

# Energy UK response: Access to Justice in relation to the Aarhus Convention

Energy UK is the trade association for the energy industry with over 100 members - from established FTSE 100 companies through to new, growing suppliers, generators and service providers across energy, transport, heat and technology. Our members deliver nearly 80% of the UK's power generation and over 95% of the energy supply for 28 million UK homes as well as businesses.

The sector invests £13bn annually and delivers nearly £30bn in gross value - on top of the nearly £100bn in economic activity through its supply chain and interaction with other sectors. The energy industry is key to delivering growth and plans to invest £100bn over the course of this decade in new energy sources. The energy sector supports 700,000 jobs in every corner of the country.

Energy UK plays a key role in ensuring we attract and retain a diverse workforce. In addition to our Young Energy Professionals Forum, which has over 2,000 members representing over 350 organisations, we are a founding member of TIDE, an industry-wide taskforce to tackle Inclusion and Diversity across energy.

## Executive Summary

Energy UK can only give an overview response, but our primary concern is of timescales within the planning system. We recognise the issues the UK faces in non-compliance with the Convention, but we would emphasise that the pace in the planning system is greatly insufficient at present. Any changes to comply more fully with the Convention must not be at the expense of further delays and longer timescales within the planning system, especially not for major infrastructure projects.

If you would like to discuss this response in further detail with Energy UK and its members, we would welcome further engagement.

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## Energy UK view

Energy UK is giving an overview response, rather than question by question, as we lack some of the capacity to respond more fully to the consultation document. We are not legal professionals or the judiciary (one of the target groups in the consultation introduction). However, many of our members are responsible for the development of energy infrastructure, often rapidly needed, and access to ECPR and Judicial Review will affect their ability to build this infrastructure for wider government goals (such as Clean Power by 2030, Net Zero by 2050, and lower electricity bills). Therefore, we have some overall points concerning the Environmental Cost Protection Regime (ECPR) and Judicial Review.

Firstly however, we want to strongly emphasise the point that any changes to create compliance with the Aarhus convention cannot come at the expense of further delaying the construction of low carbon energy infrastructure, or infrastructure to facilitate that. We support enhanced access to environmental justice, in principle better scrutiny under the Judicial Review process, and meeting international obligations. However, this is only on the basis that this does not create further complications to the planning and environmental consenting process, which is already a blocker to new energy projects. Our objections to the current system are based on environmental, societal, and economic grounds. Delaying build out of low carbon energy will result in increased emissions from the power sector, as

well as other sectors such as transport, heating, and industry, which rely on a rapid expansion of low carbon power. Continued delays in the planning and environmental consenting system as is will have to be resolved to reach existing emissions targets for 2030 and 2035, otherwise this will cause further harm to the wider environment. Societally, slower rollout of low carbon power will not benefit communities overall in the UK, as this is likely to keep electricity bills higher for the country as a whole. Economically, reforms to the planning system could unlock a 0.3-1% growth in UK productivity,<sup>1</sup> increasing jobs and growth whilst having a knock-on effect of lower costs for households and businesses in reduced electricity prices. Therefore, all our statements regarding changes to the Aarhus convention are underpinned by the above viewpoints. Speeding up the time to build energy infrastructure is of the utmost importance, and the convention must assist, not block, the above.

Specifically, on the points around ECPR, Energy UK does not want to unnecessarily limit access to justice for claimants, and in principle supports the proposals presented under this chapter of the consultation document. We agree on not extending ECPR to private claims, and feel this is unnecessary and likely to create further barriers in the planning system. Implementation of the proposals in the ECPR chapter should focus on making existing legal challenges fairer and more equitable, not increasing the number of legal challenges overall. More broadly, wider reform of the planning system to ensure higher thresholds for legal challenges but much more ample resourcing of these challenges could be a critical step to make cases more equitable, which could benefit adherence to the Convention.

For the Judicial Review section, this is already a blocker on addressing climate change and creating economic growth, with half of Judicial Review challenges against projects under the Nationally Significant Infrastructure Scheme occurring since 2019.<sup>2</sup> Judicial Review alone has stalled three offshore wind projects and over 3.5GW of clean energy by around a year,<sup>3</sup> not accounting for other stalling in the rest of the development system. With this backdrop, we do not object in principle to the proposal that timeframe for Judicial Review begins when a decision becomes public, rather than when it is made, but the sector needs a guarantee that this change will not increase the timeframe for Judicial Review yet further. If that can be delivered as part of the changes to bring the UK in line with the Convention, we would support. As with the ECPR points above, it may be advisable to do this with a wider package of legislative planning reform measures, such as the Planning and Infrastructure Bill or another equivalent pan-policy mechanism. Regarding the options outlined in Section 75 of the consultation document, we would support the first option of the when a decision is made public (rather than leaving it open to the court), to reduce complexity in an already complex system.

Finally, Energy UK would encourage the government to ensure that any changes to the application of international standards such as the Aarhus Convention in the United Kingdom do not have a subsequent impact on other Government priorities, for example the ongoing reset in relations with the European Union.

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<sup>1</sup> [James Heath: urgent planning reform needed to remove "binding constraint" on UK's economic future - NIC](#)

<sup>2</sup> [Getting Great Britain building again: Speeding up infrastructure delivery - GOV.UK](#)

<sup>3</sup> Ibid