Access to justice in environmental matters - United Kingdom

Introduction

The UK consists of England, Scotland, Wales and Northern Ireland. It also has international responsibility for Gibraltar, Guernsey, Jersey, and the Isle of Man. The relevant law for England and Wales, Northern Ireland and Scotland is set out in the main text.. Please see separate Annexes for information on Gibraltar, Guernsey, Jersey and the Isle of Man.

I Constitutional foundations

The UK does not have a single codified written constitution. Environmental actions in respect of the decisions of a public authority may be brought under Article 8 of, or Article 1 of Protocol 1 to, the European Convention on Human Rights where there is interference with the peaceful enjoyment of a possession. The Convention is implemented in the UK by the Human Rights Act 1998. While parties may not rely directly on the provisions of an international treaty that has not been implemented in UK law by an Act of Parliament or secondary legislation, a court will try and construe legislation in a way that accords with the UK's international obligations.

Courts and administrative bodies do not apply the Aarhus Convention directly except for those provisions of it that have been implemented by an Act or Order, or through EU law, which is directly applicable in domestic law – *Morgan v Hinton Organics (Wessex) Ltd* [2009] EWCA Civ 107. However in *Walton v Scottish Ministers* [2012] UKSC 44 it was said that decisions of the Aarhus Compliance Committee should be treated with respect.

It should be noted that upon signature (confirmed upon ratification) the United Kingdom made the following statement in relation to 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."

II Judiciary

Courts

There are no specialist environmental courts in the UK. In England and Wales (E&W) and Northern Ireland (N.I.) environmental criminal cases begin in the magistrates' court – presided over by lay magistrates or a District Judge. Serious cases are tried in the Crown Court by a judge and jury. In Scotland minor criminal cases are dealt with by the Justice of the Peace courts, while more serious cases are tried in the Sheriff court by a Sheriff, alone or with a jury. The most serious cases are heard in the High Court of Justiciary by a judge and jury.

Magistrates (Sheriffs) can hear statutory nuisance cases – nuisances that are defined by statute - where the aim is to abate the nuisance rather than recover damages. Civil cases in E&W and N.I. such as nuisance actions are usually tried in the county court by a circuit judge in E&W and by a county court judge in NI. Cases that are more complicated or of high value are tried in the High Court by a high court judge. The Technology and Construction Court is a division of the High Court in E&W which specialises in technically complex issues. In Scotland smaller claims are heard in the Sheriff Court and more valuable ones in the Outer House of the Court of Session.

Cases where a judicial review is brought against decisions of the government or local government are heard in E&W and N.I. by the administrative division of the High Court by a high court judge. In Scotland they are heard in the Court of Sessions.

Judges are drawn from the legal profession and have to have been in practice for a certain amount of years before they can apply to become a judge. Many in E&W start as Recorders – part time judges – before going on to become Circuit or High Court Judges. In Scotland they often start as part-time Sheriffs or have been senior lawyers and in NI they start as deputies sitting part time. Judges are independent of the state. There are no specialist environmental judges, although judges dealing with environmental cases have naturally built up expertise in that area.

Tribunals

In E&W, where a planning decision is disputed the applicant – but not any objectors – may appeal against the decision. The appeal will be heard by an inspector from the Planning Inspectorate. These inspectors will also hear an applicant's or permit holder's appeals from decisions in respect of environmental permits, water abstraction licences and other environmental regulatory matters. In Scotland such appeals are dealt with either by a Reporter appointed by the Directorate for Planning and Environmental Appeals or, in respect of certain planning applications, by the planning authority's Local Review Body, depending on the scale of the development and each planning authorities own procedures. In Northern Ireland appeals are heard by Commissioners from the Planning Appeals Commission.

Where someone is in breach of certain environmental legislation in E&W the relevant Agency can impose civil sanctions rather than take criminal proceedings – Environmental Civil Sanctions (England) Order 2010 (SI 2010/1157 (W. 2010/1821). Appeals in respect of such sanctions are heard by the First Tier (Environment) Tribunal. The legislatures of Northern Ireland and Scotland are considering similar provisions.

Forum Shopping

There is no forum shopping for different types of court available in civil actions in the UK. However a claimant may be able to bring an action in different local courts if he lives in one area but the harm occurred in another area. In Scotland claimants may in certain cases have a choice between bringing an action in the Sheriff Court or the Court of Session. In criminal cases (E&W) a defendant may choose to be tried in the magistrates' court or the Crown Court if the offence is one that can be heard by that court.

Appeals and extraordinary remedies

Appeals from magistrates in E&W and N.I. are heard by a judge in the crown (county N.I.) court. If the appeal is as to the law, then the defendant can require the magistrates to state a case for the High Court. Appeals from the crown or county court are to the Court of Appeal (Criminal) Division. Appeals from the Court of Appeal go to the Supreme Court.

Appeals from a county court decision in a civil case will go either to a high court judge or the Court of Appeal, depending on the nature of the case. Anyone wishing to appeal must get permission from the court. Appeals from a high court decision in a civil or administrative case go to the Court of Appeal and again permission is required.

In Scotland civil appeals from the sheriff are heard by the Court of Session (Inner House). Appeals from there go to the UK Supreme Court. Criminal appeals from the sheriff are heard by the High Court of Justiciary. There is a separate avenue in Scotland for ECHR appeals to go to the Supreme Court.

There are extraordinary remedies in UK law such as injunctions/interdicts, mandatory orders and prohibiting orders. These are discussed below.

Cassation

In the UK where a judicial review is made of an administrative decision the court only has power to uphold that decision, to quash it or to require an authority to redress a failure to act. The court cannot put itself in the place of the administrative body and take the decision for it. In criminal cases, appeal courts will impose the sentence they think appropriate, they do not send the case back to the lower court (E&W). In planning / environmental permit appeals the administrative decision maker can change the substance of the original decision.

Judicial procedures

In the UK criminal prosecutions are brought by public prosecutors (and in E&W by public authorities or private individuals). They are started by the issue of an information in the magistrates' court (E&W), summons in the magistrates court (NI) or by complaint to the Sheriff court or justice of the peace court or an indictment in the Sheriff court or High Court (Scotland). Environmental cases (E&W) will usually be brought by the Environment Agency, the Natural Resources Body for Wales or by local authorities.

Civil actions in E&W and N.I. to recover damages are dealt with by county courts or the High Court under the Civil Procedure Rule 1988 which set out the way in which cases should be brought and determined. In Northern Ireland, the County Court Rules (Northern Ireland) 1981 or the Rules of the Court of Judicature (Northern Ireland) 1980 apply. In Scotland the procedure is provided for in the Sheriff Court Ordinary Cause Rules or the Rules of the Court of Session. Environmental cases are usually actions for nuisance or allege negligence.

Actions to judicially review the decision of a public authority are started in the High Court under rule 54 of the Civil Procedure Rules in E&W, Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980 or rule 58 of the Rules of the Court of Session. Environmental cases are dealt with procedurally in the same way as other judicial reviews.

Judicial action from own motion

UK courts use an adversarial approach, rather than an inquisitorial one, reflecting the country's common law heritage. Thus cases have to be brought by parties and the courts cannot initiate an action by their own motion. Where a case is before the court, the court can raise issues of its own motion but the parties must be allowed to address the judge on them.

III Access to Information

The relevant provisions of the Aarhus Convention and Directive 2003/4/EC on public access to environmental information are implemented in E&W and N.I. by the Environmental Information Regulations 2004 (SI 2004/3391) and in Scotland by the Environmental Information (Scotland) Regulations 2004 (SSI 2004/52). These supplement the Freedom of Information Act 2000 (E&W and N.I.) and the Freedom of Information (Scotland) Act 2002.

Remedies

Where an applicant for information considers that the relevant authority has failed to comply with a request the first step is to go back to the authority under regulation 11 (E&W and N.I.) or 16 (Scot) and ask it to review its decision. If the applicant is still dissatisfied after this process then a complaint can be made in E&W and N.I.to the Information Commissioner's Office under section 50 of the 2000 Act or to the Scottish Information Commissioner under section 47 of the 2002 Act. Appeals against the Commissioner's decision are usually made in E&W and N.I. to the First-tier Tribunal or in Scotland to the Court of Session.

