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# Aarhus Convention Implementation Report

April 2008

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## UK IMPLEMENTATION REPORT

Provide brief information on the process by which this report has been prepared, including information on which types of public authorities were consulted or contributed to its preparation, on how the public was consulted and how the outcome of the public consultation was taken into account and on the material which was used as a basis for preparing the report.

Answer:

The process of preparing the UK's Implementation Report under the Aarhus Convention, including consultation with stakeholders at the national level, is extremely important to the UK. In order to ensure that the information provided to stakeholders is comprehensive, and therefore allow them a fully opportunity to comment on the draft report, the UK felt that it was necessary to delay the consultation until early 2008.

On 25 January 2008, the UK Government conducted an informal 2-month public consultation on the draft report. The consultation applied to England, Wales, Northern Ireland and Scotland and was publicly available on the Defra Website. In parallel to this, written views from over 100 organisations with a particular interest in the Convention were also sought. The types of organisations consulted covered a range of interests; such as environmental NGO's, public authorities, Think Tanks and research bodies. Where appropriate, their views have been reflected in the drafting of this report.

Report any particular circumstances that are relevant for understanding the report, e.g. whether there is a federal and/or decentralized decision-making structure, whether the provisions of the Convention have a direct effect upon its entry into force, or whether financial constraints are a significant obstacle to implementation (optional).

Answer:

England, Wales and Northern Ireland have legal systems which operate in a similar way in relation to all three pillars of the Convention.

Scotland has a long-established legal system which is separate from that operating in England, Wales and Northern Ireland.

### Article 3

#### **List legislative, regulatory and other measures that implement the general provisions in paragraphs 2, 3, 4, 7 and 8 of article 3.**

Explain how these paragraphs have been implemented. In particular, describe:

- (a) With respect to **paragraph 2**, measures taken to ensure that officials and authorities assist and provide the required guidance;
- (b) With respect to **paragraph 3**, measures taken to promote education and environmental awareness;
- (c) With respect to **paragraph 4**, measures taken to ensure that there is appropriate recognition of and support to associations, organizations or groups promoting environmental protection;
- (d) With respect to **paragraph 7**, measures taken to promote the principles of the Convention internationally;
- (e) With respect to **paragraph 8**, measures taken to ensure that persons exercising their rights under the Convention are not be penalized, persecuted or harassed.

Answer:

#### **Paragraph 2**

Several general measures have been taken in the UK to ensure that officials and authorities behave properly in their relations with the public, including by providing appropriate assistance and guidance. Expected standards of conduct and service delivery have been extensively codified. Examples include the civil service code of conduct ([http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/civil\\_service/civil\\_service\\_code.aspx](http://www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/civil_service_code.aspx)) and the "Chartermark" scheme ([www.chartermark.gov.uk](http://www.chartermark.gov.uk)). A single, searchable internet portal ([www.direct.gov.uk](http://www.direct.gov.uk)) provides access to all relevant information and services provided by government departments, agencies, local authorities and other relevant bodies, including contact details for assistance and guidance on environmental matters.

The Department for Environment, Food and Rural Affairs (Defra) has a general web page which summarises the different provisions it has in place to assist the public in seeking access to information, and to facilitate the public in participating in decision-making and consultation procedures (<http://www.defra.gov.uk/corporate/consult/default.asp>). This includes a Code of Practice (<http://www.defra.gov.uk/corporate/opengov/eir/index.htm>) which provides guidance to public authorities on best practice in providing access to environmental information. In particular, Defra has an accessibility commitment, that it will articulate information clearly and create an open and transparent Department (<http://www.defra.gov.uk/corporate/opengov/accessibility.htm>).

The Information Commissioner's Office provides information on the Freedom of Information Act and the Data Protection Act (<http://www.informationcommissioner.gov.uk/>) and it also provides a range of advice and training products (<http://www.informationcommissioner.gov.uk/eventual.aspx?id=41>). The Scottish Information Commissioner has similar powers under the Freedom of Information (Scotland) Act, although data protection is not devolved and remains with the UK Information Commissioner.

Defra has provided extensive information on public access to environmental information under the Environmental Information Regulations 2004. (<http://www.defra.gov.uk/corporate/opengov/eir/index.htm>) The Defra web pages contain detailed guidance on the Environmental Information Regulations 2004 including leaflets posters and slides to be used for explaining and publicising access rights to both public authority staff and the general public. Defra also has an Environmental Information Unit which provides a help line and mailbox facility on Environmental Information Access rights and delivers workshops and presentations to public authority staff to promulgate environmental information access rights.

The Cabinet Office has produced guidance and a code of practice (<http://bre.berr.gov.uk/regulation/documents/consultation/pdf/code.pdf>) which aims to increase the involvement of individuals and groups in public consultations, minimising the burdens it imposes upon them and giving them enough time to respond.

A guide to the procedures involved in Environmental Impact Assessment are published by the Department for Communities and Local Government (DCLG): (<http://www.communities.gov.uk/planningandbuilding/planning/sustainabilityenvironmental/environmentalimpactassessment/>)

The government provides information and links (<http://www.justice.gov.uk>) on the provision of effective and accessible justice for all, in particular via Community Legal Service Direct ([www.clsdirect.org.uk/index.jsp](http://www.clsdirect.org.uk/index.jsp)), which gives guidance on how to access legal services and obtain financial aid.

The work of officials and public authorities is complemented by the work of several independent voluntary bodies, including Citizens Advice, which provides the gateway to a nationwide network of local Citizens Advice Bureaus ([www.adviceguide.org.uk/](http://www.adviceguide.org.uk/)) providing practical advice on legal system and individuals' rights.

The UK government is considering how it can continue to make an effective contribution to the Aarhus Clearing House for Environmental Democracy (<http://aarhusclearinghouse.unece.org/>) a web portal which was developed within the subsidiary work of the Aarhus Convention, and serves to collect, disseminate and exchange information on laws and practices relevant to access to environmental information, public participation and access to justice.

