Department
for Environment
Food & Rural Affairs

United Kingdom Final Progress Report to the Aarhus Convention Compliance Committee

Implementation of decision VII/8s concerning compliance by United Kingdom with its obligations under the Convention

Date: November 2024

We are the Department for Environment, Food and Rural Affairs. We are responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.

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Introduction

The Aarhus Convention is an international treaty under the auspices of the United Nations Economic Commission for Europe (UNECE). The United Kingdom ratified the Convention in 2005; it is one of the Convention's 47 Parties. The Convention sets out obligations on Parties to make provisions for the public to access environmental information, to participate in environmental decision-making and to access justice when challenging environmental decisions.

The Aarhus Convention Compliance Committee (ACCC) has identified areas where the UK government is in breach of its obligations under the Convention. Decision VII/8s[1], adopted at the seventh session of the Meeting of the Parties (MoP) outlines 14 recommendations in which the UK can bring itself into compliance with the Convention.

The UK government recognises the importance of these findings and is committed to fulfilling its international obligations under the Convention. The UK presents its final progress report on actions taken and future pathways to implement recommendations 2, 4, 6 and 8 of decision VII/8s concerning the UK's compliance with the Aarhus Convention.

The UK government seeks to ensure the UK's institutional frameworks reflect the obligations to make environmental information accessible, to empower the public to participate in environmental decision making and access to justice in environmental matters remains accessible, equitable and aligned with our obligations under the Aarhus Convention.

[1] Decision VII/8s concerning compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention*

Recommendations

Paragraph in the Decision Document	Original Text in the Decision Document
2	Reaffirms decision VI/8k and requests the Party concerned to, as a matter of urgency, take the necessary legislative, regulatory, administrative and practical measures to:
2(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;
2(b)	Further consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice;
2(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;
2(d)	Establish a clear, transparent and consistent framework to implement article 9 (4) of the Convention;
2(e)	Put in place a clear requirement to ensure that: (i) When selecting the means for notifying the public under article 6 (2), public authorities are required to select such means as will ensure effective notification of the public concerned in the territory outside of the Party concerned, bearing in mind the nature of the proposed activity, and the potential for transboundary impacts; (ii) When identifying who is the public concerned by the environmental decision making on ultra-hazardous activities, such as nuclear power plants, public authorities will apply the precautionary principle and consider the potential extent of the effects if an accident would indeed occur, even if the risk of an accident is very small;

4	Recommends that the Party concerned take the necessary legislative, regulatory, administrative and practical measures to ensure that:
4(a)	Decisions to permit activities subject to article 6 of the Convention cannot be taken after the activity has already commenced or has been constructed, save in highly exceptional cases and subject to strict and defined criteria;
4(b)	Activities subject to article 6 of the Convention are not entitled, by law, to: (i) Become immune from enforcement under article 67B (3) of the Planning (Northern Ireland) Order 1991 or any legislation that supersedes it; (ii) Receive a certificate of lawful development under article 83A of the Planning (Northern Ireland) Order 1991 or any legislation that supersedes it;
6	Recommends that the Party concerned take the necessary legislative, regulatory, administrative and practical measures to ensure that:
6(a)	The time-frame for bringing an application for judicial review of any planning related decision within the scope of article 9 of the Convention is calculated from the date the decision became known to the public and not from the date that the contested decision was taken;
6(b)	When calculating the sum of costs to be awarded against an unsuccessful claimant in a procedure subject to article 9 of the Convention, the courts, inter alia, take into account the stage of the judicial procedure to which the costs relate;
6(c)	In judicial procedures within the scope of article 9 of the Convention, successful “litigants in person” are entitled to recover a fair and equitable hourly rate;
6(d)	In proceedings within the scope of article 9 of the Convention in which the applicant follows the Party concerned’s pre-action

	protocol, the public authority concerned is required to comply with that protocol;
8	Recommends that the Party concerned promptly take the necessary legislative, regulatory, administrative or other measures, such as establishing appropriate assistance mechanisms, to ensure that procedures to challenge acts and omissions by public authorities that contravene provisions of its law on litter are fair, equitable and not prohibitively expensive;

Access to Justice

Under the United Kingdom's constitutional arrangements, England and Wales have a single justice system under the jurisdiction of the UK government and judiciary. Scotland and Northern Ireland have their own justice systems. The Supreme Court is the final court of appeal for civil cases for the whole of the UK.