If an authority refuses a request it must write to the applicant and explain why the request was refused. It must say what exemptions apply (reg 14(3)&(4) E&W and N.I (13 (b) & (c) Scot)) and what the applicant can do if he or she wants to challenge the decision – reg. 14(5) or13(e)

Procedure

The Regulations impose a duty upon a public authority that holds environmental information to make it available on request. That duty is subject to a number of exceptions found in regulations 12 and 13 E&W and N.I. (10 & 11 Scot). A refusal of a request for environmental information must be made in writing as soon as possible and no later than 20 days (or 40 days in a complex case, reg. 7 (both)) after the date of receipt of the request, reg. 14 (13 Scot). A person whose request has been refused may ask the

authority to review its decision. The review decision must be notified as soon as possible, and not later than 40 days after receipt of the request for a review, reg.11 (16 Scot). If the refusal to disclose is maintained the person whose request has been refused ("the complainant") may apply for a decision from the Commissioner, section 50 of the 2000 Act as applied by reg. 18 (E&W and N. I.)(Section 47, Scot). The Commissioner will issue a formal decision notice under section 50(3) (49(5), Scot) on the application. The complainant or the public authority may appeal to the Tribunal against the Commissioner's decision notice, section 54 as applied *ibid* - to the Court of Session,(section 56, Scot). In E&W and N.I. an appeal to the Tribunal is governed by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. A notice of appeal must be received by the Tribunal within 28 days of the Commissioner's decision notice, rule 28(1). There is a further appeal on a point of law from the Tribunal to the Upper Tribunal.

The Commissioners will see the disputed information and have powers of entry and inspection (section 55 E&W and N.I.) (section 54 Scot) to obtain further information if they consider the provisions of the legislation are not being complied with. Where the release of information is contested in court, the court will view the information and rule as to whether it should be released, having regard to its contents.

Courts can order information to be disclosed in civil and criminal proceedings. This will be under rule 31 of the Civil Procedure Rules (E&W) (Rule 9a, Sheriff Court Ordinary Cause Rules (Scot) or Parts 21-26 of the Criminal Procedure Rules (E&W) Chapter 7a Criminal Procedure Rules (Scot).

IV Access to Justice in Public Participation

Administrative procedures

Environmental licences such as permits for waste management sites or water abstraction licences are issued by the Environment Agency (E), the Department of the Environment in NI through the Northern Ireland Environment Agency, the Scottish Environment Protection Agency, or the Natural Resources Body in Wales ("the Agencies"). The Agencies also enforce environmental protection legislation such as the Transfrontier Shipment of Waste Regulations 2007 and the Producer Responsibility Obligations (Packaging Waste) Regulations 2007. The regulation of the marine environment is mainly in the hands of the Marine Management Organisation (E&W and N.I.) who will issue licences under Part 4 of the Marine and Coastal Access Act 2009. For devolved consents, Marine Scotland has a similar role in waters adjacent to Scotland. Nature conservation matters such as establishing and supervising Sites of Special Scientific Interest (in NI known as Areas of Special Scientific Interest) are handled by Natural England, the Northern Ireland Environment Agency, by Scottish Natural Heritage and in Wales by the Natural Resources Body.

These bodies are concerned with major environmental issues. Local authorities will also have a role to play. They will licence some installations that can cause air pollution, monitor the quality of drinking water and be involved in nature conservation issues. They play a major role in the remediation of contaminated land under Part IIA of the Environmental Protection Act 1990. The Environmental Protection Act 1990 does not extend to NI. Contaminated Land in NI is covered by part III of the Waste and Contaminated Land (NI) Order 1996 which has not been commenced.

The decisions of these bodies, whether local or national like the Agencies, are generally subject to appeal to the government (Secretary of State, Scottish or Welsh Ministers). Thus for example a decision by the Agencies to refuse a water abstraction licence /CAR licence (controlled activities regulations licence) can be appealed to the Secretary of State or the Ministers by the unsuccessful applicant. In NI such appeals lie to the Planning Appeals Commission.

Appeals to the Secretary of State, the Ministers or the Planning Appeals Commission are only available to applicants for the licence etc. or the person who is the subject of an enforcement notice. They are rarely allowed to go direct to court. Any other individual who has an interest in the matter and who wishes to question a first instance decision can seek leave to bring a judicial review in respect of it.

Judicial review of administrative procedures

Generally any alternative remedies should be exhausted before making an application for judicial review. This is not a decisive rule, but the applicant must have permission from the court to bring the action and permission may be refused if alternative remedies have not been exhausted – e.g *R (Davies & ors) v Financial Services Authority* [2003] EWCA Civ 1128. In Scotland, the Court of Session Rules, Chapter 58.3 provide that reviews cannot be brought if the matter could be dealt with by appeal or review under or by virtue of any enactment.

Judicial review in E&W, Scotland and NI will look at procedural impropriety. That can involve issues like failing to adequately consult those who may be affected by a scheme – *R(Greenpeace Ltd) v Secretary of State* [2007] EWHC 311 (Admin) – failure to

follow procedural steps required by the relevant legislation or rules – *R (Kerr) v Cambridge City Council* [2011] EWHC 1623 (Admin) - and failure to give adequate reasons for the decision – *R (London Borough of Hillingdon) v Secretary of State for Transport* [2010] EWHC 626 (Admin).

The courts will look at the legality of the substantive decision. A public authority must act within the powers granted to it by Parliament – *Stewart v Perth and Kinross Council* [2004] SC (HL) 71. If it does not, the exercise of a purported power is *ultra vires* – outside the body's powers - and will be quashed. However courts will not second guess a democratically elected authority or a body like the Environment Agency that is appointed by Parliament to exercise statutory powers; as the authority to exercise that power has been given to the Agency, not the courts. But if the substantive decision is so unreasonable that no reasonable authority, properly advised, would have taken it then a court may quash it – *R (Technoprint Ltd) v Leeds City Council* [2010] EWHC 581 (Admin).

Generally courts will not verify material and technical findings and calculations in a judicial review. Unless a party raises the issue these matters are considered to have been rightly determined by the public authority. If there is a dispute it may be dealt with on the documents or, in rare cases, by cross-examination of witnesses – *R (McVey) v Secretary of State for Health* [2010] EWHC 437 (Admin).

Review of land use planning decisions

Land use planning in E&W is provided for in the Town and Country Planning Act 1990 (Planning (N.I.) Order 1991. Scotland - Town and Country Planning (Scotland) Act 1997). In E&W, regional strategies are required by Part 5 of the Local Democracy, Economic Development and Construction Act 2009 while local development documents will be made under Part 3 (Part 6 (W)) of the Planning and Compulsory Purchase Act 2004. The Planning Act 2008 sets out a special regime for major projects such as airports or large reservoirs. In Northern Ireland such projects may be dealt with under article 31 of the Planning (Northern Ireland) Order 1991. In Scotland the 1997 Act provides for the National Planning Framework (Part 1A) and for strategic and local development plans (Part II) .

In England, Wales and Northern Ireland, all these strategies or plans will usually be subjected to a public inquiry. An inspector (Commissioner N.I. Reporter(S)) will hold the inquiry and report to the Secretary of State (E) or Ministers (N.I. S&W). The Secretary of State or Ministers may require an authority to reconsider parts of the plan.

In Scotland, the National Planning Framework will be published following public consultation and parliamentary consideration; and strategic and local development plans will be subject to examinations, carried out by reporters, into unresolved issues arising from public consultation.

Once a strategy or plan has been formally approved by the authority any legal challenge must be made to it within six weeks of that approval. The challenge can only be made by a "person aggrieved" by the relevant document on the grounds that it is not within the appropriate power or that a procedural requirement has not been complied with. The case is dealt with by the High Court (E&W and N.I.) or the Court of Session (S) - Planning Act 2004, section 113, T&CP(S)A 1997, s. 238. The High Court can quash the relevant document wholly or in part or remit to the adopting authority with relevant directions – PA 2008, s.113 (7) – (7C), while the Court of Session may quash it wholly or in part – s. 238(2)(b). Actions are brought under Part 54 of the Civil Procedure Rules (E&W) (Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980, Chapter 58 of the Rules of the Court of Session (S)) and evidence is by relevant documents and written statements – see e.g. *Heard v Broadland District Council & ors* [2012] EWHC 344 (Admin).

