

**ORAL STATEMENT ON BEHALF OF THE GOVERNMENT OF THE UNITED KINGDOM  
ON PRELIMINARY ADMISSIBILITY (PRE/ACCC/C/2022/196)**

Good afternoon and thank you for the opportunity to respond to the admissibility of this communication.

Although we have sent our comments in advance of the preliminary hearing on admissibility, I will make a brief summation of the main point we raise.

The question here is whether the UK has breached article 9 of the Convention and if there is a case for us to answer.

The United Kingdom submits that the communication is inadmissible within the meaning of paragraphs 20(c) and 20(d) of the annex to Decision I/7 for the following reasons:

1. The communication is incompatible with the provisions of the Convention - the communication alleges non-compliance with the Article 9. Specifically, the communicant considers there is an inequality in planning appeal rights between applicants for planning permission and other members of the public in Scotland. It is the UK's case that administrative third party right of appeal is not required in the planning system for compliance with the Aarhus Convention but that article 9 requires access to review procedures to challenge the legality of a planning decision.
2. While under section 47 of the Town and Country Planning (Scotland) Act 1997 the applicant for planning permission has a right to appeal planning decisions of the local planning authority to the Scottish Government, this is a full merits appeal and a re-determination of the case on its planning merits. It is not a right "to challenge the substantive or procedural legality of any decision" as required by article 9(2) of the Convention.
3. The Communicant refers to section 47 of the Town and Country Planning (Scotland) Act 1997. Rights of appeal to the Scottish Ministers under section 47 of the 1997 Act in Scotland are the same in substance as the right of appeal to the Secretary of State in England under section 78 of the Town and Country Planning Act 1990.

The communication quotes from paragraph 145 of the Findings and Recommendations in case ACCC/C/2013/90 but omits to quote the text of paragraph 144 which states:

"In its findings on communications ACCC/C/2010/45 and ACCC/C/2011/60 (United Kingdom), the Committee held that the right of a developer in England and Wales to appeal a refusal to grant planning permission to the Secretary of State for Communities and Local Government or to the Secretary of State's Planning Inspectors was not a review procedure under article 9(2) of the Convention because the appeal was "before an executive body, not constituting a court of law or independent and impartial body established by law".

It is submitted that this applies equally to rights of appeal under section 47. The right of appeal under section 47 of the Town and Country Planning (Scotland) Act 1997 to the Scottish Ministers or a person appointed by them are not procedures under article 9 as the appeal under section 47 is an appeal to an executive body on the planning merits of the proposal and is not a review of the legality of the decision appealed against.

We therefore request that the Committee find this communication inadmissible and so dismiss it.

Thank you.