England and Wales

Recommendations 2(a), 2(b), 2(c), 2(d), 6(a), 6(b), 6(c), 6(d) & 8:

On 30 September 2024, the UK government published a call for evidence titled 'Access to Justice in relation to the Aarhus Convention'[2]. In this call for evidence, the UK government is seeking views on the ACCC's recommendations set out in paragraphs 2 (a), (b), (c) and (d), 6 (a), (b), (c) and (d), and 8 of decision VII/8s. These relate to the compliance issues identified by the ACCC in relation to the Environmental Costs Protection Regime, the rules on time limit for making a judicial review claim and litter abatement orders.

In publishing this call for evidence, the UK government aims to gather views on the ACCC's recommendations and to invite suggestions on any suitable alternatives to determine the best way to bring the UK into compliance. The call for evidence will close on 9 December 2024, and we will carefully consider the responses received before deciding how best to proceed.

Recommendation 8:

The UK government is committed to ensuring that the procedure for challenging authorities with regards to their duty to keep land clear of litter and refuse and clean is compliant with the Convention. As part of the UK government's call for evidence on 'Access to Justice in relation to the Aarhus Convention', we are seeking information that will enable us to establish the best course of action.

The call for evidence tests an option to change the provisions on costs in section 91 of the Environmental Protection Act (EPA) 1990, and thereby introduce a cap so that a complainant would pay no more than a set amount when seeking a litter abatement order, regardless of the outcome of the court case. We are requesting information, through the call for evidence, that will help us assess the associated benefits and risks.

[2] Access to Justice in relation to the Aarhus Convention - GOV.UK

The call for evidence also seeks views on non-judicial options to meet our obligations.

Once the call for evidence closes, we will review the responses and determine next steps.

In the meantime, the UK government would like to note that where a magistrates' court is satisfied that, when a complaint was made to it under section 91, the land in question was defaced by litter or refuse or wanting in cleanliness, and that there were reasonable grounds for bringing the complaint, the court shall order the defendant to pay the complainant's reasonable costs in bringing the proceedings before the court.

Scotland

Recommendation 2(a):

As noted in the most recent progress report[3], the rules governing protective expenses orders ("PEOs") are set out in Chapter 58A of the Rules of the Court of Session, which are drafted by the Scottish Civil Justice Council ("SCJC").

Scottish Government officials wrote to the SCJC in December 2021, advising them of the Committee's findings in relation to PEOs and seeking their engagement to consider, revise and/or redraft the rules governing PEOs in light of the Committee's findings.

SCJC have been continuing their review of the PEO rules. SCJC have recently published a paper which details the amendments to court rules that have been made, as well as next steps[4]. The paper commits to the preparation of rules on private nuisance claims to be consulted upon. It can be read alongside a paper on research on previous PEO applications[5].

Recommendation 2(b):

As noted in the previous progress report, the Scottish Government undertook a public consultation on court fees, which closed in March 2022. Following analysis of the responses to the consultation, an exemption from court fees was introduced for environmental cases in the Court of Session.

[3] United Kingdom Progress Report to the Aarhus Convention Compliance Committee 2023

[4] Update on the Aarhus Concerns for Scotland

[5] Research: On The Type Of Cases Seeking A Protective Expenses Order

The Order introducing an exemption from court fees for 'Aarhus cases' in the Court of Session came into force on 1 July 2022. A further consultation will look at extending that exemption further in light of the changes to court rules. It is anticipated that the next consultation on court fees will take place in 2025.