### Paragraph 3

The Government's central internet portal for public services ([www.direct.gov.uk](http://www.direct.gov.uk)) contains links to the websites of the lead government department ([www.defra.gov.uk](http://www.defra.gov.uk)) and executive agency ([www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)) for environmental issues. These sites contain information and advice relevant to all areas of environmental policy. There are also links to more detailed sources of information on particular subject areas.

Environmental education begins at an early age and features in the national curriculum in schools. Information is available from the Department for Children, Schools and Families (<http://www.dfes.gov.uk>) and National Curriculum online (<http://www.nc.uk.net/home.html>). In addition to environmental education, the curriculum includes a citizenship programme, which encourages young people to participate in the democratic life of their school and the wider community.

Various environmental bodies, enforcement agencies and other organisations run specific environmental awareness programmes, sometimes in conjunction with schools, for example:

- 1) The Environment Agency's flood awareness project (<http://www.environment-agency.gov.uk/subjects/flood/?lang=e>)
- 2) The range of advice and training products offered by the Information Commissioner's Office ([www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)); and
- 3) Local authority initiatives such as the campaigns run by Southwark Council on littering, graffiti, and workshops for schools, (<http://www.southwark.gov.uk/YourServices/environment/CampaignsandEducation/>)
- 4) The Home Office's Active Communities initiative aims to promote strong, active and empowered communities, capable of defining the problems they face and tackling them together.

Environmental education and awareness are widely integrated into all areas of UK public policy. Examples include: 1) the role of "Education for Sustainable Development" in the national education curriculum ([www.nc.uk.net/esd/index.htm](http://www.nc.uk.net/esd/index.htm)); and 2) the inclusion of the principles of "ensuring a just society" and "promoting good governance" which are reflected in the UK's approach to sustainable development. ([www.sustainable-development.gov.uk](http://www.sustainable-development.gov.uk)).

### Paragraph 4

There are no general requirements for the recognition of associations, organisations or groups promoting environmental protection in the UK. A broadly liberal and inclusive approach is taken to their participation in public life, including in relation to environmental policy issues.

Representatives of consumer groups, women's groups, as well as

individuals acting in an individual capacity, are included in the current membership of environmental stakeholder groups (such as the Chemicals Stakeholder Forum), policy advisory bodies (such as the Sustainable Development Commission) or as lay or expert members, as appropriate, on specialist advisory committees (such as the Advisory Committee on Hazardous Substances or the Pesticides Residue Committee). Detailed examples, together with membership particulars, can be found on <http://www.defra.gov.uk/environment/index.htm>

A wide range of stakeholders are routinely involved in public consultations on policy issues, which are conducted across government according to a common administrative code:

<http://bre.berr.gov.uk/regulation/documents/consultation/pdf/code.pdf>

Independent research for the European Commission refers to the wide variety of NGOs, citizens' groups and individuals that have obtained legal standing before the UK administrative courts in particular environmental cases ([www.europa.eu.int/comm/environment/aarhus/index.htm](http://www.europa.eu.int/comm/environment/aarhus/index.htm)).

Direct financial support to environmental associations or groups takes a variety of forms. For example, Defra has committed £7.14 million over the three year lifespan of the Environmental Action Fund (2005-8). It has also wholly or partially funded several independent research projects into justice in environmental matters, to which NGOs and legal associations have contributed

(<http://www.defra.gov.uk/ENVIRONMENT/eaf/index.htm#funding>).

Indirect support for environmental associations or groups includes exemption from direct and indirect taxes for qualifying fundraising activities by registered charities, as well as tax relief on charitable donations from individuals. The National Charities Database ([www.charitiesdirect.com](http://www.charitiesdirect.com)) currently records more than 1000 registered charities that include the pursuit of environmental aims within their objectives.

## **Paragraph 7**

The Foreign and Commonwealth Office (FCO) leads the UK's commitment to the Partnership for Principle 10 (PP10) initiative, which supports principle 10 of the Rio Declaration, and therefore the principles of the Aarhus Convention. The UK offers full support to the initiative, whose partners include governments, international organisations such as the World Bank and NGOs from across the world, who join together to promote awareness of the principles, share best practice, and mobilise resources to do this.

As a member of the European Community, the UK supports the appropriate application of the Convention to Community legislation and bodies. It has also supported, and continues to support, the development of the participatory principles of the Convention and of Principle 10 of the 1992 Rio Declaration in international forums, such as the World Summit on Sustainable Development in 2002, the Environment for Europe process, as well as in specific environment agreements, such as the recent Cartagena Protocol on Biosafety to the Convention on Biological Diversity.

UK experts have participated in an ad-hoc group set up within the subsidiary body of the Aarhus Convention, which is considering Public Participation in International Forums. (<http://www.unece.org/env/pp/ppif.htm>) The group's aim is to consider the scope, format and content of guidelines, which will promote the principles of the Aarhus Convention in international environmental decision-making processes, thus directly supporting Article 3(7) of the Convention. The group is taking into account the need to avoid duplication of efforts and to ensure the broadest possible ownership of such guidelines, as well as the experience already gained by Parties and Signatories in implementing Article 3(7) on an individual basis.

Examples of the active promotion by the UK at the international level of the practical application of the Convention's underlying principles include:

1) UK funded workshop and publication of a Handbook of Good Practices in Public Participation at Local Level (<http://www.unece.org/env/pp/newcastle.handbook.htm>);

2) Partly UK funded Handbook on Access to Justice (<http://www.unece.org/env/pp/a.to.j/handbook.final.pdf>);

3) Membership of the Partnership for Principle 10 (<http://www.pp10.org>), under which the UK's Foreign and Commonwealth Office has donated approximately £1million for the period 2007-2008 for various projects throughout the world which aim to improve access to information, public participation and access to justice in environmental matters;

4) UK Environment for Europe Fund (<http://www.defra.gov.uk/environment/internat/enveurofund/index.htm>) which aims to promote environmental protection and sustainable development in Central and Eastern Europe, Caucasus and Central Asia (EECCA region) and to support activities of environmental organisations in these countries.

