleased to note that the Committee has found that we have met the requirements of paragraphs 2 (a), (b) and (d) and 4 of the Decision, with respect to: the eligibility for costs protection; to costs protection prior to the grant of permission; and to interveners who intervene against the claimant.

4. We are however disappointed to note that the Committee considers that we have not yet met the requirements of paragraphs 2 (a), (b) and (d) and 4 of decision VI/8k,

with respect to: the types of claims covered by cost protection; the schedule of financial resources needed to support an application for costs protection or protection on appeal; unincorporated associations; variations in cost caps; and costs in procedures with multiple claimants in England and Wales. The UK Government remains committed to undertaking a review of the Environmental Cost Protection Regime (ECPR) in England and Wales. As we move towards recovering from the Covid-19 pandemic, we will set out the details of the ECPR review in due course.

Costs issues – Scotland

5. We note with disappointment that the Committee considers that the requirements of paragraphs 2(a), (b) and (d) of the Decision with respect to the type of claims covered have not been met, that it considers that the revised PEO rules further move away from fulfilling the requirements of paragraphs 2(a), (b) and (d) with respect to the level of costs caps in Scotland, and 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).

Types of claims covered and Cross-undertakings for damages – Northern Ireland

6. We note with disappointment that the Committee considers that we have not yet demonstrated the requirements of paragraphs 2(a), (b) and (d) with regard to the type of claims covered in Northern Ireland. We are further disappointed that the Committee does not consider us to have met the requirements of paragraph 2 (c) concerning time limits for the bringing of applications for judicial review in Northern Ireland.

Allocating costs in private nuisance proceedings

7. We note with disappointment that the Committee considers that we have not yet met the requirements of paragraph 6 of the Decision concerning the system for allocating costs in private nuisance proceedings within the scope of article 9 (3) of the Convention. We are further disappointed that the Committee did not consider that we have met the requirements of paragraphs 8 (a) and (b) of Decision VI/8k concerning public authorities' requirement to ensure effective notification of the public of a proposed activity.

Planning Advice Note 12

8. We note the Committee's comments on the previous version of Advice Note 12¹. In December 2020, an updated Advice Note 12 was published, which was amended to, amongst other things, address some of the Committee's concerns. This now sets out the revised process for notifying the public in clear and unambiguous terms. It can be accessed via the Planning Inspectorate's website, or via the following link (<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-twelve-transboundary-impacts-and-process/>).

¹ Party's Second Progress Report Annex K: Planning Advice Note 12 (https://unece.org/DAM/env/pp/compliance/MoP6decisions/VI.8k_UK/Correspondence_with_the_Party_concerned/Second_progress_report/Annex_K_-_Planning_Advice_Note_12.pdf).

9. We note the Committee's comments in relation to the Wylfa Newydd development consent application. That application was made under the previous version of Advice Note 12 and, in any event, it has been withdrawn and therefore no decision has or will be made in relation to it. The current Advice Note 12 sets out a clear and unambiguous process which was followed for the Sizewell C project. The process ensures that members of the public in other states are notified by the same method and at the same time as the UK public and are afforded the same ability as the UK public to participate in the process should they wish to do so. We believe that this process satisfies the requirements of paragraphs 8(a) and (b) of Decision VI/8k.

10. Regarding the Committee's position that the UK has not yet demonstrated that it has put in place a clear requirement, the UK repeats its view that Advice Note 12 does set out a clear requirement and that the public concerned have access to judicial review if they do not consider that Advice Note 12 has been followed. Advice Note 12 sets out a compliant process and the UK Government has committed itself to that process. The UK also notes that the Committee has again requested specific court decisions showing where failure to follow the advice in Planning Advice Note 12 could be successfully challenged. No such challenges have been brought to date. The UK has already provided court decisions to show that in judicial review proceedings the courts will expect the Government to follow its own published guidance.

11. Finally, we would like to request that the following factual correction is made: in paragraph 181 of the draft report, the text states that, 'It considers that the proposed revisions may address some, though not all, of the concerns identified in paragraphs 167-175 above'. The paragraph number should be amended to paragraph 163.

Yours sincerely,

Adam Lavis

United Kingdom National Focal Point to the UNECE Aarhus Convention