Work to develop policy in respect of reforms to legal aid continues. Officials are currently developing a paper on legal aid reform which, amongst other things, will set out potential areas for reform and, in the coming months, the Scottish Government plans to host a variety of engagement sessions. Officials are seeking to work collaboratively and build consensus and hope that these sessions will allow stakeholders to not only discuss the contents of that paper but also to suggest their own ideas for reform.

Recommendation 2(d):

Section 41 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 sets out a duty for Ministers to consult on "*whether the law in Scotland on access to justice on environmental matters is effective and sufficient, and whether and, if so, how the establishment of an environmental court could enhance the governance arrangements".*

The Scottish Government has met with a variety of stakeholders and drafted a report on environmental governance in Scotland[6].

A public consultation launched on 2 June 2023 and ran until 13 October 2023[7]. The Scottish Government published a statement including a summary of the responses and Ministers' recommendations in response to the views raised on 19 November 2024[8].

The Scottish Government is continuing to work on the preparation of a new Human Rights Bill and will continue to develop thinking around delivering a right to a healthy environment. The Scottish Government will engage with stakeholders as we further develop the Human Rights Bill, albeit Ministers have decided that a Bill will not now be introduced during this Parliamentary session. Instead, they want to use the remainder of the Parliamentary session to further develop, scrutinise and test proposals for the Bill, to help ensure that the legislation is as strong and impactful as possible.

A public consultation on the Human Rights Bill was launched on 15 June and ran until 5 October 2023[9].

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[6] Report into the Effectiveness of Governance Arrangements, as required by section 41 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021

[7] Review of the Effectiveness of Environmental Governance - Scottish Government consultations - Citizen Space

[8] Effectiveness of environmental governance arrangements: statement - gov.scot

[9] A Human Rights Bill for Scotland: Consultation - Scottish Government consultations - Citizen Space

The Scottish Government did not include the Bill in the legislative programme within its Programme for Government 2024/25, published in September. The Programme for Government confirmed that work on the Bill will continue, along with early implementation steps. This is with a view to the Bill being introduced in the next Parliamentary session. The Scottish Government is continuing to develop its thinking and take into account views expressed through the consultation on the best approach to recognising and including the right to a healthy environment in the Bill.

Recommendation 2(c), 6(a):

The Scottish legislative provisions in respect of judicial review are set out within the Courts Reform (Scotland) Act 2014 which inserts a new section 27A into the Court of Session Act 1988. The 2014 Act delivered upon the review of the civil courts conducted by Lord Gill in 2009. Lord Gill concluded that a three-month time limit to bring judicial review was an appropriate balance between the interests of decision makers (and those affected) being able to move forward with certainty and the rights of individuals and organisations to seek judicial intervention. Lord Gill also concluded that the court should be able to extend the limit where the interests of justice and fairness required it.

Section 27A states:

Time limits

1) *An application to the supervisory jurisdiction of the Court must be made before the end of—*
   a) *the period of 3 months beginning with the date on which the grounds giving rise to the application first arise, or*
   b) *such longer period as the Court considers equitable having regard to all the circumstances.*

On the face of it, a failure to properly advertise a decision may well be a reason that the court would find as grounds for extending the time limit. The Scottish Government's view is that the legislation provides sufficient flexibility to allow a court to consider all the facts and circumstances of a case. Nonetheless, the Scottish Government notes the conclusions of the ACCC in relation to Northern Ireland as well as the call for evidence issued elsewhere within the UK. The Scottish Government will give careful consideration to the conclusion of the calls for evidence once they are known and will consider whether amendments are necessary to the law in Scotland in light of those conclusions.

Recommendation 8:

There is little evidence on which to offer a view on the operation of the system of seeking litter abatement orders in Scotland. The Scottish Government is aware of only one case that has ever been brought in Scotland. In that case the Sheriff concluded that action in favour of the respondent as a public body that had acted reasonably and had met the national performance standards set. Therefore, the pursuer did not enjoy the protections provided by the Environmental Protection Act 1990.