5) Under the auspices of the Aarhus Convention, Defra have sponsored a collaborative project between the United Nations Environment Programme (UNEP) and the UK Environment Agency, to utilise the Agency's experience and expertise in GIS based electronic information services to help build capacity in the EECCA region, for efficient and effective provision of environmental information.

6) The contribution of funding by the UK's Department for International Development to an independent study and the development of a practical guide on Public Participation and the Cartagena Protocol on Biosafety ([www.ids.ac.uk/UserFiles/File/knots\\_team/NBFreport\\_Main.pdf](http://www.ids.ac.uk/UserFiles/File/knots_team/NBFreport_Main.pdf))

7) The UK's department for Communities and Local Government part funds <http://www.communityplanning.net>. The site, originally funded by the Department for International Development, provides detailed information on how ordinary people can effectively influence the planning and management of their environment.

## **Paragraph 8**

The UK has strengthened the access rights to information with the powers of enforcement given to the office of the Information Commissioner (ICO) and the Information Tribunal. The ICO examines complaints from requesters where the requester feels that their request has not been dealt with properly by the public authority. The Information Tribunal gives a further and higher level of appeal. Both the ICO and the Information Tribunal have powers to order public authorities to release information and both appeal procedures are free of charge. The Scottish Information Commissioner has broadly similar powers although the appeal procedure operates without a tribunal.

We will treat any member of the public equally, regardless of nationality, citizenship and domicile. Any legal person has equal access to the courts.

Several legal and administrative measures are available in the UK to protect people from penalization, persecution or harassment in pursuing matters covered by the Convention. Some of these measures relate to the avoidance of discrimination against particular members of the public, such as at work or in the provisions of services (for example, The Race Relations Act 1976, or the Disability Discrimination Act 1995). Others have more general application, or are based on fundamental human rights. Examples include the Protection from Harassment Act 1997, which makes it a criminal offence to behave in a way amounting to the harassment of another person, or The Human Rights Act 1998, which makes rights from the European Convention of Human Rights enforceable in the UK courts. (<http://www.humanrights.gov.uk>)

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 3 listed above.

Answer: None.

Provide further information on the **practical application of the general provisions of the Convention.**

Answer: Not applicable.

## Article 4

### List legislative, regulatory and other measures that implement the provisions on access to environmental information in article 4.

Explain how each paragraph of article 4 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Also, and in particular, describe:

- (a) With respect to **paragraph 1**, measures taken to ensure that:
  - (i) Any person may have access to information without having to state an interest;
  - (ii) Copies of the actual documentation containing or comprising the requested information are supplied;
  - (iii) The information is supplied in the form requested;
- (b) Measures taken to ensure that the time limits provided for in **paragraph 2** are respected;
- (c) With respect to paragraphs 3 and 4, measures taken to:
  - (i) Provide for exemptions from requests;
  - (ii) Ensure that the public interest test at the end of paragraph 4 is applied;
- (d) With respect to **paragraph 5**, measures taken to ensure that a public authority that does not hold the environmental information requested takes the necessary action;
- (e) With respect to **paragraph 6**, measures taken to ensure that the requirement to separate out and make available information is implemented;
- (f) With respect to **paragraph 7**, measures taken to ensure that refusals meet the time limits and the other requirements with respect to refusals;
- (g) With respect to **paragraph 8**, measures taken to ensure that the requirements on charging are met.

Answer:

The provisions of Articles 4 and 5 of the Convention fall within the competence of the European Community, as do the related matters covered by Article 9(1) of the Convention.

On 28 January 2003, 'Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council

Directive 90/313/EEC' was adopted (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:EN:NOT>).

(Directive 90/313/EEC had previously established measures for the exercise of the right of the public to access environmental information).

The preamble of Directive 2003/4/EC states that "Provisions of Community law must be consistent with that [Aarhus] Convention with a view to its conclusion by the European Community" (par 5) and that "Since the objectives of the proposed Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty." (par 23)

The European Community has therefore implemented Article 4 of the Convention through this legislation. The UK was required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 February 2005. In order to do this, the Department for Environment, Food and Rural Affairs produced new domestic Environmental Information Regulations (SI 2004/3391), which are the statutory provisions relating to public access to environmental information in England, Wales and Northern Ireland. (<http://www.defra.gov.uk/corporate/opengov/eir/index.htm>)

In Scotland, separate arrangements have been made for Environmental Information (Scotland) Regulations (SSI 2004/520) (<http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm>)

In Gibraltar, separate arrangements have been made for Environmental Information Regulations. ([http://www.gibraltarlaws.gov.gi/view\\_article\\_s.php?group\\_id=000000241&id=00001853](http://www.gibraltarlaws.gov.gi/view_article_s.php?group_id=000000241&id=00001853))

The Freedom of Information Act 2000 (and the 2002 Scottish Act) took effect on 1 January 2005, and has brought about significant changes to access to information held by public authorities (<http://www.informationcommissioner.gov.uk/eventual.aspx?id=33>).

These legislative measures ensure compliance with the provisions mentioned in the above question.

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 4.

Answer: One response to the public consultation noted that there is some anecdotal evidence of restrictions to access to information, where planning authorities have not been able to supply requested documents in an alternative format (in a different language) even though this alternative format is specified to be available.

Provide further information on the **practical application of the provisions on access to information**, e.g. are there any statistics available on the number of requests made, the number of refusals and their reasons?

Answer: The Ministry of Justice publishes statistics and reports on the

performance of central government in the provision of access to information.

Give relevant web site addresses, if available:

<http://www.foi.gov.uk/reference/statisticsAndReports.htm>

## Article 5

**List legislative, regulatory and other measures that implement the provisions on the collection and dissemination of environmental information in article 5.**

Explain how each paragraph of article 5 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Also, and in particular, describe:

(a) With respect to **paragraph 1**, measures taken to ensure that:

(i) Public authorities possess and update environmental information;

(ii) There is an adequate flow of information to public authorities;

(iii) In emergencies, appropriate information is disseminated immediately and without delay;

(b) With respect to **paragraph 2**, measures taken to ensure that the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible;

(c) With respect to **paragraph 3**, measures taken to ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks;

(d) With respect to **paragraph 4**, measures taken to publish and disseminate national reports on the state of the environment;

(e) Measures taken to disseminate the information referred to in **paragraph 5**;

(f) With respect to **paragraph 6**, measures taken to encourage operators whose activities have a significant impact on the environment to inform the public regularly of the environmental impact of their activities and products;

(g) Measures taken to publish and provide information as required in **paragraph 7**;

(h) With respect to **paragraph 8**, measures taken to develop mechanisms with a view to ensuring that sufficient product information is made available to the public;

(i) With respect to **paragraph 9**, measures taken to establish a nationwide system of pollution inventories or registers.