Environmental Impact Assessment (EIA)

EIA is prescribed for applications for planning permission for certain developments in England by the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 - SI/2011/1824 and in NI by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 (N.I 2012/59, S 2011/139 W. SI 1999/293). These development regulations are supplemented by others dealing with specific regimes such as the Water Resources (Environmental Impact Assessment) (E&W) Regulations 2003 – SI 2003/164.

Screening decisions can be reviewed by the courts on an application for judicial review. An application (E&W) must be brought within three months of the relevant decision – *R(U & Ptnrs (East Anglia)Ltd) v Broads Authority* [2011] EWHC 1824 (Admin). The review is brought under Part 54 of the Civil Procedure Rules (E&W), (Chapter 58 of the Court of Session Rules (S) Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980). The review can be in respect of a failure to follow proper procedure – *R (Birch) v Barnsley MBC* [2010] EWCA Civ 1180 – failure to give adequate reasons as to why no EIA is required – *R (Bateman) v South Cambridge DC* [2011] EWCA Civ 157 – or because there was insufficient information on which the planning authority could determine whether EIA was required or not – *R (Cooperative Group Ltd) v Northumberland County Council* [2010] EWHC 373 (Admin).

Scoping decisions can also be reviewed by the courts. The rules are the same as for any other judicial review of an EIA decision. However the Regulations provide for the planning authority to give a scoping opinion on request by the developer. If it fails to do so the remedy is to ask the Secretary of State (Minister) to give a relevant direction. Thus scoping reviews are likely to be rare if an opinion has been sought; although an objector could challenge the opinion or direction.

Final decisions can also be challenged in judicial review proceedings in the same way as other EIA judicial reviews. A review of a final decision may consider the adequacy of the EIA but the courts are reluctant to find a document that has been through the EIA process to be inadequate – *R (Edwards & Pallikaropoulos) v Environment Agency* [2008] UKHL 22. The courts consider that the Regulations recognise that an environmental statement may well be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting "environmental information" provides the local planning authority with as full a picture as possible. There may be cases where the document purporting to be an environmental statement could not reasonably be described as an environmental statement as defined by the Regulations but they are likely to be few and far between – *R (Blewett) v Derbyshire County Council* [2003] EWHC 2775 (Admin).

The court will look at the procedural legality of EIA decisions. They will not go into the merits of the case unless it can be shown that the resulting decision was irrational – *R (Bowen West) v SoS for Communities and Local Government* [2012] EWCA Civ 321 The court will look at further evidence in relation to material and technical findings etc.. A mistake of fact giving rise to unfairness is a valid ground for review but any such mistake would have to have made a material difference to the relevant decision – *Eley v SoS for Communities and Local Government* [2009] EWHC 660 (Admin).

An application for review can be made by anyone "aggrieved" by the decision T&CPA 1990, s. 288(1) (T&CP(S)A 1997, s. 239 - as applied by regulation 42 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011). While normally participation in the decision sought to be challenged is required, it may not be a decisive factor if the applicant has a substantial interest that is prejudiced by the decision – *Ashton v SoS for Communities and Local Government & ors* [2010] EWCA Civ 600. Non-governmental organisations may have a sufficient interest but may have to have participated in the process for their application for judicial review to be permitted.

A court can grant an interim injunction to halt a project where it is alleged that the EIA was inadequate pending the resolution of that issue – *Belize Alliance of Conservation NGOs v Department of the Environment* [2003] UKPC 63. An application for an injunction will be made as the relief sought in judicial review proceedings. Usually the applicant will have to offer the court an undertaking that it will meet any losses caused to the developer if an injunction is refused. In E& W and NI if, in a case to which the Aarhus Convention applies, the court is satisfied that an injunction is necessary to prevent significant environmental damage and to preserve the factual basis of the proceedings, it must, in considering whether to require an undertaking and its terms, have particular regard to the need for the order overall such as would make continuing with the case prohibitively expensive for the applicant and to make any necessary directions to ensure that the case is heard at the earliest opportunity. ([Practice Direction 25, Civil Procedure Rules (E&W)] and the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (NI)) The court will consider the balance of convenience between the parties in determining the application – *R (Save Britain's Heritage) v SoS for Communities and Local Government & or* [2010] EWCA Civ 1500. There are no special rules in respect of injunctions in EIA cases.

IPPC Decisions

In E&W IPPC decisions are made under the Environmental Permitting (England and Wales) Regulations 2010 – 2010/675. In Northern Ireland they are made under the Pollution Prevention and Control (NI) Regulations 2013 – SR 2013/160. In Scotland they are made under the Pollution Prevention and Control (Scotland) Regulations 2000 (SSI 2000/323) and Pollution Prevention and Control (Scotland) Regulations 2012 (SSI 2012/360).

IPPC decisions can be reviewed in the courts in the same way as other administrative decisions. A person seeking to challenge a decision must have sufficient standing. The challenge is made under Part 54 of the Civil Procedure Rules (E&W), (Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980, Chapter 58 of the Court of Session Rules (S)). Evidence is given in accordance with the relevant Rules and is usually by written witness statement and documents.

The courts will consider whether the correct procedures have been followed – *R (Rockware Glass) v Chester City Council* [2006] EWCA Civ 992. They will consider whether the relevant plant falls within the Regulations – *Scottish Power Generation (No.2) v Scottish Environment Protection Agency* 2005 SLT 641. They will not consider the substantive merits of the decision on the basis that this would be to usurp the function of the body entrusted by Parliament to make that decision. They will look at the technical evidence and if the decision was based on a material error that affected the decision they may quash that decision.

In *R (Edwards) v The Environment Agency* [2004] EWHC 736 Mr Edwards was a resident in a town in which a cement factory was seeking a permit under IPPC Regulations. He did not make any representations to the Agency during the consultation. He brought proceedings for a judicial review of the decision. Even though he was temporarily homeless at the time it was held he had a sufficient interest as a resident to bring the action.

Injunctive relief is available in judicial review proceedings in the same way as for EIA cases. There are no special rules applicable to IPPC procedures besides those generally applying nationally.

V Access to Justice against Acts or Omissions

Civil claims

A civil – as opposed to criminal – claim can be brought against someone whose activities adversely affect private property. This will usually be an action in nuisance that must be brought by someone who enjoys exclusive possession of the property. The principles in determining whether a nuisance has been suffered by the claimant were set out in *Barr v Biffa* [2012] EWCA Civ 312. The English (W and NI) law of nuisance is set out in text books such as *Clerk & Lindsell on Torts* 20th edn. Chapter 20. In these jurisdictions there is no requirement to establish fault on the part of the Defendant. In Scotland the test for nuisance is slightly different - what can reasonably be described as intolerable behaviour or as something which would not be tolerated by a reasonable person – *Robb v Dundee City Council* 2002 SC 301. In addition there must be an averment of fault - *RHM Bakeries (S) Ltd v Strathclyde RC* 1985 SC (HL) 17

Where contaminants flow from one person's land to another's the person whose land is contaminated may have an action in trespass. It may also be negligent to cause environmental harm so that, if damage is caused and the person causing the damage owes a duty of a care to the person suffering from it, he will be liable. In all cases the courts may award pecuniary damages and may also issue an injunction to stop it happening again.

Claims in nuisance, trespass or negligence can be directly made against state bodies where their activities have caused the harm – *Dennis v Ministry of Defence* [2003] EWHC 793 (QB). However if the cause of the harm is the result of a body carrying out operations authorised by statute it will have to be shown that it was acting negligently – *Allen v Gulf Oil Refining Ltd* [1981] AC 1001. If the allegation of negligence amounts to saying that the relevant body should have spent public funds to prevent the harm a court may hold that the issue is not justiciable as decisions as to spending funds are for that body – *Dobson v Thames Water Utilities Ltd* [2011] EWHC 3253 (TCC). Where the issue of an environmental permit or planning permission results in harm to someone, the state body that issued the permit or permission is rarely liable in negligence as the body usually owes no duty of care to the affected person.