Nonetheless, the SCJC paper referred to above addresses Litter Abatement Orders and proposes extension of the PEO regime to the Sheriff Court to include environmental cases brought under the Environmental Protection Act 1990, including litter abatement orders.

Northern Ireland

Recommendations 2(a), 2(b), 2(c), 2(d), 6(a), 6(b), 6(c) & 6(d):

The Department of Justice (Northern Ireland) proposes to launch a call for evidence to gather views on the ACCC's recommendations regarding access to justice to determine the best way to reach compliance with the Convention. Respondents will be asked to consider the benefits, as well as the potential risks, in relation to the ACCC's recommendations in relation to Northern Ireland, with a view to determining whether each recommendation should be implemented, or whether there are suitable alternatives for bringing these areas into compliance. The Department is working towards issuing the call for evidence before the end of the year.

Cross-Undertakings for Damages:

The Northern Ireland Courts and Tribunals Service has captured data on Aarhus cases since June 2023. Following a manual examination of a random sample of such cases, no record of an order for a cross-undertaking for damages has been found. The forthcoming call for evidence will seek further input to inform this issue.

Recommendation 8:

The Department of Agriculture, Environment & Rural Affairs (DAERA) is responsible for litter policy and legislation in Northern Ireland (NI). Article 11 of the Litter (NI) Order 1994 applies. DAERA acknowledges the issue of non-compliance in this matter, will monitor progress with England and Wales on their approach to the removal of financial barriers, and is committed to taking the necessary steps towards compliance.

DAERA made new legislation (the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Amendment) Regulations (NI) 2022) to deter littering and reduce the likelihood of a person becoming aggrieved by litter, by increasing the maximum fixed penalty notice for littering offences from £80 to £200. DAERA has also committed to producing NI's first overarching Litter Strategy, which will include further steps to tackle the problem of littering. DAERA has also agreed a fly-tipping Protocol with 9 of NI's 11 district councils, under which the NI Environment Agency (a DAERA agency) has committed to taking responsibility for illegal waste deposits in excess of 20 cubic metres, and a range of hazardous waste regardless of volume. District councils will take responsibility for all other deposits under 20 cubic metres.

Public Participation in Decision Making

Recommendation 2(e)

Under the United Kingdom's constitutional arrangements, nuclear policy is a reserved matter under the jurisdiction of the UK government.

Summary of position

The UK government has taken significant steps to address the concerns raised by the ACCC. We have actively listened to the feedback provided and have made substantial revisions to Planning Advice Note 12 (PAN 12) to ensure better compliance with the Aarhus Convention's requirements. These revisions include clearer procedures for public notification and participation, particularly for transboundary environmental impacts. Additionally, we are in the process of reviewing the Nuclear National Policy Statement (NPS) for new nuclear developments post-2025. Through this review we will further reinforce public notification and consultation requirements, demonstrating our commitment to continuous improvement and effective public participation in environmental decision-making. We welcome the ACCC's views on whether significant steps taken now address the issues raised in Recommendation 2(e).

Issue

The ACCC found that the UK did not adequately involve the German public in the consultation process for the Hinkley Point C (HPC) project. This finding was based on the UK's failure to comply with the Aarhus Convention's obligations related to public participation in decision making, access to information and access to justice.

Public participation in decision making

The ACCC's concern was that the UK did not adequately consult the public in other potentially affected states, such as Germany, during the decision-making process for projects like the Hinkley Point C nuclear plant. The ACCC found that the UK's consultation process did not sufficiently ensure that communities in these other states were informed and able to participate meaningfully, as required by the Aarhus Convention.

The UK continues to apply a precautionary approach as outlined in the Environment Act 2021 when identifying the 'public concerned' by environmental decision-making on ultra-hazardous activities, such as nuclear power plants. For each proposed nuclear power plant, a screening process assesses the potential extent of the effects if an accident were to occur and any likely significant transboundary impacts, as required by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. This process, described in more detail below, ensures that the 'public concerned' in other states are informed about potential impacts, even if the risk of an accident is very small.