Answer:

The provisions of Articles 4 and 5 of the Convention fall within the competence of the European Community, as do the matters covered by Articles 9(1).

On 28 January 2003, 'Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC' was adopted

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:EN:NOT>).

(Directive 90/313/EEC had previously established measures for the exercise of the right of the public to access environmental information)

The preamble of Directive 2003/4/EC states that "Provisions of Community law must be consistent with that [Aarhus] Convention with a view to its conclusion by the European Community" (par 5) and that "Since the objectives of the proposed Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty." (par 23)

The European Community has therefore implemented Article 4 of the Convention through this legislation. The UK was required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 February 2005. In order to do this, the Department for Environment, Food and Rural Affairs produced new domestic Environmental Information Regulations, which are the statutory provisions relating to public access to environmental information in England, Wales and Northern Ireland. (<http://www.defra.gov.uk/corporate/opengov/eir/index.htm>)

In Scotland, separate arrangements have been made for Environmental Information (Scotland) Regulations. (<http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm>)

In Gibraltar, separate arrangements have been made for Environmental Information Regulations. ([http://www.gibraltarlaws.gov.gi/view\\_article\\_s.php?group\\_id=000000241&id=00001853](http://www.gibraltarlaws.gov.gi/view_article_s.php?group_id=000000241&id=00001853))

In addition:

The Department for Environment, Food and Rural Affairs (<http://www.defra.gov.uk>), the UK Environment Agency (<http://www.environment-agency.gov.uk>), the Scottish Executive (<http://www.scotland.gov.uk/Topics/Environment>), the National Assembly for Wales (<http://new.wales.gov.uk/topics/environmentcountryside/?lang=en>) and the Department of the Environment in Northern Ireland (<http://www.doeni.gov.uk/>) publish extensive amounts of information relating to the environment.

### **Paragraphs 6 and 8**

The UK government believes that changes to the way we produce, use and dispose of products and provide services, can result in big reductions in the major environmental impacts. The government's aim is to develop more integrated approaches to tackling product impacts right across their life cycle. This involves

identifying product sectors with the most significant impacts and finding the best combination of market measures to bring about improvements.

These measures include ways of promoting consumer demand for more sustainable products – such as raising public awareness, and tools to improve green claims and other labeling. Information on consumer products and the environment is available from the UK Department for Environment, Food and Rural Affairs (<http://www.defra.gov.uk/environment/consumerprod/index.htm>)

The Advisory Committee on Consumer Products and the Environment provides advice to our government on the development and implementation of policy in this area. (<http://www.defra.gov.uk/environment/consumerprod/accpe/index.htm>)

Other bodies which provide information to the public, to enable them to make informed environmental choices about products and services, include:

- 1) The Food Standards Agency (<http://www.food.gov.uk/>)
- 2) The Department for Business, Enterprise and Regulatory Reform (<http://berr.gov.uk>)
- 3) The Trading Standards Institute (<http://www.tradingstandards.gov.uk/>)
- 4) The Carbon Trust, which helps businesses and the public sector cut carbon emissions (<http://www.thecarbontrust.co.uk/carbontrust/>)

### Paragraph 9

The Protocol on Pollutant Release and Transfer Registers (PRTRs) was adopted during the “Environment for Europe” Ministerial Conference in May 2003. The European Union adopted a Regulation on the establishment of a European Pollutant Release and Transfer Register (E-PRTR) which came into force on 24 February 2006. The UK has consulted on how to establish a UK PRTR in line with the Protocol obligations and the E-PRTR Regulation. The UK will establish a UK PRTR before ratifying the Protocol.

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 5.

Answer: None.

**Provide further information on the practical application of the provisions on the collection and dissemination of environmental information in article 5, e.g. are there any statistics available on the information published?**

Answer: Not applicable.

Give relevant web site addresses, if available:

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## Article 6

### **List legislative, regulatory and other measures that implement the provisions on public participation in decisions on specific activities in article 6.**

Explain how each paragraph of article 6 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Also, and in particular, describe:

(a) With respect to **paragraph 1**, measures taken to ensure that:

(i) The provisions of article 6 are applied with respect to decisions on whether to permit proposed activities listed in annex I to the Convention;

(ii) The provisions of article 6 are applied to decisions on proposed activities not listed in annex I which may have a significant effect on the environment;

(b) Measures taken to ensure that the public concerned is informed, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, of the matters referred to in **paragraph 2**;

(c) Measures taken to ensure that the time frames of the public participation procedures respect the requirements of **paragraph 3**;

(d) With respect to **paragraph 4**, measures taken to ensure that there is early public participation;

(e) With respect to **paragraph 5**, measures taken to encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit;

(f) With respect to **paragraph 6**, measures taken to ensure that:

(i) The competent public authorities give the public concerned all information relevant to the decision-making referred to in article 6 that is available at the time of the public participation procedure;

(ii) In particular, the competent authorities give to the public concerned the information listed in this paragraph;

(g) With respect to **paragraph 7**, measures taken to ensure that procedures for public participation allow the public to submit comments, information, analyses or opinions that it considers relevant to the proposed activity;

(h) With respect to **paragraph 8**, measures taken to ensure that in a decision due account is taken of the outcome of the public participation;

(i) With respect to **paragraph 9**, measures taken to ensure that the public is promptly informed of a decision in accordance with the appropriate procedures;

(j) With respect to **paragraph 10**, measures taken to ensure that when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 are applied making the necessary changes, and where appropriate;

(k) With respect to **paragraph 11**, measures taken to apply the provisions of article 6 to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

Answer:

The provisions of Articles 6, 7 and 9(2) of the Convention fall within the competence of the European Community, as do the related matters covered by Articles 9(2) and 9(4).