Authorities are not usually liable to compensate an individual simply for breaching a duty – *Bourgoin SA v Ministry of Agriculture Fisheries and Food* [1986] QB 716. However where in a judicial review the court finds a breach of duty it may award damages as long as damages are not the sole relief claimed. In addition damages may be awarded where a breach of the claimant's human rights is found. A claim against a state body can include a claim for an injunction.

Environmental liability

The EU Directive on Environmental liability (2004/35/EC) is implemented in England by the Environmental Damage (Prevention and Remediation) Regulations 2009 – SI 2009/153 (W. 2009/995) In Northern Ireland they are implemented by SR 2009/252 and in Scotland by the Environmental Liability (Scotland) Regulations (SSI 2209/266). The competent authorities for the purposes of the Directive are in E&W usually the Environment Agency or the Natural Resources Body for Wales, but can be Natural England for habitats or species on land or the Secretary of State for the sea. In N.I. the Department of the Environment is the authority while in Scotland it will usually be SEPA but Scottish Natural Heritage for harm to protected species and habitats on land or inland waters and the Scottish Ministers for harm in the coastal sea or territorial waters.

The Regulations provide for an "interested person" – which would include a non-governmental body promoting environmental protection – to be able to request the competent authority to take action under them. A request must be made in writing and set out the person's interest (E&W and N.I) and give enough information to enable the authority to identify the nature and location of the incident.

A court review of decisions made by competent authorities on requests for action under the Regulations will be the same as for any other judicial review. The court will ensure that correct procedures were followed. It will review the legality of the decision. It may intervene on technical or other errors if those errors were material and that affected the decision it may quash that decision.

An action to enforce liability will be brought under Part 54 of the Civil Procedure Rules (E&W), (Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980, Chapter 58 of the Court of Session Rules (S)). The applicant for judicial review issues a

claim form in the High Court (E&W) in accordance with Part 54 or Order 53 (N.I.) or in Scotland a petition under Chapter 58 of the Rules. Evidence is given in accordance with the relevant Rules and is usually by written witness statement and documents.

VI Other Means of Access to Justice

In E&W and S an action for statutory nuisance – a nuisance as defined in the relevant statute - can be brought in a magistrates' or sheriff court under Part III of the Environmental Protection Act 1990. Section 79(1) of the Act sets out what constitutes a statutory nuisance. Under section 82 an individual can bring his action in the relevant court if he is "aggrieved" by the nuisance. The court can make an order for the abatement of the nuisance and, under section 82, fine the Defendant. In N.I. this procedure is available under Part 7 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011.

The Parliamentary Ombudsman (E&W), The Assembly Ombudsman (N.I.) or the Scottish Public Services Ombudsman investigate issues of maladministration by government bodies. In E&W, the Local Government ombudsmen will do the same for local authorities, while in NI this will be done by the Northern Ireland Ombudsman – the SPSO investigates local authorities in Scotland. The E&W ombudsmen can act jointly and did so in a case of maladministration involving the Environment Agency and two local authorities who were ordered to pay the complainants a total of £95,000 in respect of a failure to deal properly with an illegal waste site. Complaints to the E&W Parliamentary Ombudsman must be referred to her by a Member of Parliament – Assembly Ombudsman by an Assembly member.. A complaint to the Local Government Ombudsman, NI Ombudsman or SPSO should only be made after the relevant body has been given a chance to deal with the issue. The ombudsmen can ask the body for an apology, repayment of money due, for example, tax or benefit, compensation, for example, for delays, improved procedures or better administrative procedures at the relevant body.

Public prosecutions in respect of environmental offences (E&W) will usually be brought by the competent authority in relation to that offence – for example the Environment Agency. These authorities have powers to investigate offences and enter land or buildings to take samples and interview people in relation to a suspected offence.

A private prosecution can be brought in E&W in respect of many environmental offences – Prosecution of Offences Act 1985, section 6 - but some may only be brought by or with the consent of the Director of Public Prosecutions. In Scotland private prosecutions are very rare and need the consent of the Lord Advocate. In Northern Ireland private prosecutions may need the consent of the Director of Public Prosecutions.

Most national or local government bodies will also have internal complaints mechanisms. If the result is unsatisfactory the complainant can go to the relevant Ombudsman or seek a judicial review. There are specific complaints organisations for utilities such as water services - the Consumer Council for Water (E&W) or the Water Industry Commission for Scotland, the Consumer Council (N.I.)

VII Legal Standing

Non-governmental organisations may have a sufficient interest but would probably – the case law does not provide certainty - have to have participated in the process for their application for judicial review to be permitted. In practice, there are few examples of individuals and NGOs being denied standing. An unincorporated association such as a member's club has no legal personality and so cannot sue or be sued. Actions by or against such associations are brought by or against the chairman or some other member. However such organisations may be amenable to judicial review – *R v Panel on Take-overs and Mergers ex p. Datafin* [1987] QB 815.

Legal Standing	Administrative Procedure (Planning or IPPC inquiry)		Judicial procedure (Judicial review)
	Only developer /permit holder may bring appeal	Take part in an appeal	Any person with 'sufficient interest' – see *Axa General Insurance Ltd v The Lord Advocate* [2011] UKSC 46.
Individuals		Yes	Yes
NGOs		Yes	Yes
Other legal entities		Yes	Yes
Ad hoc groups		Yes	Yes
Foreign NGOs		Yes	Yes

Any other		Yes	Yes

To bring a private civil action in nuisance – such as noise or odour - the claimant must have exclusive possession of the property affected by the nuisance. However a 'statutory nuisance' action under section 82 of the Environmental Protection Act 1990 can be brought by a person "aggrieved" by the nuisance.

Anyone has standing to bring a private criminal prosecution where such an action is available.

There are no different rules for sectoral legislation. In the UK judicial review procedures apply to all judicial reviews. Although legislation like the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675 Schedule 5, Part 1) in E&W makes special provision for public consultation, the definition of "public consultee" is "a person whom the regulator considers is affected by, is likely to be affected by, or has an interest in, an application." There is no difference here between the ordinary judicial review standard of "sufficient interest." The term "sufficient interest" for judicial review cases was considered in *Axa General Insurance Ltd v The Lord Advocate* [2011] UKSC 46.

There is no formal *actio popularis* in UK law. However the rights of NGOs or individuals to intervene in administrative decisions means that there is effectively such an action.

A state body is a legal entity just like a private company. The Environment Agency, for example is a body corporate. It can bring or defend legal actions. Thus the Agency could in theory bring an action for the judicial review of a decision by another government body. The same is true of ombudsmen or public prosecutors like the Crown Prosecution Service. However this is very unlikely to ever happen in practice and the courts do not favour this type of action and expect government bodies to resolve their differences without recourse to legal action.

VIII Legal Representation

The UK has an adversarial system reflecting its common law heritage. In environmental judicial review proceedings (E&W) the claimant's lawyer will formulate the application for permission to bring the action, setting out the grounds on which it is based. Usually the application is dealt with on the claimant's evidence without a hearing. However if there is an oral hearing, the defendant's lawyer may attend and explain to the court why it is considered that permission should not be granted. If permission is granted, the defendant will file its evidence. Both lawyers will file a skeleton argument with the court, presenting an outline of their case. At the hearing each lawyer will supplement the skeleton argument with oral submissions.

It is not compulsory to have a lawyer in any environmental hearing, whether at a planning or other inquiry or a judicial review.

Lawyers who specialise in environmental law can be found using directories such as *Chambers & Partners* or the *Legal 500.* These directories are issued every year. The Environmental Law Foundation (ELF) specialises in environmental law and the UK Environmental Law Association (UKELA) is a body of environmental lawyers. The Planning and Environmental Bar Association (PEBA) is a body of barristers in E&W who do environmental and planning cases.

IX Evidence

In criminal cases evidence is by witnesses giving evidence orally and subject to cross-examination. In civil claims written witness statements are provided on which the witnesses are cross-examined on oath (E&W). In Scotland evidence is given orally by witnesses. In administrative hearings such as planning inquiries witnesses statements are provided on which the witnesses are cross examined but rarely under oath. In judicial review hearings the evidence is all written witness statements or documents with no cross-examination (E&W). In Scotland most judicial reviews are decided at the First Hearing on the basis of legal argument, but if there is a hearing on evidence, that would be given orally by witnesses.