The UK also ensures that consultation requirements for nuclear developments are met through Great British Nuclear (GBN), a UK government arms-length body responsible for driving the delivery of new nuclear projects. GBN collaborates with successful bidders to ensure that project developers shape proposals to meet consultation requirements, including those set out in PAN 12. This initiative helps ensure that public participation procedures are robust and effective.

Access to information

The ACCC commented on the Wylfa Newydd development, noting that the UK's previous guidance, PAN 12, didn't fully meet the Aarhus Convention's standards for notifying and involving the public in other countries about potential environmental impacts. Specifically, the ACCC expressed concerns that the UK's approach might not adequately inform the 'public concerned' beyond the EEA states (European Economic Area) and did not address translation needs effectively.

In response, the UK acknowledged these points and has since updated PAN 12. The new version, followed for the Sizewell C project, now has clearer steps to notify the public in any potentially affected state (not just the EEA) and considers translation needs to ensure public access to information. The UK clarified that any interested party can participate in consultations, showing a broadened approach to meet the ACCC's standards. For completeness, the UK confirms that the Wylfa Newydd application has since been withdrawn and therefore no decision has or will be made in relation to it.

PAN 12 on Transboundary Impacts, reflecting the UK's process for notifying the public[10], was updated again and published in September 2024. It sets out clear and unambiguous procedures for notifying the public, including those in other states, about potential environmental impacts that have been identified. Under PAN 12, the UK's Planning Inspectorate will issue a press release and publish that press release on the British Embassy website in relevant states. In addition, applicants will be asked to publish a press notice in the print media of each EEA state where a significant impact on their environment is identified. For nuclear projects that fall under the UK's Nationally Significant Infrastructure Projects (NSIPs) regime, the applicant will also be asked to publish a press notice in all neighbouring states of the UK, including Germany, regardless of whether any significant impact is identified. The updated process ensures that the public in these identified states is notified by the same method and at the same time as the UK public,

[10] Nationally Significant Infrastructure Projects: Advice on Transboundary Impacts and Process

providing equal opportunities for participation should they wish to do so. The UK believes that this process satisfies the requirements of paragraphs 8(a) and (b) of Decision VI/8k[11].

The UK recognises the ACCC's comments that notification should not be limited to EEA states and that Article 2 of the Aarhus Convention defines the 'public concerned' as including 'all interested parties'. PAN 12 clarifies that any state and any person or group may participate and express their views on an NSIP application during the examination by registering as an 'interested party'. The Examining Authority (appointed by the Planning Inspectorate) also has the discretion to invite an 'other person' to participate during the examination of an application. Though English is the default language required, PAN 12 also makes clear that the UK expects to address the reasonable translation needs of EEA States and others to meet the requirements of effective examination.

Access to justice

The ACCC raised concerns about the legal enforceability of PAN 12, suggesting the UK has not demonstrated a 'clear requirement'. We were grateful for the advice from the ACCC in the response to the UK's first progress review[12].

The UK reaffirms that PAN 12 does set out a 'clear requirement'. The 'public concerned' also have access to judicial review if they consider that PAN 12 procedures were not followed. The UK maintains that it has a reasonable expectation that our Development Consent system is designed in a way that nuclear developments cannot progress without following the guidance provided by the Planning Inspectorate, including PAN 12. Those applying for Development Consent are expected to follow the recommendations or risk their applications being denied. PAN 12 will continue to serve as a guidance document, which is expected to be followed, and will not be incorporated into UK legislation but is designed to complement the legislation, regulations and guidance issued by the UK government.

In response to the ACCC's request for specific court decisions showing enforcement of PAN 12, the UK notes that no relevant challenges have been brought to date. The court decisions provided[13] demonstrate that, in judicial review, courts expect the UK government to adhere to its published guidance.