On 26 May 2003, 'Directive 2003/35/EC of the European Parliament and of the Council, providing for public participation in respect of the drawing up of plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC' was adopted (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0035:EN:NOT>).

Directive 85/337/EEC concerns the assessment of the effects of certain public and private projects on the environment (<http://europa.eu.int/comm/environment/eia/full-legal-text/85337.htm>) and Directive 96/61/EC concerns integrated pollution prevention and control (IPPC) (<http://europa.eu.int/comm/environment/ippc/>).

The preamble of Directive 2003/35/EC states that "Community law should be properly aligned with that Convention with a view to its ratification by the Community", (par 5) and that "Since the objective of the proposed action ...cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiary as set out in Article 5 of the Treaty." (par 12)

The European Community has therefore implemented Articles 6, 7 and 9(2) of the Convention through this legislation. The UK has brought into force the laws, regulations and administrative provisions necessary to comply with this Directive. A number of changes have been made to existing domestic legislation, which are listed below:

- The Pollution Prevention and Control (Public Participation) (England and

Wales) Regulations 2005

- The Environment Act 1995 (c.25)
- Environmental Protection Act 1990 (c.43)
- The Pollution Prevention and Control (Miscellaneous Amendments) Regulations (Northern Ireland) 2006
- Amendment of Pollution Prevention and Control Ordinance 2001
- Integrated Pollution Control and Air Pollution Control by Local Authorities
- Environmental Protection The Pollution Prevention and Control (Public Participation etc.) (Scotland) Regulations 2005
- The Offshore Combustion Installations (Prevention and Control of Pollution) (Amendment) Regulations 2007
- Town and Country Planning Act 1990 (c 8)
- Town Planning (Environmental Impact Assessment) Regulations 2000
- The Town and Country Planning (Development Plan) (Amendment) Regulations 1997
- The Town and Country Planning (Development Plan) Regulations 1991
- The Town and Country Planning (Local Development) (England) Regulations 2004
- The Town and Country Planning (Regional Planning) (England) Regulations 2004
- The Town and Country Planning (Scotland) Act 1997 c 8
- The Town and Country Planning (Structure and Local Plans) (Scotland) Regulations 1983
- The Town and Country Planning (Transitional Arrangements) (England) Regulations 2004
- The Town Planning (Environmental Impact Assessment) (Amendment) Regulations 2006
- The Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2006
- The Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2006
- The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2006
- The Environment Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2005
- The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007
- The Environmental Impact Assessment and Natural habitats (extraction of minerals by marine dredging) (Wales) Regulations 2007
- The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006
- The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006
- The Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007

- The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 2007
- The Environmental Impact Assessment (Forestry) (England and Wales) (Amendment) Regulations 2006
- The Environmental Impact Assessment (Land Drainage Improvement Works) (Amendment) Regulations 2006
- The Environmental Impact Assessment (Scotland) Amendment Regulations 2006
- The Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England)(Amendment) Regulations 2005
- The Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (Wales) (Amendment) Regulations 2007
- The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007
- The Gas Transporter Pipe-line Works (Environmental Impact Assessment) (Amendment) Regulations 2007
- The Harbour Works (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2007
- The Highways (Environmental Impact Assessment) Regulations 2007
- The Marine Works (Environmental Impact Assessment) Regulations 2007
- The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007
- Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006
- Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006
- Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) Regulations (Northern Ireland) 2006
- The Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations 2006
- Statutory Rule 2006 No. 34 Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2006
- The Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2007
- The Pipe-line Works (Environmental Impact Assessment) (Amendment) Regulations 2007
- The Water Resources (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2006
- The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006
- The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Amendment) Regulations 2007
- The Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 2007

Specifically:

### Paragraph 1

The obligations under part (a) of this paragraph are satisfied by elements of our national regulations which implement the Community Directive on Integrated Pollution Prevention and Control (IPPC) Regulations 2000 (<http://www.opsi.gov.uk/si/si2000/20001973.htm>) and Environmental Impact Assessment (EIA) Regulations 1999 (<http://www.opsi.gov.uk/si/si1999/19990293.htm>). The EIA Regulations 1999 were prepared with Aarhus in mind, although the UK was not a Party to the Convention at that time. In the UK, all projects likely to have a significant effect on the environment are subject to EIA procedures (according to EC Directive 85/337).

### Paragraph 11

In March 2001 the European Community adopted Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC. ([http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type doc=Directive&an doc=2001&nu doc=18](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type doc=Directive&an doc=2001&nu doc=18)). The Directive is implemented in the UK by part VI of the Environmental Protection Act 1990 and regulations made under that Act (e.g. in respect of England and Wales, the Genetically Modified Organisms (Deliberate Release) Regulations 2002: (<http://www.opsi.gov.uk/SI/si2002/20022443.htm>). Defra, the Scottish Executive and the National Assembly for Wales have functions and responsibilities in relation to the deliberate release of GMO's.

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 6.

Answer:

**Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 6, e.g. are there any statistics or other information available on public participation in decisions on specific activities or on decisions not to apply the provisions of this article to proposed activities serving national defence purposes.**

Answer:

## Article 7

**List the appropriate practical and/or other provisions made for the public to participate during the preparation of plans and programmes relating to the environment. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.**

Answer:

The provisions of Articles 6, 7 and 9(2) of the Convention fall within the competence of the European Community, as do the matters covered by Articles 9(2) and 9(4).

On 26 May 2003, 'Directive 2003/35/EC of the European Parliament and of the Council, providing for public participation in respect of the drawing up of plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC' was adopted.

([http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32003L0035](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32003L0035)).

Directive 85/337/EEC concerns the assessment of the effects of certain public and private projects on the environment (<http://europa.eu.int/comm/environment/eia/full-legal-text/85337.htm>) and Directive 96/61/EC concerns integrated pollution prevention and control (<http://europa.eu.int/comm/environment/ippc/>).

