

**From:** ECE-Aarhus-Compliance

**Sent:** Friday, December 9, 2022 5:29 PM

**To:** Solomons-Moat, Justine

**Cc:** Uk Mission Uk Mission [FCDO GOV]

; Winstone, Alex

Adisa Solanke, Grace ; pstookes

doreen mccracker ClientEarth globc ; howens

rober Alistairmacintosh ashley.lloyd eh\_org

luanan jcampbellqc hardwickac squeakyclean2006

KateHarrison Stephanie.Eedy Gareth.morgan

Neil.stockdale hbrown ; sylvia.kotting-uh sylvia kotting-

uh buero-kotting-uh Dean.blackwood rblackwood01

tracy micklafferty65 ; john cday2948

dave.timms katie.dekauwe wildlife roger.watts

mchurch will.rundle Rosie.Sutherland Ben Christman

bchristmar

**Subject:** RE: Decision VII/8s (United Kingdom) - invitation to open session at Committee's 77th meeting (13-16

December 2022)

Dear Justine,

Thank you for confirming the participation of the United Kingdom in the open session to discuss its plan of action on decision VII/8s to be held next Friday, 16 December, at the Compliance Committee's seventy-seventh meeting.

In my email of 3 December, I had indicated that the Committee would provide a brief summary outlining some concerns regarding the plan of action in advance of the meeting to assist the Party concerned to prepare for the open session. Please see the Committee's brief summary below:

With respect to the implementation of paragraphs 2 (a) and (b) of decision VII/8s in England and Wales, the Committee notes that the United Kingdom proposes to publish a Call for Evidence on reviewing its environmental costs protection regime (ECPR) "in the coming months". No precise date for publishing the Call for Evidence is given. At paragraph 7 of its report to MOP7 on decision VI/8k (part I), [https://unece.org/sites/default/files/2021-09/ece mp\\_pp\\_2021.59\\_ac.pdf](https://unece.org/sites/default/files/2021-09/ece_mp_pp_2021.59_ac.pdf), the Committee had already expressed its disappointment that the ECPR review, which was supposed to have taken place in April 2020, had been delayed. As of December 2022, the Committee has received no information to indicate that the Call for Evidence has yet been published.

The plan of action does not refer at all to the list of issues that the Committee, in paragraphs 6 and 81 of its report to MOP7 on decision VI/8k (part I), [https://unece.org/sites/default/files/2021-09/ece mp\\_pp\\_2021.59\\_ac.pdf](https://unece.org/sites/default/files/2021-09/ece_mp_pp_2021.59_ac.pdf), has identified as requiring to be addressed in England, Wales and Scotland. The Committee points out that, in order to fulfil paragraph 2 (a) and (b) of decision VII/8s in England, Wales and Scotland, the Party concerned should ensure that any proposed revisions to the costs protection regime of those jurisdictions address each of the issues listed by the Committee in its report to MOP7 on decision VI/8k.

With regard to the implementation of paragraphs 2 (a) and (b) of decision VII/8s in Northern Ireland, the plan of action states that "there are no current plans" to extend the costs protection regime in Northern Ireland to cover private law claims. The Committee underlines that the recommendation in paragraph 2 (a) of decision VII/8s applies to all UK jurisdictions. To fulfil paragraph 2 (a) the Party concerned will therefore need to take measures to ensure that, among other things, private nuisance claims in all its jurisdictions, including Northern Ireland, are fair, equitable and not prohibitively expensive.

With respect to proposed measures to fulfil paragraph 2 (e) (i) and (ii) of decision VII/8s, the Party concerned refers, inter alia, to its updated Advice Note 12: Transboundary Impacts (version 6) and states that "the UK Government does not currently have fixed ideas for any improvements to existing regimes". The Committee points out that the Committee had already examined version 6 of Advice Note 12 in its report to MOP7 on decision VI/8k and identified various matters that required improvement. The Committee refers the Party concerned to paragraphs 46-51 of its report on decision VI/8k to MOP7 (part II), [https://unece.org/sites/default/files/2021-12/ECE\\_MP.PP\\_2021\\_60\\_E.pdf](https://unece.org/sites/default/files/2021-12/ECE_MP.PP_2021_60_E.pdf), which detail a number of improvements that could be made to Advice Note 12 with a view to fulfilling what is now paragraph 2 (e) of decision VII/8s.

Regarding paragraphs 4 (a) and (b) of decision VII/8s, the plan of action does not provide a concrete timeline to commence even the proposed initial analysis of the implications of the Committee’s findings or possible options to address them. Moreover, the Committee expresses concern at the United Kingdom’s statement with regard to paragraph 4 (a) of decision VII/8s that “if appropriate, the United Kingdom will come forward with measures to address the issue, in light of the obligations under the Aarhus Convention.”

Concerning paragraph 6 (a)-(d) of decision VII/8s, with respect to England and Wales, the Committee notes that, while the Party concerned again refers to its plans to publish a Call for Evidence on reviewing the ECPR in the coming months, it does not indicate whether the Call for Evidence will actually consult upon the matters addressed by the recommendations in paragraph 6 (a) or (b). Moreover, the plan of action does not indicate any proposed measures to implement paragraph 6 (a)-(d) of decision VII/8s in Scotland or Northern Ireland.

Regarding paragraph 8 of decision VII/8s, while the plan of action reports upon the processes underway in England, Wales and Scotland, it does not refer to any proposed measures to implement this recommendation in Northern Ireland.

We hope the above may be of assistance. Please do not hesitate to let me know if you have any questions. The link to join the open session will be sent to all registered participants this weekend, following the expiry of the deadline for registration later tonight.

We look forward to the United Kingdom’s participation in the open session next Friday.

Kind regards,  
Fiona



**Fiona Marshall**

Environmental Affairs Officer – Secretary to the Compliance Committee  
Aarhus Convention secretariat  
Environment Division  
United Nations Economic Commission for Europe

Email: [aarhus.compliance@un.org](mailto:aarhus.compliance@un.org)

Website: [www.unece.org/env/pp/welcome.html](http://www.unece.org/env/pp/welcome.html)

Tel: +41 (0) 22 917 42 26

Fax: +41 (0) 22 917 06 34

Palais des Nations  
8-14 avenue de la Paix  
CH - 1211 Geneva 10, Switzerland