The evidence of the witnesses in major criminal cases is evaluated by a jury. While the judge may comment on the evidence of fact, the jury is the sole arbiter of the facts in the case. In all other trials the magistrate, judge or inspector (reporter) evaluates the evidence given. He or she must take into account all the material relied on and give reasons for preferring one side to the other.

It is for the parties to provide the evidence for the court. On a judicial review the administrative body whose decision is being reviewed has a duty to disclose all relevant documents – a duty of candour. New evidence can be introduced if material. The court can request evidence from one party or the other but usually does not.

Parties can instruct experts to give evidence in a case. For example in a civil claim each party may instruct experts on the operation of the relevant facility and how harm from it can be avoided. The court may order that such evidence is to be given by a joint expert (E&W).

Expert evidence is not binding on the judge. It is for the judge to evaluate all the evidence and accept or reject it. In criminal cases the role of the expert is to provide the judge or jury with the necessary scientific criteria for testing the accuracy of their

conclusions, so as to enable the judge or jury to form their own independent judgment by the application of those criteria to the facts proved in evidence.

X Injunctive Relief

In some legislation it is provided that the bringing of an appeal will not have the effect of suspending a decision or notice – e.g. Environmental Permitting (England and Wales) Regulations 2010, reg. 31. In other legislation it is stated that the relevant notice will have no effect until the appeal is finally determined or withdrawn – Town and Country Planning Act 1990, s. 175(4) (in Scotland, 1997 Act s. 131(3)). In judicial review proceedings the applicant can ask the court for an interim order to stay the effect of the relevant decision until the case is decided.

Where the legislation states that the bringing of the appeal does not suspend the decision or notice, that decision or notice will have immediate effect. In cases where the usual rule is that the notice is of no effect until the appeal is determined the authority may be able to serve another notice to halt the activity immediately – e.g a stop notice in planning cases – Town and Country Planning Act 1990, section 183 (in Scotland 1997 Act, s 140). However it may have to compensate someone adversely affected by the stop notice if the enforcement notice is overruled. Where the legislation gives an authority a discretion as to whether or not to suspend the notice pending appeal – e.g Statutory Nuisance (Appeals) Regulations 1995, reg. 3 – the authority must properly consider the balance between the public interest in the notice having immediate effect and the consequences of that to the person served with the notice – *Cromarty Firth Port Authority v Ross and Cromarty District Council* 1997 S.L.T. 254.

A civil – as opposed to criminal - court can grant an interim injunction – interdict in Scotland - to halt a project where it is alleged that the administrative decision was inadequate pending the resolution of that issue – *Belize Alliance of Conservation NGOs v Department of the Environment* [2003] UKPC 63. There are no special rules in respect of injunctions in environmental cases. Local and other authorities, as well as issuing enforcement and other notices, may be able to bring an action for an injunction against someone who is in breach of the relevant legislation – e.g. Environmental Protection Act 1990, s. 81(5).

Injunctions (interdicts) can also be awarded in cases between individuals or other legal entities. Injunctions are usually awarded to stop an activity but mandatory injunctions are occasionally awarded to require someone to do something. Where there is a risk of impending damage a *quia timet* injunction – an injunction where harm is feared but has not eventuated - may be granted but these are rare.

An application for an injunction (interdict) will be made as the relief sought in judicial review proceedings or in a claim between individuals etc... The time limits for asking for an injunction are those for bringing the claim. An application for an urgent interim injunction can be made before proceedings are issued. Where an interim injunction (interdict) is sought, usually the applicant will have to offer the court an undertaking that it will meet any losses caused to the defendant if an injunction is refused. In E& W and NI if, in a case to which the Aarhus Convention applies, the court is satisfied that an injunction is necessary to prevent significant environmental damage and to preserve the factual basis of the proceedings, it must, in considering whether to require an undertaking and its terms, have particular regard to the need for the order overall such as would make continuing with the case prohibitively expensive for the applicant and to make any necessary directions to ensure that the case is heard at the earliest opportunity. ([Practice Direction 25, Civil Procedure Rules (E&W)] and the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (NI). The court will consider the balance of convenience between the parties in determining the application – *R (Save Britain's Heritage) v SoS for Communities and Local Government & or* [2010] EWCA Civ 1500. Courts have the power to suspend the operation of an injunction. The person subject to the injunction may make an application to discharge it.

A decision by a court to award an injunction (interdict) can be appealed to a higher court. Usually the appellant will need leave from either the court that issued the injunction or the appeal court.

XI Costs

An applicant seeking access to justice in environmental matters may have to pay court fees, lawyers' fees, expert witness' fees, expenses for other witnesses and the costs involved in preparing documents, plans, etc.

Court fees

There are no court fees in respect of criminal cases at first instance but an appeal to a higher court may involve a fee.

The court fee for starting a judicial review claim is £60 (E&W). For starting a civil claim in E&W the fee varies according to the amount claimed. If the claim is worth between £1,000 - £1,500, the fee is £70. If it is worth between £15,000 - £50,000 the fee is £340. An application for leave to appeal to the Court of Appeal is £235 with a further £465 at a later stage. Claimants may be eligible for fee remission depending on their circumstances.

All petitions to the Inner or Outer House of the Court of Session in Scotland cost £180, appeals to the High Court of Justiciary are £90.

In Northern Ireland a notice of motion for judicial review costs £200. A civil claim in the High Court costs a fee of £300. Filing a notice of appeal is £500.

Costs

The level of costs may vary considerably, depending on the nature and complexity of the case, the experience of the lawyer and the amount of documents. In E&W solicitors' fees for cases that will be disputed are known as "contentious costs." The solicitor will usually charge an hourly rate depending on the grade of fee earner. Thus a para-legal might charge £80 an hour while a partner might charge £200 an hour. A barrister in the case will charge a brief fee and hourly fees for drafting or other work. In Scotland 'costs' are known as 'expenses.' To give an idea of costs in judicial review cases in *Allen v Secretary of State for Communities and Local Government* [2012] EWHC 671 (Admin) the successful applicant was awarded £9,456 plus VAT for a one day case. In *Road Sense v Scottish Ministers* [2011] CSOH 10 the expenses of one side were estimated at £82,000 to £90,000 for a four day hearing. This range of costs is similar in all UK jurisdictions.

Costs in civil claims may be higher, reflecting the common law legal systems in the UK, which are based on case law rather than a civil code and the corresponding absence of an investigative role for judges (meaning that a heavier burden falls on parties and their legal representatives to present relevant case law before the courts). In a case in nuisance – *Bontoft v East Lindsey District Council* [2008] EWHC 2923 (QB) - one side's costs were £195,000 for a six day trial. Costs can be increased in cases done under a conditional fee agreement but the legislation allowing such agreements was repealed in April 2013. In Scotland these are 'speculative fees' which are provided for by the Act of Sederunt (Fees of Solicitors in Speculative Actions) 1992/1879 and the Act of Sederunt (Fees of Advocates in Speculative Actions) 1992/1897.

Injunctions

There is no different level of fee in injunction (interdict) cases. Usually the party seeking an injunction (interdict) will have to give an undertaking in damages, although see the Civil Procedure Rules, Practice Direction 25 (E&W) and the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (NI). Under the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (NI) and the amended Practice Direction 25A of the Civil Procedure Rules (E&W) the court must, in Aarhus Convention cases, have particular regard to the need for the terms of the order overall not to be such as would make continuing with the case prohibitively expensive for the applicant when considering whether to require an undertaking by the applicant to pay damages.

Awards of costs (expenses S)

The general rule in UK jurisdictions is that costs (expenses Scot.) follow the event or the loser pays – e.g Civil Procedure Rules (E&W) Part 44.3. However the courts have a wide discretion in awarding costs. The starting point is that the loser pays but the successful party's costs can be reduced if that party has failed on some issues in the case or has raised irrelevant matters. In addition courts favour the use of ADR and a party that unreasonably fails to engage in ADR may suffer costs consequences – *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576. The court in making a costs order will also look at the conduct of the parties from the start of the proceedings and consider whether any reduction in costs should be made because improper conduct.