The preamble of Directive 2003/35/EC states that "Community law should be properly aligned with that Convention with a view to its ratification by the Community", (par 5) and that "Since the objective of the proposed action ...cannot be sufficiently achieved by the Member States and can therefore, by reason of scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiary as set out in Article 5 of the Treaty." (par 12)

The European Community has therefore implemented Articles 6, 7 and 9(2) of the Convention through this legislation, and has created a legal obligation on the United Kingdom, which ensures our compliancy with this Article.

The UK was required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 25 June 2005. The changes made to existing domestic legislation are listed below:

- The Air Quality Limit Values (Amendment) (England) Regulations 2004
- The Air Quality Limit Values (Amendment) Regulations (Northern Ireland) 2004
- The Air Quality Limit Values (Scotland) Amendment Regulations 2005
- The Air Quality Limit Values (Wales) (Amendment) Regulations 2005
- The Environmental Assessment of Plans and Programmes Regulations 2004 (Statutory Instrument 2004 No 1633)

- The Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (Scottish Statutory Instrument No 258)
- Environmental Assessment (Scotland) Act 2005, which came into force on 20 February 2006 repealed the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004, except in relation to those plans and programmes in Scotland whose first formal preparatory act was on or before 19 February 2006.
- The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (Welsh Statutory Instrument No 1656 (W.170))
- The Environmental Assessment of Plans and Programmes Regulations (NI) 2004 (Statutory Rule 2004 No 280)
- Part III of the Planning (NI) Order 1991
- Part III of the Planning (NI) Order 1991, as amended by S.I. 2003/430 (N.I.8)
- The Waste and Contaminated Land (Northern Ireland) Order 1997
- The Planning (Control of Major-Accident Hazards) Regulations 1999
- The Planning (Development Plans) Regulations (NI) 1991
- The Planning (Development Plans) Regulations (NI) 1991 (S.R. 1991 No.119, as amended by S.R. 1994 No.394
- The Planning (Development Plans) Regulations (NI) 1991 No 119 as amended by S.R. 2004 No.438.
- Parts 1 and 2 of, and Schedule 8 to, the Planning and Compulsory Purchase Act 2004.
- Planning and Compensation Act 1991 (c 34)
- Public Health (Air Quality) (Ozone) (Amendment) Rules 2005
- Public Health (Amendment No 2) Ordinance 2005 No 3510 of 29 December 2005, (No 71 of 2005)
- The Nitrate (Public Participation etc.) (Scotland) Regulations 2005
- The Nitrates Action Programme Regulations (Northern Ireland) 2006
- The Protection of Water Against Agricultural Nitrate Pollution (Amendment) Regulations (Northern Ireland) 2005
- The Protection of Water Against Agricultural Nitrate Pollution (England and Wales) (Amendment) Regulations 2006
- The Transfrontier Shipment of Waste Regulations 2007
- The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006
- The Transport and Works (Assessment of Environmental Effects) Regulations 2006
- Transport and Works (Scotland) Act 2007
- There are legal requirements to involve the public through out the preparation of local and regional plans, as outlined in the Planning and Compulsory Purchase Act 2004 Act and detailed in The Town and Country Planning (Regional Planning) (England) Regulations 2004
- The Disability Discrimination Act 2005, Equality Act 2006, and Race Relations (Amendment) Act 2000 place duties on public authorities to promote disability gender and race equality, which includes requirements

to involve or consult the various 'equalities strands' in the work of the authority.

**Explain what opportunities there are for public participation in the preparation of policies relating to the environment.**

Answer:

Public participation in the preparation of plans that affect the environment is current practice in the UK. The Cabinet Office has produced guidance and a code of practice (<http://bre.berr.gov.uk/regulation/documents/consultation/pdf/code.pdf>) which aims to increase the involvement of individuals and groups in public consultations, minimising the burdens it imposes upon them and giving them enough time to respond. Procedures for public consultation in response to proposed government policies are consistent with the requirements of the Convention.

Describe any **obstacles encountered** in the implementation of article 7.

Answer: None.

**Provide further information on the practical application of the provisions on public participation in decisions on specific activities in article 7.**

Answer:

## Article 8

**Describe what efforts are made to promote effective public participation during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To the extent appropriate, describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.**

Answer:

Public participation in the preparation of plans that affect the environment is current practice in the UK.

The Cabinet Office has produced guidance and a code of practice (<http://bre.berr.gov.uk/regulation/documents/consultation/pdf/code.pdf>) which aims to increase the involvement of individuals and groups in public consultations, minimising the burdens it imposes upon them and giving them enough time to respond. Procedures for public consultation in response to proposed government policies are consistent with the requirements of the Convention.

Consultation lies at the heart of Strategic Environmental Assessments and all public strategies, plans and programmes that are likely to result in significant environmental effects once implemented, must have their likely effects assessed within the terms of the Environmental Assessments (Scotland) Act 2005. In Scotland detailed guidance, in the form of an SEA Tool Kit has been published and is available to all Responsible Authorities.

Furthermore, the new 'community strategies' that each local authority must prepare contain legal obligations for public participation. (<http://www.communities.gov.uk/publications/localgovernment/preparingcommunitystrategies>)

In addition to information contained in Article 3 and 7 the UK's department for Communities and Local Government funds Planning Aid Services. Planning Aid Services provides free, independent and professional help, advice and support on planning issues to people and communities who cannot afford to hire a planning consultant. The service operates across all UK regions.

Describe any **obstacles encountered** in the implementation of article 8

Answer: None. While there is support for the scope of the UK's answer under Article 8, two stakeholders raised that amendments to the Planning Bill could result in potential obstacles to public participation. As such, closer working between relevant departments has been initiated to ensure mutual understanding with regards to implementation of the Convention.

**Provide further information on the practical application of the provisions on public participation in the field covered by article 8.**

Answer: Not applicable.

