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Geneva, 5 January 2011

Ms. Rhona Brankin MSP
Convener of the Committee
Public Petitions Committee
TG.01, The Scottish Parliament
Edinburgh EH99 1SP
United Kingdom

Re: Consideration of petition PE1372 by the Public Petitions Committee of the Scottish Parliament addressed to the United Nations Economic Commission for Europe (UNECE)

Dear Ms. Brankin,

I refer to your letter dated 8 December 2010 seeking a written response from the secretariat of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), to the points made in petition PE1372 by Duncan McLaren on behalf of the Friends of the Earth Scotland. The secretariat looked carefully at the content of the petition and the nature of your request. The petition concerns a matter of alleged non-compliance by Scotland, and thus by the United Kingdom of Great Britain and Northern Ireland (United Kingdom) as a Party to the Convention, with its obligations under the Convention and in particular with article 9 on access to justice.

The secretariat recalls that according to the Convention (see art. 12), its functions are limited to the following: (a) the convening and preparing of meetings of the Parties; (b) the transmission to the Parties of reports and other information received in accordance with the provisions of the Convention; and (c) such other functions as may be determined by the Parties. Bearing in mind that review of compliance is not within the functions of the secretariat, we are not able to comment on the specific points of alleged non-compliance raised in the petition at issue.

However, the secretariat discussed your request with the Compliance Committee, the body responsible for review of compliance, at the Committee's thirtieth meeting from 14 to 17 December 2010. The Compliance Committee instructed the secretariat to provide the Public Petitions Committee of the Scottish Parliament with some information which may be useful for the further consideration of the petition on 8 February 2011.

Review of compliance

Article 15 of the Aarhus Convention on review of compliance, requires the Meeting of the Parties to establish arrangements for reviewing compliance with the Convention. Consequently, decision I/7 on review of compliance (text available on the Internet at: <http://www.unece.org/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf>) was adopted by the first Meeting of the Parties (Lucca, Italy, on 21-23 October 2002) and the first Compliance Committee was elected.

The compliance mechanism of the Convention is non-confrontational, non-judicial and consultative in nature and may be triggered in four ways:

- (1) a Party makes a submission about compliance by another Party;
- (2) a Party makes a submission concerning its own compliance;
- (3) the secretariat makes a referral to the Committee;
- (4) members of the public make communications concerning a Party's compliance with the Convention.

Useful information about the Convention's compliance mechanism may be found on the web site of the Compliance Committee at <http://www.unece.org/env/pp/ccBackground.htm>. In addition, the Guidance Document on the Aarhus Convention Compliance Mechanism (available on the Internet at: http://www.unece.org/env/pp/compliance/CC_GuidanceDocument.pdf), includes the Committee's *modus operandi*, which is the body of the procedures followed by the Committee in carrying out its functions.

Recent findings of the Compliance Committee concerning the United Kingdom and access to justice

So far, the Committee has considered the following communications with regard to compliance by the United Kingdom, in particular with its obligations under article 9 of the Convention on access to justice

- (1) **Communication ACCC/C/2008/23** was made on 21 February 2008 by Mr. Morgan and Ms. Baker with regard to compliance by the United Kingdom with its obligations under article 9, paragraph 4, in connection with the availability of fair, equitable, timely and not prohibitively expensive review procedures in their private nuisance proceedings against the operator Hinton Organics (Wessex) Ltd seeking an injunction to prohibit offensive odours arising from the operator's waste composting site near their homes. Following cancellation of an interim relief, the communicants were ordered to pay the costs of the operator and public authorities/added parties to the proceedings;
- (2) On 18 August 2008, Cultra Residents' Association submitted **communication ACCC/C/2008/27** with regard to compliance by the United Kingdom with its obligations *inter alia* under article 9 of the Convention in connection with the decision-making procedure to expand Belfast City Airport operations and the rights with respect to the costs charged upon the communicant following the dismissal of its application for judicial review proceedings;
- (3) On 2 December 2008, ClientEarth, the Marine Conservation Society (MCS) and Mr. Robert Latimer submitted **communication ACCC/C/2008/33** with regard to compliance by the United Kingdom with its obligations under article 9, paragraphs 2, 3, 4 and 5, of the Convention in connection with the lack in general of substantive review in procedures for judicial review, the prohibitively expensive costs of judicial review proceedings, the lack of rights of action against private individuals for breaches of environmental laws and the restrictive time limits for judicial review; and in particular in connection with access to justice to challenge a government license issued to the Port of Tyne in northern England that allowed for the disposal and protective capping of highly contaminated port dredge materials at an existing marine disposal site called "Souter Point" approximately four miles off the coast.