Under Part 36 of the Civil Procedure Rules (E&W) one party can make an offer to the other to settle the claim, usually by offering a sum of money – Minute of Tender (Scot.) If the offer or tender is rejected but the person rejecting it fails to obtain a more advantageous judgment then there may be costs penalties.

Special costs rules now apply throughout the United Kingdom for certain environmental cases limiting the exposure of losing parties to the other side's costs.

XII Financial Assistance Mechanisms

There are no special exemptions from court fees or costs in respect of environmental matters in UK jurisdictions. There are such exemptions from fees for those on low incomes.

UK courts have been applying Article 9.4 of the Aarhus Convention – which includes a requirement that environmental cases should not be 'prohibitively expensive' – by means of Protective Costs Orders (E&W and N.I) or Protective Expenses Orders (Scot.) The law around these orders is relatively new and is still being developed. The Aarhus Convention is now specifically applied to costs in judicial review proceedings in E&W by the Civil Procedure (Amendment) Rules 2013, Part 45; in Scotland, by similar rules applying to all environmental cases, made in March 2013; and in NI by the Costs Protection (Aarhus Convention)

Regulations (Northern Ireland) 2013, which sets out specific rules for fixed protected costs orders for proceedings to which the Convention applies.

According to these rules:

(1) At first instance, an appeal that is subject to the Aarhus Convention may not be ordered to pay costs exceeding £5,000 for individuals and £10,000 legal persons and persons representing associations. Costs recovery against a losing defendant is capped at £35,000.

(2) On appeal, the rules of the Civil Procedure Rules 52.9A governing costs recovery apply, whereby the court can make an order limiting the costs.

(3) The Supreme Court may also make an order limiting costs recovery in an Aarhus case based on the Costs Practice Direction (as per last amendment in November 2013).

Prior to those rules, the award of a PCO in judicial review cases were governed by the 'Corner House' principles which were set out in *R (Corner House Research) v The Secretary of State for Trade and Industry* [2005] EWCA Civ 192 at para. 74 :

(1) A protective costs order may be made at any stage of the proceedings, on such conditions as the court thinks fit, provided that the court is satisfied that: (i) the issues raised are of general public importance; (ii) the public interest requires that those issues should be resolved; (iii) the applicant has no private interest in the outcome of the case; (iv) having regard to the financial resources of the applicant and the respondent(s) and to the amount of costs that are likely to be involved, it is fair and just to make the order; and (v) if the order is not made the applicant will probably discontinue the proceedings and will be acting reasonably in so doing.

(2) If those acting for the applicant are doing so *pro bono* this will be likely to enhance the merits of the application for a PCO.

(3) It is for the court, in its discretion, to decide whether it is fair and just to make the order in the light of the considerations set out above.

These principles are modified in environmental cases to remove the public interest requirement and the emphasis on the claimant' s means – *R (Garner) v Elmbridge Borough Council* [2010] EWCA Civ 1006. They continue to apply in respect of non-judicial review cases within the scope of the Aarhus Convention.

Legal Aid

Civil legal aid in E&W is provided by the Community Legal Service (CLS). There is no discrete area of funding for environmental cases. However funding can be obtained through the 'public interest' category. Thus the CLS granted funding for judicial review proceedings concerning the need for a public inquiry into the decommissioning of nuclear submarines as the case had a significant public interest. But many potential actions will fail this test as either not benefiting the wider public or not raising any new issues of law. Thus an application for funding to challenge the decision of the Environment Agency to grant an operating licence for an incinerator near the applicant's home was refused. The Scottish Legal Aid Board has a similar criteria of "wider public interest."

Criminal legal aid may be available for defendants but not for those wishing to bring a private prosecution.

Funding decisions by the CLS are determined by its "Funding Code." Section 7 of the Code deals with judicial review. Section 7.5 states that "Where the case does not appear to have a significant wider public interest, to be of overwhelming importance to the client or to raise significant human rights issues, Legal Representation will be refused if: (i) prospects of success are borderline or poor; or (ii) the likely costs do not appear to be proportionate to the likely benefits of the proceedings having regard to the prospects of success and all the circumstances." This would apply for all individuals. NGOs are unlikely to be able to get legal aid. In Scotland the grant of legal aid is determined by the Civil Legal Aid Handbook, Part IV, Chapter 3 of which is concerned with assessing probable cause and reasonableness.

Pro Bono

Pro bono work in the UK is facilitated through the ProBono UK.net website. This provides access to information about how to get free legal advice. In E&W the Solicitors Pro Bono Group – "LawWorks" also has a website showing where to go for help. For barristers in E&W, the Bar Pro Bono unit acts as a clearing house to match barristers to cases. The Unit receives applications for assistance through advice agencies and solicitors. The Unit aims to help in cases where the applicant cannot afford to pay for the assistance sought or obtain public funding, has a meritorious case, and needs the help a barrister can provide. Neither of these organisations specialise in environmental work but can put an individual in touch with those who do.

LawWorks Scotland provides a similar service in Scotland to LawWorks in E&W; although the two bodies are separate entities. The Faculty of Advocates has a Free Legal Services Unit whose work includes planning and environmental cases.

The Northern Ireland Pro Bono Group provides advice and representation by barristers and solicitors who have volunteered to join a panel and who cover the full range of legal specialisations. Volunteers have offered their services free of charge up to 3 days or 20 hours each year. The cases most likely to meet the criterion of the Pro Bono Unit will be appeals, applications for leave to appeal, judicial review applications, specific steps in proceedings, tribunal hearings and advisory work

Legal clinics

There are no legal clinics specialising in environmental cases in E&W or NI. However Citizens Advice Bureaux and Law Centres will either help with environmental cases or pass the matter on to someone who can help. The Environmental Law Centre Scotland offers advice to the public on environmental issues.

Public interest organisations

The Environmental Law Foundation is the leading organisation in the UK providing free legal advice to local communities with environmental concerns. For almost two decades it has pioneered the provision of free advice to vulnerable communities facing a range of environmental threats including adverse impacts of pollution and loss of green space and biodiversity. The Public Law Project is a national legal charity which aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage. It will do some environmental cases.

XIII Timeliness

Planning applications must be determined within eight weeks although if they require EIA the time limit is extended to sixteen weeks. Authorities determining IPPC applications must usually make a decision within three months, although there are other time limits in the Regulations. Applications for other licences may not have a legal requirement for determination within a specific time but authorities are encouraged to say how long it will take to issue the licence.

If a planning decision or environmental permit application is not determined within the required time it will be deemed to have been refused. That enables the applicant to appeal to the Secretary of State or Ministers, or in certain circumstances to a Local Review Body in Scotland.

Court procedures

Prior to 1 July 2013, judicial review applications on environmental matters in E&W must have been brought within three months of the relevant decision. The Civil Procedure Rules stated (54.5) proceedings must be filed promptly and in any event not later than three months after the grounds to make the claim first arose. However the “promptly” aspect has been considered insufficiently precise. Thus where EU legislation is being considered the claimant has three months – *R (U & Ptnrs (East Anglia) Ltd) v Broads Authority* [2011] EWHC 1824 (Admin). Since 1 July 2013, the time limits for filing a claim form for judicial review has been amended to six weeks in relation to a decision under the “planning acts” (the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990). (The Civil Procedure (Amendment No. 4) Rules 2013).

Time limits for the bringing of civil actions in nuisance, trespass or negligence are set out in the Limitation Act 1980 (E&W). Under section 2 of the Limitation Act 1980 an action founded on a tort – such as nuisance – must be brought within six years from the date on which the cause of action accrued. Under section 6 of the Prescription and Limitation (Scotland) Act 1973 any claim must be brought within five years. Under article 6 of the Limitation (Northern Ireland) Order 1989 the time is six years. Time starts to run from either the date of the injury or the date – if later - the claimant knew the injury was attributable, in whole or in part, to the act or omission that is alleged to constitute negligence, nuisance or breach of duty. “Knowledge” here means a reasonable belief in the facts leading to attribution – *Ministry of Defence v AB & Ors* [2012] UKSC 9.

Where an individual intends to bring an action under section 82 of the Environmental Protection Act 1990 in a magistrates’ or sheriff court, notice of the action must be given 21 days before proceedings are commenced. (S. 82(6)). Given the nature of the proceedings the nuisance will still be existing at this time.