Give relevant web site addresses, if available:

## Article 9

### **List legislative, regulatory and other measures that implement the provisions on access to justice in article 9.**

Explain how each paragraph of article 9 has been implemented. Describe the transposition of the relevant definitions in article 2 and the non-discrimination requirement in article 3, paragraph 9.

Also, and in particular, describe:

(a) With respect to **paragraph 1**, measures taken to ensure that:

(i) Any person who considers that his or her request for information under article 4 has not been dealt with in accordance with the provisions of that article has access to a review procedure before a court of law or another independent and impartial body established by law;

(ii) Where there is provision for such a review by a court of law, such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law;

(iii) Final decisions under this paragraph are binding on the public authority holding the information, and that reasons are stated in writing, at least where access to information is refused;

(b) Measures taken to ensure that within the framework of national legislation, members of the public concerned meeting the criteria set out in **paragraph 2** have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6;

(c) With respect to **paragraph 3**, measures taken to ensure that where they meet the criteria, if any, laid down in national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of national law relating to the environment;

(d) With respect to **paragraph 4**, measures taken to ensure that:

(i) The procedures referred to in paragraphs 1, 2 and 3 provide adequate and effective remedies;

(ii) Such procedures otherwise meet the requirements of this paragraph;

(e) With respect to **paragraph 5**, measures taken to ensure that information is provided to the public on access to administrative and judicial review.

Answer:

Here are the provisions that govern this area of law in the UK.

Adequate and effective remedies, including injunctive relief in appropriate cases, are available. In England and Wales an applicant / claimant must demonstrate sufficient interest and an arguable case in law to access judicial review proceedings (see ref to where they meet the criteria laid down in national law). This 'interest' is interpreted very widely.

In Scotland, the claimant must show both title and interest, which means that a party has to show that there is some legal capacity and a direct interest in the subject matter. Some changes have therefore been needed to the Scottish law as a result of the requirements of Directive 2003/35/EC that NGOs should be deemed to have sufficient interest to access review proceedings, and these changes have been made in transposing Directive 2003/35/EC.

Research evidence from the Commission to underpin its draft Directive on access to justice in environmental matters (see <http://europa.eu.int/comm/environment/aarhus/index.htm>) puts the UK among those Member States that take an "extensive approach" to legal standing before the administrative courts. This analysis suggests that, in recent years, the English courts have given an expansive interpretation to the criterion of "sufficient interest" for obtaining a hearing before the courts. It gives examples of environmental cases taken by a wide variety of complainants, including established NGOs, ad hoc pressure groups and individuals reflecting a community concern, in which legal standing has been granted because of the relevance of wider public interests.

Although the total number of cases of this kind is low (about 100 over five years), the Commission's research points out that its data on "court cases" do not include any of the matters dealt with by administrative review, such as under the planning system, or under statutory "environmental appeals". The research recognises that such review systems play an important part in our system of environmental law, and may be equivalent to environmental actions taken in other Member States through the courts.

Further information on the court system can be found at <http://www.direct.gov.uk/en/Gtg11/GuideToGovernment/Judiciary/index.htm>.

In addition to the procedures described above, the UK government is also a strong supporter of alternative dispute resolution (ADR) and has introduced initiatives to encourage and promote its use in all civil disputes.

### **Paragraph 1**

This paragraph is technically contingent on the obligations under pillar I, and the adopted Directive 2003/4/EC on public access to environmental information (which includes provisions on access to justice). The role of the Information Commissioner (and his Scottish Counterpart) under the Freedom of Information Act (and the equivalent Scottish Act) provides the relevant review facility for environmental information.

## **Paragraph 2**

This paragraph is technically contingent on the obligations under Article 6, and the adopted Directive 2003/35 on public participation in the drawing up of plans and programmes.

Under Article 9(2) of the Convention, non-governmental organisations which promote environmental protection and which meet requirements under national law are deemed to have 'sufficient interest' to engage in review procedures. (To review the legality of an authority's application of law but not to challenge the merits or substance of a case). In England, Wales and Northern Ireland, if the interest of an applicant is not direct or personal, but is a general or public interest, it will be for the courts to determine whether or not the applicant has standing in accordance with a number of factors including the level of public importance of the issues raised and the applicant's relationship to those issues. In determining whether public interest groups or NGOs specifically have sufficient interest to bring a challenge, the court will consider a number of factors including the merits of the challenge, the importance of vindicating the rule of law, the importance of the issue raised, the likely absence of any other responsible challenger, the nature of the breach and the role played by the group or body in respect of the issues in question. The criteria have come to be applied liberally; if an applicant has insufficient private interest in bringing an application, provided he raises a genuine and serious public interest, he will have standing.

In Scots law, title and interest (to be heard by a court) is a matter of substantive law, not a procedure, so the legislation transposing EU Directive 2003/35/EC included provision giving sufficient interest to NGO's promoting environmental protection.

## **Paragraph 3**

If an applicant has a direct personal interest in the outcome of the claim, he will normally be regarded as having sufficient interest in the matter. The term 'interest' includes any connection, association or interrelation between the applicant and the matter to which the application relates.

## **Paragraph 4**

We will treat any member of the public equally, regardless of nationality, citizenship and domicile. Any legal person has equal access to the courts. We believe that court fees for bringing a case are reasonable, for example the fees for bringing a judicial review are currently:

- £30 to apply for permission; and
- £180 to bring a substantive case in the Administrative Court of the High Court if permission is granted.

Broadly similar fees would be payable to bring a case in the Court of Session in Scotland.

The government's firm view is that while it is right that there should be access to the courts, there is no automatic right of free access to the courts. Those who can afford to pay fees should be expected to do so. It would not be appropriate for taxpayers to bear the full cost of civil proceedings when those who bring these

proceedings can afford to pay.

People who are in receipt of certain specified state benefits are automatically exempted from court fees. Others, who do not receive these benefits, may be able to have their court fees remitted in part or in full on grounds of hardship. Public funding (formerly civil legal aid) is available for environmental cases and judicial review, subject to the statutory tests of the applicant's means and merits of the case and where no alternative source of funding is available. This enables us to target resources towards those who need them the most.