The Committee considered all three communications in accordance with the procedure set out in section VI of the annex to decision I/7. It found that the United Kingdom had failed to comply with the requirement for fair and non-prohibitively expensive remedies set by article 9 of the Convention, and presented recommendations, as needed. The advance unedited copy of the findings and recommendations of the Committee with regard to these three communications may be found on the Committee's web site at: <http://www.unece.org/env/pp/pubcom.htm>. At its fourth session (Chisinau, June 2011), the Meeting of the Parties will consider the report and the recommendations of the Committee.

In addition, **communication ACCC/C/2009/38**, was submitted on 7 May 2009 by Road Sense, concerning alleged non-compliance by the United Kingdom with its obligations *inter alia* with article 9, paragraphs 2 and 3, of the Convention, in respect of the proposed construction of a road bypass around the Scottish city of Aberdeen, known as the Aberdeen Western Peripheral Route. The Committee completed its draft findings at its thirtieth meeting and it is expected that the draft findings will be posted on the Committee's web site (<http://www.unece.org/env/pp/pubcom.htm>) by February 2011.

Reporting mechanism

Article 10, paragraph 2, of the Convention requires the Parties at their meetings to keep under continuous review the implementation of the Convention on the basis of regular reporting. Consequently, decision I/8 on reporting requirements (text available on the Internet at: <http://www.unece.org/env/pp/documents/mop1/ece.mp.pp.2.add.9.e.pdf>) was adopted by the first Meeting of the Parties. In view of the upcoming fourth session of the Meeting of the Parties, the United Kingdom submitted its national implementation report, including information on how the Convention is implemented in Scotland, on 16 December 2010. Useful information about the reporting mechanism in general may be found at: <http://www.unece.org/env/pp/Reports.htm>, while the national implementation report submitted by the United Kingdom will be made available on the following web-site by mid February 2011: <http://www.unece.org/env/pp/Reports.htm>.

Task Force on Access to Justice

The Parties have recognized the difficulties in implementing the third pillar of the Convention on access to justice. To support the implementation of this pillar, the Parties have established the Task Force on access to justice (see mandate and related activities at: <http://www.unece.org/env/pp/a.to.j.htm>) with the mandate *inter alia* to examine good practices, to share experience with implementation of article 9 of the Convention and to assess the impact of certain barriers in access to justice.

To date, the Task Force has held three meetings. Among other things, the Task Force has decided to prioritize analytical studies on the issue of costs and financial arrangements (including litigation costs, legal aid and support for public interest lawyers) and the issue of remedies (including injunctive relief and the issue of timing). The Task Force will review the progress on these studies at its fourth meeting, scheduled to take place on 7-8 February 2011, in Geneva. It is hoped that the studies on costs and remedies will provide a good source of comparison and improvement of the Aarhus principles. The related materials on the studies will be posted on the web site of the Task Force.

Apart from costs and remedies, the Task Force has also decided that at some point in the future the issue of standing should be analyzed. The Task Force will discuss the details for this future study at its fourth meeting.

Revised Implementation Guide 2011

Following the decision of the Parties to the Convention, the Aarhus Convention Implementation Guide is currently being revised. The 2000 edition is available at <http://www.unece.org/env/pp/guidancedocs.htm> and the 2011 revised Guide will be published in time for the fourth meeting of the Parties in June 2011. Among other things, the revised Guide discusses any findings of the Committee with regard to access to justice and includes updates on the implementation of article 9 of the Convention.

We hope the above is helpful. Please do not hesitate to contact us if you would like any further information concerning the Convention and the related activities.

Yours sincerely,



Ella Behlyarova
Secretary to the Aarhus Convention

Cc: Ms. Jane Barton, International and European Coordination Division, DEFRA, UK