Duration of cases

The duration of the case depends on the complexity of the legal and factual issues. Judicial review cases - where there is no oral evidence heard – can take from half a day to four or five days. Environmental civil proceedings where both sides call witnesses

and experts can take much longer. A relatively simple noise nuisance case might take two or three days. *Dobson v Thames Water Utilities Ltd* [2011] EWHC 3253 (TCC) involved more than ten witnesses of fact on each side and four experts on each side dealing with different disciplines. The case lasted six weeks.

In criminal cases, the enforcement agency's investigation may take months or even years from the date of the crime to the issuing of proceedings. Usually there is an initial hearing in a magistrates' or Sheriff's court within three weeks of the date proceedings were issued. If a guilty plea is to be made the court will usually deal with it within a month; although in NI, England & Wales magistrates may send the case to a Crown Court if they consider their sentencing powers are not sufficient to deal with the offence. A summary trial in the magistrates' or sheriff's court may take from one to three days; although longer cases are possible.

A serious case will be referred by the magistrates to the Crown Court. In a Crown Court with a jury cases will go to Pre-Trial Review which may take more than one hearing so extending the case for several months. The trial itself can be from one day to a month or more – a recent prosecution for waste offences resulted in a six week trial.

Deadline for judgments

There are no set deadlines for judges to give judgments. In straightforward cases (E&W) the judge maygive an oral judgment immediately following the hearing. In more complex cases judgment may be reserved and will usually follow in writing within two to six months. Longer than six months is possible but not common.

As there are no set deadlines there are no sanctions against courts delivering decisions in delay. However in cases involving issues of human rights there is an expectation that decisions will issue promptly.

XIV Other Issues

Environmental decisions are either challenged during the EIA process or when a decision is issued. If a public inquiry is held before decisions are issued members of the public will be able to address the inquiry.

Although there is currently no single UK government website regarding access to justice in environmental matters, information on various aspects is available through the central government website (http://www.gov.uk/) and the websites of the Scottish Government and Northern Ireland Executive. Information and opinions are also available from NGOs like UKELA or Friends of the Earth and groups like the UK Environmental Law Association (UKELA).

Alternative Dispute Resolution exists in the UK. It is strongly encouraged by the civil courts. The pre-action protocol for judicial review (E&W) states that "Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored." It is accessible to the public through leaflets such as the Legal Services Commission "Alternatives to Court" CLS Direct Information Leaflet 23.

Mediation is frequently used in civil claims between individuals or corporate bodies. Mediation is available in judicial review cases but is not much used – Public Law Project: 2009 *Mediation and Judicial Review*.

XV Being a Foreigner

There are no specific anti-discrimination clauses regarding language or country of origin found in the procedural laws of the UK. However the courts are public bodies and thus bound by the Equality Act 2010 which makes it unlawful to discriminate on the basis of race or nationality. The Act imposes a race equality duty with which the courts must comply. Courts have guidance on equal treatment of all those who come before them in "Bench Books" that are issued to judges – e.g *The Equal Treatment Bench Book for England and Wales.*

Use of different languages is facilitated in court procedures. Internally languages like Welsh are provided for in hearings. Other languages can be used with an interpreter. Courts will have advisory leaflets available in a number of languages.

In criminal cases and some tribunal proceedings the court service will arrange for an interpreter and will pay the fee; although in criminal cases if the defendant is convicted the fee may be part of the costs of the case he or she is ordered to pay. In civil cases it is for the parties to make such arrangements and pay the fees.

XVI Transboundary Cases

As the UK consists of islands with only the Ireland / Northern Ireland land borders, transboundary cases are very rare. Under regulation 24 of the Infrastructure Planning (EIA) Regulations 2009 development likely to have significant transboundary effects on the environment in another EEA state must be notified to that state. The state may then participate in the procedure under the Regulations. There are no procedural rules for the participation although EU legislation like the Mediation Directive has been

implemented in court rules in the UK. Civil liability is determined under conventions such as the International Convention on Civil Liability for Oil Pollution Damage 1969 where relevant. Otherwise Part III of the Private International Law (Miscellaneous Provisions) Act 1995 deals with the applicable law. Section 11(2)(a) provides that the law of the country where the damage occurred is the applicable law.

There are no decisions in UK law on what constitutes 'the public' in a transboundary dispute.

There are no decisions in UK law on whether a foreign national who is adversely affected by a project in the UK would have sufficient interest to participate in a public inquiry or a judicial review in relation to the project. However if he or she would otherwise have a sufficient interest it might be contrary to the Equality Act 2010 to deny participation. If it was accepted that the person had sufficient interest the procedure would be the same as for anyone else. Legal aid is unlikely to be available given the criteria of "significant wider public interest" discussed above.

If a person has a 'sufficient interest' in proceedings then he or she may participate in them.

Although there are no decisions of UK courts on this, if a person in the foreign state could be adversely affected by the proposal there is no reason why he or she could not have a significant interest for the purposes of judicial review.

The appropriate forum is the country that is the more preferable for securing the ends of justice - *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460. This is likely to be the country whose law is applicable to the dispute. In the UK under section 11 of the Private International Law (Miscellaneous Provisions) Act 1995 the applicable law is usually the country where the injury or damage occurred but this can be displaced in accordance with section 12. If a UK court has accepted jurisdiction in a dispute that decision can be challenged but it will be for the challenger to show that the decision was wrong.

As Gibraltar has a land border with Spain, there is the possibility for transboundary cases to arise. Please see Annex A for details.

Related links

Access to justice

- Environmental Protection Act 1990 http://www.legislation.gov.uk/ukpga/1990/43/contents
- Town and Country Planning Act 1990 http://www.legislation.gov.uk/ukpga/1990/8/contents
- Environmental Information Regulations 2004 http://www.legislation.gov.uk/uksi/2004/3391/contents/made
- For detailed Aarhus costs rules: http://www.legislation.gov.uk/nisr/2013/81/regulation/3/made
- Environmental Damage (Prevention and Remediation) Regulations 2009 http://www.legislation.gov.uk/uksi/2009/153/made
- Rules for judicial review actions (E&W) http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part54
- Rules for judicial review actions (Scot) https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=12

Ombudsmen offices and prosecutor offices

- Environment Agency http://www.environment-agency.gov.uk/
- Scottish Environment Protection Agency http://www.sepa.org.uk/
- Ombudsman UK https://www.gov.uk/government/organisations/the-parliamentary-and-health-service-ombudsman
- Ombudsman Scotland http://www.scottishombudsman.org.uk/
- Ombudsman N.I. http://www.ni-ombudsman.org.uk/

Environmental experts

- ENDS Directory (Costs £65) http://www.endsreport.com/reports/endsdirectory2012
- Expert database (Free) – use keyword 'environment' http://www.expertsearch.co.uk/

Environmental lawyers

- Chambers & Partners http://www.chambersandpartners.com/UK

Bar Associations

- Planning and Environmental Bar Association http://www.peba.org.uk/
- Advocates (Scot) specialising in environmental matters http://www.advocates.org.uk/stables/specialareas/P003.html

- Barrister (N.I.) http://www.barlibrary.com/barristers-directory/?name=&yearofcall=&specialism=51&x=31&y=13&letter=

Pro-Bono environmental law offices

- Environmental Law Foundation http://www.elflaw.org/
- Public Law Project http://www.publiclawproject.org.uk/

National and International NGOs

- Friends of the Earth http://www.foe.co.uk/
- Greenpeace http://www.greenpeace.org.uk/
- Royal Society for the Protection of Birds https://www.rspb.org.uk/
- UK Environmental Law Association https://www.ukela.org/
- UK World Wide Fund for Nature http://wwf.org.uk/

Information on Access to Justice

- UK Environmental Law Association https://www.ukela.org/

Information on Crown Dependencies

- Ministry of Justice Factsheet: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361537/crown-dependencies.pdf

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Last update: 14/09/2016

Annex A: Gibraltar

Introduction

Gibraltar is a British Overseas Territory in Europe. The Gibraltar Constitution Order 2006 allows Gibraltar self-government in all matters excluding external affairs, defence and internal security for which the UK Government remains ultimately responsible. HM Government of Gibraltar is responsible for the implementation of EU obligations in Gibraltar.

