



Response to the DEFRA Consultation: UK National Implementation Report - Aarhus Convention

INTRODUCTION

1. This is the response of the United Kingdom Environmental Law Association to the DEFRA Consultation on the Implementation Report to the Meetings of the Parties.¹
2. UKELA is a registered charity the principal objects of which include the promotion, for the benefit of the public generally, of the enhancement and conservation of the environment in the UK, and, in particular, the advancement of the education of the public in all matters relating to the development, teaching, application and practice of law relating to the environment.
3. The Rt Hon Lord Justice Carnwath is UKELA's current President, having taken over the role in 2006 from the late Rt Hon Lord Slynn of Hadley. In addition to Lord Justice Carnwath, the Association's patrons are Baroness Young of Old Scone (former Chief Executive, the Environment Agency), Professor Sir Francis Jacobs KCMG, QC (Kings College London), Professor Richard Macrory (University College London) and Tom Burke CBE (Visiting Professor, Imperial and University Colleges, London).
4. Current membership (lawyers and non-lawyers) is in excess of 1,200.

RESPONSE

5. This response addresses concerns that UKELA has in relation to the draft implementation report that the DEFRA is intending to submit to the Meetings of the Parties.

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6. UKELA has particular concerns that the draft report does not reflect accurately the extent to which the United Kingdom has implemented Article 9 of the Convention (Section XXVIII). Nor does it fully reflect the extent of the obstacles encountered in the implementation of Article 9 (Section XXIX).
7. UKELA considers that the UK Government's position as set out at paragraph 126 regarding compliance with the Aarhus Convention (namely that the UK considers it is compliant) is untenable in light of the recent decision of the Aarhus Compliance Committee.
8. UKELA specific concerns with the draft report are as follows:
 - a. The draft report also fails to address what action will be taken in response to the Aarhus Compliance Committee's recommendations.
 - b. The draft report fails to acknowledge the Update Report to the Report by the Working Party into Environmental Justice chaired by Lord Justice Sullivan dated October 2010, and in particular its recommendation for a new costs rule to the effect that an unsuccessful Claimant in a claim for judicial review shall not be ordered to pay the costs of any other party other than where the Claimant has acted unreasonably in bringing or conducting the proceedings.
 - c. The draft report at Section XXVIII, in relation to Article 9(4) fails to include sufficient detail on the average amount of adverse costs awards following an unsuccessful environmental judicial review. As an example is to be found in *Garner v Elmbridge District Council* [2010] EWCA Civ 1006.
 - d. The draft report at Section XXVIII fails to acknowledge or make reference to Sullivan LJ's judgment in *Garner*, to the effect that as a

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result of Directive 2003/53/EC the UK courts have now recognised that different considerations apply to applications for PCOs in cases to which the EIA Directive applies compared to those of general judicial review claims.

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