

1 July 2022

Mr. Adam Lavis
Department of Environment, Food & Rural Affairs
United Kingdom

Mr. William Rundle
Friends of the Earth
United Kingdom

Dear Mr. Lavis,
Dear Mr. Rundle,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom regarding public participation in the context of the “Great Repeal Bill” (ACCC/C/2017/150)

I refer to my letter of 27 June 2022 inviting the Party concerned and the communicant to participate in the hearing to discuss the substance of the above communication to be held at the Palais des Nations, Geneva, on Wednesday, 14 September 2022.

In preparation for the hearing, the Committee has identified a number of questions upon which it seeks clarification from the Party concerned and the communicant in writing prior to the hearing. To this end, please find **enclosed** the questions prepared by the Committee for your attention.

In accordance with the Committee’s usual timeframe, the Party concerned and the communicant will have four weeks to prepare their written replies to the Committee’s questions. Following receipt of each party’s replies, the other party will thereafter have four weeks to provide its comments thereon.

The Committee would accordingly be grateful to receive your replies to the enclosed questions by **Friday, 29 July 2022**. Thereafter, please send any comments you may have on the other party’s replies **within four weeks** of their receipt (i.e. by Friday, 26 August, if the replies are received on 29 July). Please send your replies and comments to aarhus.compliance@un.org, copying the other party.

Please do not hesitate to contact the secretariat if you have any questions.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva

Enc: Questions from the Committee to the Party concerned and communicant

Questions from the Committee to the Party concerned and communicant

To the Party concerned:

1. Please explain how and when, under English law, the executive signs off on the text of a draft Bill that has been prepared for the government for submission to the legislature (i.e. to Parliament) for its consideration. Are such decisions taken by the individual minister responsible or by the Cabinet as a whole? How is that decision recorded and documented? Please indicate how and when that decision took place with respect to the Withdrawal Bill in the present case and provide any relevant documentation.
2. Paragraph 80 of the Party concerned's response to the communication (the Response) states: "It is accepted that there are no rights in Article 191 [TFEU] itself that will be saved by clause 4(1) of the Bill". Does the Party concerned thereby accept that Article 191 TFEU is excised from domestic law and ceases to have any effect thereunder? If so, on what basis does the Party concerned nevertheless submit that that does not produce a "significant effect on the environment" for the purposes of article 8 of the Convention? If not, what precisely is the Party concerned's submission as to the continuing status – if any – of Article 191 TFEU within domestic law?
3. At paragraphs 81–83 of its Response, the Party concerned refers to the "Environmental Principles and Governance after the United Kingdom leaves the European Union: Consultation on environmental principles and accountability for the environment" launched on May 2018 ("the May 2018 consultation"). Please explain the relevance, if any, of the May 2018 consultation procedure to the Party concerned's submission that, should the Committee take the view that the Withdrawal Bill falls "within the parameters of article 8 of the Convention, the UK's position is that sufficient public participation has been provided and the objectives of article 8 of the Convention have been met" (see para. 6 (2) of the Response). Please also indicate whether it is the Party concerned's submission that the May 2018 consultation and the "public participation there has been in relation to the Bill and exiting the EU generally" (set out at paras. 95 to 116 of the Response) are alternative and equally valid methods of complying with the requirements of article 8 of the Convention.
4. Paragraph 100 of the Response states: "it is important to note that the Bill, in draft, was made publicly available on Parliament's website, and, within clear time-frames, that the ongoing participation of the public and of representative consultative bodies is guaranteed by their directly elected Members of Parliament".
 - (a) Please specify the "clear time-frames" there referred to and indicate when those time-frames ended. In particular, did they end (i) before the draft Withdrawal Bill was approved by the executive for submission to Parliament (see question 2 above); or (ii) before the Bill was introduced before the House of Commons for its first reading (according to paragraph 19 of the Response, on 13 July 2017); or (iii) at some later date, and, if so, when?
 - (b) How was the public informed of (i) its opportunities to comment on the draft Withdrawal Bill whilst under preparation and (ii) the timeframes for doing so?

5. Paragraph 112 of the Response states that “in 2017 DExEU [the Department for Exiting the European Union] received over 90 pieces of correspondence regarding the Bill and has received 32 letters thus far in 2018 either sent directly to ministers or forwarded across from other Parliamentarians or stakeholders”.
 - (a) Please indicate how many of those communications specifically raised issues relating to environmental law, as distinct from other areas of law and / or general issues; and, of those communications, how many were from (i) environmental NGOs and (ii) other members of the public.
 - (b) Please also provide the relevant parts of the documentation in which the communications referred to in subparagraph (a) above were taken into account.
6. Please provide the text of the Consultation Principles as in force at the time of the government’s preparation of the Withdrawal Bill.
7. Please provide evidence (e.g. from relevant legislation, administrative instructions/guidance or court caselaw) to demonstrate that government ministries/agencies engaged in the preparation of draft legislation that may have a significant effect on the environment are required to apply the Consultation Principles when doing so (see paragraph 120 (2) et seq. of the Response and see, for example, Principle K of the Consultation Principles 2018: ‘This document does not have the force of law and is subject to statutory and other legal requirements’.)
8. Paragraph 124 of the Response states that “the Courts have developed principles concerning lawful consultation both as to when it is required and, when it is required, what it must involve”. Please provide any relevant caselaw over and beyond *Ex p. Coughlan* (referred to in footnote 63 to the Response) and identify relevant passages therein to demonstrate that the courts require the principles listed in paragraph 124 of the Response to be applied during the preparation of draft legislation on behalf of the government.
9. At paragraphs 125-126 of the Response, the Party concerned cites pages 12 and 41 of “Judge Over Your Shoulder: A guide to good decision making” (JOYS). Please provide evidence (e.g. from relevant legislation, administrative instructions/guidance or court caselaw) that government ministries/agencies engaged in the preparation of draft legislation that may have a significant effect on the environment are required to apply pages 12 and 41 of JOYS when doing so.
10. Is participation in the Delegated Powers and Regulatory Reform Committee, referred to at paragraph 113 of the Response, limited to members of parliament and government officials or may certain members of the public attend and speak at its meetings at their request? If the latter, which members of the public may do so and what are the requirements for them to attend and speak?

11. Please indicate whether the full text of clause 7 of the draft Withdrawal Bill is contained in the White Paper and, if so, on what page. If it is not to be found there, please indicate precisely when and how the draft text of clause 7 was first made available to the public.
12. Please indicate whether it is the Party concerned's submission that a member of parliament is to be considered a "representative consultative body" for the purposes of subparagraph (c) of article 8 of the Convention and, if so, set out the arguments on which it relies in support of that submission.
13. Please indicate whether it is the Party concerned's submission that it is sufficient for the purposes of subparagraph (c) of article 8 of the Convention that some, selected, members of the public are able to participate in the preparation of draft legislation that may have a significant effect on the environment through representative consultative bodies (e.g. in the case of the Withdrawal Bill, the communicant through Greenlink), notwithstanding that the general public may not have such opportunities. If so, please set out the arguments on which the Party concerned relies in support of that submission.
14. Please comment on the communicant's reply to question 1 of the Committee's questions to the communicant below.

To the communicant:

1. Please give specific examples (other than the status of Article 191 TFEU, already referred to in your communication at footnote 9) of the way(s) in which you maintain that the text of the draft Withdrawal Bill showed that it would necessarily have a significant effect on the environment.
 2. Please comment on the Party concerned's reply to questions 1–5 and 7–13 above. Please keep your comments as brief and concise as possible.
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