The general principle in civil proceedings in the UK is that the unsuccessful party will be ordered to pay the costs of the successful party. However, the court has wide discretion to make a different order, taking into account all the relevant factors. Furthermore, the court is not limited simply to ordering (or not ordering) costs against the losing party, but can make a range of different orders, such as that only a proportion of the other party's costs should be paid.

The Civil Procedure Rules (CPR) in England and Wales provide considerable flexibility to enable the court to give balanced consideration to all the circumstances; to reach decisions on costs in individual cases which are fair; and to meet the overriding objective of the CPR of dealing with cases justly. Similar flexibility is found in the provisions in Scotland and Northern Ireland. The Court of Appeal has given rulings and guidance in a range of cases relating to the interpretation of the CPR provisions.

In addition to these general provisions there are a variety of ways in which the courts can take action to ensure that costs are proportionate and fairly allocated. The CPR provides the courts with extensive case management powers to control and direct the course of proceedings to ensure that these are conducted on as timely and efficient a basis as possible. The courts also have extensive powers to control costs at different stages of the proceedings. As well as detailed provisions which govern the assessment of costs at the conclusion of proceedings, the courts are also able to make an order capping costs in an individual case at any stage of the proceedings. In the context of judicial review, provisions also exist for the court to make a Protective Costs Order (PCO) – (a 'protected order for expenses' in Scotland) - at the outset of proceedings (or at any other stage).

Guidance on PCOs has been established by the Court of Appeal, which means that judges hearing judicial reviews in England and Wales are obliged by the doctrine of binding precedent (based on the hierarchy of the courts) to take it into account in considering any application for a PCO. These provisions on costs capping and PCOs can help to provide certainty to a party as to their potential exposure to an adverse costs order if they are ultimately unsuccessful.

The existing provisions in relation to court proceedings must also be considered in the context of the system of environmental law, and access to it, as a whole. This is because the system ensures that seeking redress through the courts is only one of the many routes open to the public in their search for environmental justice. The public can, for example, report potential breaches of environmental legislation to the appropriate regulator, for example in England and Wales the Environment Agency (in Scotland the Scottish Environment Protection Agency or in Northern Ireland directly to the Department of the Environment). Similarly, they can make a complaint to the local authority regarding a statutory nuisance and the

authority is under a duty to investigate the problem. Neither of these routes involves any expense on behalf of the complainant. There are also various appeal procedures in place relating to the many different regulatory regimes, some of which give interested members of the public the right of appeal. Also, with regard to access to environmental information the relevant Information Commissioner offers a review procedure which involves no expense.

For public interest cases the Legal Services Commission (LSC) (<http://www.legalservices.gov.uk/>) has revised its guidance when looking at whether there is an alternative source of funding available for cases which have a significant wider public interest. The definition of a public interest case is that it could bring benefits for a significant number of other people, or where a public body may have abused its power. Public interest could also include cases that raise novel or significant points of law. The revised guidance recognises the fact that contributions to funding can only be considered where there exists an identifiable group from whom they can be collected. Further, the more intangible the benefits, the less it may be reasonable for the LSD to expect a substantial contribution. Any contributions to funding should also be capped to an agreed level at the outset of the case, as it is recognised that it may be unrealistic to revert back to the funded clients for further contributions as cost increases, or the case goes to appeal. Scotland advise us that their system complies with the requirements of article 9(4).

## **Paragraph 5**

The UK has engaged in extensive activity to provide information to the public on accessing administrative and judicial review procedures, and to remove any financial and other barriers to access to justice or to consider how they could be removed.

The government provides information and links (<http://www.justice.gov.uk/>) on the provision of effective and accessible justice for all, in particular via Community Legal Service Direct ([www.clsdirect.org.uk/index.jsp](http://www.clsdirect.org.uk/index.jsp)), which gives guidance on how to access legal services and obtain financial aid.

The Community Legal Service Direct provides legal information, details of how to access legal services and obtain financial aid to do so. (<http://www.clsdirect.org.uk/index.jsp>)

In 2003, Defra also contributed funding and assistance for the development of the “Handbook on Access to Justice under the Aarhus Convention” – offering practical guidance and case study examples to assist with the implementation of Article 9 of the Aarhus Convention (<http://www.unece.org/env/pp/a.to.j/handbook.final.pdf>)

Defra has been gathering information on the broad topic of “justice in environmental matters” over the last few years. This information includes some research projects which were partly or wholly funded by Defra. (<http://www.defra.gov.uk/environment/enforcement/justice.htm>)

In 2003, the UK Department for Environment, Food and Rural Affairs provided support and assistance to the Magistrates Association, in the preparation of ‘Costing the Earth’, a toolkit offering guidance and information for sentencers and

anyone else concerned about environmental crime. (<http://www.magistrates-association.org.uk/documents/training/cote-guidance.pdf>)

Describe any **obstacles encountered** in the implementation of any of the paragraphs of article 9.

Answer: Stakeholders are pleased that the UK Government accepts that costs are relevant consideration in the context of Article 9(4) of the Aarhus Convention. However, two stakeholders highlighted that financial difficulties remain in bringing environmental cases. Responsibility for civil costs issues rests with the MOJ, and over the last year, Defra and MoJ officials have been examining these issues.

**Provide further information on the practical application of the provisions on access to justice pursuant to article 9, e.g. are there any statistics available on environmental justice and are there any assistance mechanisms to remove or reduce financial and other barriers to access to justice?**

Answer: Not applicable.

**Articles 10-22 are not for national implementation.**

General comments on the Convention's objective:

**If appropriate, indicate how the implementation of the Convention contributes to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.**

Answer:

The United Kingdom made the following declaration on ratifying the Aarhus Convention:

"The United Kingdom understands the references in article 1 and the seventh preambular paragraph of this Convention to the "right" of every person "to live in an environment adequate to his or her health and well-being" to express an aspiration which motivated the negotiation of this Convention and which is shared fully by the United Kingdom. The legal rights which each Party undertakes to guarantee under article 1 are limited to the rights of access to information, public participation in decision-making and access to justice in environmental matters in accordance with the provisions of this Convention."