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[11] Decision VI/8k Compliance by United Kingdom with its obligations under the Convention

[12] Paras 81-87 of the First progress review of the implementation of decision VII/8s on compliance by the United Kingdom with its obligations under the Convention, 26.06.2024

[13] Paragraph 49 of Final Progress Report on the implementation of decision VI/8k, 30.09.2020

A new UK National Policy Statement for siting nuclear power stations

The UK would also like to remind the Committee that it is developing a new Nuclear National Policy Statement (NPS) for new nuclear developments post-2025. An NPS is a form of statutory guidance, approved by Parliament under the Planning Act 2008, and the Secretary of State is required by law to decide the outcome of any application for planning consent for nationally significant infrastructure in accordance with the NPS. This review includes reinforcing public notification and consultation requirements as set out in PAN 12. An extensive consultation on the NPS is scheduled soon, and the UK will share the consultation with the ACCC.

Conclusion

The UK remains committed to continuous improvement and collaboration with the ACCC to ensure effective public participation in environmental decision-making.

England

Recommendations 4(a), 4(b):

The UK government has recently (April 2024) increased the time limits for taking planning enforcement action in England to 10 years for all types of unauthorised development. The planning enforcement system in England also allows local planning authorities to take enforcement action (through Planning Enforcement Orders) outside of the statutory time limit where unauthorised development has been deliberately concealed. While we consider that these existing measures go a long way to addressing the concerns of the ACCC we commit to undertake a public consultation in 2025 on the principle of removing completely the time limit for taking enforcement action against development which is subject to Article 6 of the Convention in England.

Wales

Recommendations 4(a), 4(b):

The Infrastructure (Wales) Act 2024 has been passed by the Senedd in Wales, which makes it a criminal offence to undertake many of the activities specified in the Convention without obtaining an infrastructure consent. We consider that making the point at which an offence occurs under criminal law much earlier in the process will be more effective in preventing the situations of concern to the ACCC for those projects with the greatest environmental impacts. The Welsh Government is also committed to undertaking public consultation in 2025, in respect of all scales of activities covered by the Convention, to remove the current time limits for enforcement action.

Scotland

Recommendations 4(a), 4(b):

Having considered the ACCC recommendations, in April 2024 Scotland published a consultation[14] on legislative proposals to disapply Section 124 of the Town and Country Planning (Scotland) Act 1997 concerning the time limits for taking enforcement action on unauthorised development which requires an environmental impact assessment (EIA).

The consultation closed in July 2024, and responses are currently being analysed.

Northern Ireland

Recommendations 4(a), 4(b):

The Department for Infrastructure (DfI) remains of the opinion that the publication of its Development Management Practice Note 9A (DMPN 9A) on the management of unauthorised EIA development addresses recommendation 4(a) of Decision VII/8s in relation to the two-tier land use planning system.

DMPN 9A was fully considered by the original determining planning authority (Derry City & Strabane District Council) in its decision to refuse planning permission for unauthorised EIA development. The decision by the Planning Appeals Commission (PAC), an independent appellate body, sits outside of the two-tier planning system and is outwith the responsibility of DfI. However, DfI will engage with PAC to understand the basis and weight to be attached to this previous decision 2021/A0081.

In relation to the policies and practices of local planning authorities (LPAs) within the two-tier planning system, DfI maintains its ongoing contact to re-iterate the legal principles relevant to the management of unauthorised EIA development.

Recommendations 4(b)(i) and (ii), on the removal of time limits on enforcement for unauthorised EIA development and the removal of the grant of a certificate of lawful use or development (CLUD) respectively, would require changes to primary planning legislation.

DfI has committed to work with the Office of the Legislative Counsel, whose principal function is to draft Bills for the Northern Ireland Executive for introduction to the Northern Ireland Assembly, to explore options for amending primary legislation. This work remains

[14] A consultation on time limits for enforcement action for unauthorised Environmental Impact Assessment development - Scottish Government consultations - Citizen Space

subject to DfI Ministerial agreement, public consultation and Assembly scrutiny. Due to other regional legislative and resourcing priorities, it has not been feasible to progress work in this area in line with the ACCC’s timeframe.