I Constitutional foundations

Gibraltar's written constitution is set out in the Gibraltar Constitution Order 2006. There are no express environmental provisions in the constitution. If a constitutional right is breached in consequence of an environmental harm, article 16 provides access to the Supreme Court.

II Judiciary

Courts

There are no specialist environmental courts in Gibraltar. The court system mirrors that of England and Wales, with environmental criminal cases usually beginning in the Magistrates' Court, and more serious cases being tried in the Supreme Court by a judge and jury.

Under Part II of the Public Health Act, statutory nuisance cases can be heard in the Magistrates' Court. Where the Government considers the remedies afforded by the Magistrates' Court would be inadequate, it may bring proceedings in the Supreme Court under section 89 of the Public Health Act.

Cases where judicial review is brought against decisions of the Government are heard by the Supreme Court, by virtue of section 12 of the Supreme Court Act. Under rule 6 of the Supreme Court Rules 2000 judicial review is brought applying the Civil Procedure Rules applicable in England and Wales.

Judges are appointed by the Governor of Gibraltar on the advice of the Judicial Services Commission. As in England and Wales, judges are drawn from the legal profession. There are no specialist environmental law judges.

Tribunals

In Gibraltar, planning permission is issued by the Development and Planning Commission ("the Commission"). A person may appeal a decision of the Commission to the Development Appeals Tribunal if-

a. they are an applicant for a permit who is aggrieved by the refusal of the Commission to grant the permit or the imposition of a condition on a permit;

b. they are a person on whom a completion notice, stoppage order or modification order has been served;

c. they are a person who has objected to an application, and they are aggrieved by a decision of the Commission; or

d. they are a person affected by a completion notice, stoppage order or modification order.

Forum Shopping

There is no forum shopping for different types of court available in civil actions in Gibraltar. In criminal cases a defendant may choose to be tried in the Magistrates' Court or the Supreme Court if the offence is one that can be heard by that court.

Appeals and extraordinary remedies

Appeals from the Magistrates' Court in Gibraltar are heard by a judge in the Supreme Court. Appeals from the Supreme Court are to the Court of Appeal. Appeals from the Court of Appeal are heard by the Privy Council.

There are extraordinary remedies in Gibraltar law such as injunctions, mandatory orders and prohibiting orders.

Cassation

The position in Gibraltar reflects that of England and Wales.

Judicial procedures

In Gibraltar criminal prosecutions are brought by public authorities or private individuals. They are started in the Magistrates' Court. Civil actions are usually dealt with by the Supreme Court. Statutory nuisance is usually heard by the Magistrates' Court, but can be heard by the Supreme Court in certain circumstances.

Judicial action from own motion

As in the UK, the Gibraltar courts use an adversarial approach. Courts are unable to initiate an action by their own motion.

III Access to Information

The relevant provisions of Directive 2003/4/EC on public access to environmental information are implemented in Gibraltar by the Freedom of Access to Information on the Environment Regulations 2005 (“FAIER”).

Remedies

Where an applicant for information considers that the authority has failed to comply with a request or any other requirements of FAIER, he may make representations to the authority under regulation 11 of FAIER.

Where an applicant for information is still dissatisfied either with the information disclosed by an authority, the withholding of information by an authority or the lack of response to an application for environmental information, that applicant may apply to the Gibraltar Regulatory Authority for a determination requiring the disclosure of information under regulation 16 of FAIER.

If either the applicant or the party on whom a determination has been made is still dissatisfied after this process, then the determination may be appealed in the Magistrates’ Court under regulation 17 of FAIER.

If an authority refuses a request it must write to the applicant as soon as possible and explain why the request was refused. It must say what exemptions apply (reg 12(4)&(5) or 13 of FAIER), the matters considered by the public authority in reaching its decision, and what the applicant can do if he or she wants to challenge the decision – reg. 11 or 17 of FAIER.

Procedure

FAIER imposes a duty upon a public authority that holds environmental information to make it available on request. That duty is subject to a number of exceptions found in regulations 12 and 13 of FAIER. A refusal of a request for environmental information must be made in writing as soon as possible and no later than 1 month after the date of receipt of the request, reg. 14 of FAIER. A person whose request has been refused may ask the authority to review its decision. The review decision must be notified as soon as possible, and not later than 2 months after receipt of the request for a review, reg.11 of FAIER. Where the refusal to disclose is maintained the person whose request has been refused (“the complainant”) may apply for a determination from the Gibraltar Regulatory Authority as specified above.

IV Access to Justice in Public Participation

Administrative procedures

The Government’s Department of the Environment has responsibility for the regulation of and granting of licences in respect of environmental issues. Some of these powers are delegated to other organisations such as the Animal Welfare Centre (responsible for maintenance of the animal impounding services) or the Environmental Agency (responsible for, amongst other things, monitoring air quality, waste and shipment of waste and integrated pollution control). The natural environment is protected by the comprehensive legal framework in particular through the Nature Protection Act 1991. Under this Act, significant areas of Gibraltar’s terrestrial and maritime environment have been designated as special areas of conservation under the Habitats and Wild Birds Directives (92/43/EEC, 2009/147/EC). The Act also provides for the designation of both terrestrial and marine protected areas other than those required by EU obligations. The Government may appoint Wildlife Wardens to regulate these protected areas.

Where not provided for in any enactment, decisions of emanations of the State may be challenged through Judicial Review as set out below.

Judicial review of administrative procedures

The rules and procedures of judicial review in Gibraltar reflect those of England and Wales.

Review of land use planning decisions

Land use planning in Gibraltar is provided for under the Town Planning Act 1999. Development works cannot be carried out except under the authority of a permit granted by the Development Planning Commission (“the Commission”). Applications for a permit must be submitted to the Commission for approval. The Commission shall consider applications and either grant a permit, refuse a permit or grant a permit subject to conditions.

Where the Commission refuses a permit or inserts a condition in the permit, the applicant for that permit may appeal the decision to the Development Appeals Tribunal. Appeals must be submitted in writing within 28 days of notification or the issue of the permit. Proceedings will be held by the Tribunal where it will hear the evidence and reach a decision. The decision of the Development Appeals Tribunal is final.

Environmental Impact Assessment (EIA)

EIA is prescribed for applications for planning permission for certain developments in Gibraltar by the Town Planning (Environmental Impact Assessment) Regulations 2000.

IPPC Decisions

In Gibraltar IPPC decisions are made under the Pollution Prevention and Control Regulations 2013.

Decisions of the Environmental Agency ("the Agency") under these Regulations may be appealed to the Minister with responsibility for the Environment (reg. 55). Appeals can only be brought by persons who have made an application under these Regulations. The Minister may affirm the decision of the Agency, direct the Agency to grant a permit or vary conditions of the permit, quash any or all of the conditions, direct the Agency to effect a transfer or accept a surrender or quash, affirm or vary a notice.

Where a person is dissatisfied with the determination by the Minister, he may appeal to the Magistrates' Court on a point of law.

V Access to Justice against Acts or Omissions

Civil claims

The relevant law concerning the bringing of civil claims (in particular an action in nuisance) in Gibraltar reflects that of England and Wales.

Environmental liability

The EC Directive on Environmental liability (2004/35/CE) is implemented in Gibraltar by the Environmental Liability Regulations 2008. The competent authority for the purposes of this legislation is the Minister with responsibility for the Environment or such other person as he may delegate.

Under regulation 16, interested parties may notify the competent authority of any environmental damage of which there is an imminent threat. The notification must be accompanied by a statement explaining why the party will be affected by or has an interest in the damage. It must also give sufficient information for the competent authority to identify the location and nature of the incident. The competent authority must consider the notification and inform the interested party of the action it intends to take.

VI Other Means of Access to Justice

In Gibraltar an action for statutory nuisance – a nuisance as defined in the relevant statute - can be brought in a Magistrates' Court under Part II of the Public Health Act. Where the Government considers summary proceedings inadequate, it may take proceedings in the Supreme Court. Section 81 of the Act sets out what constitutes a statutory nuisance. Under section 88 an individual aggrieved by a nuisance can make a complaint to a justice of the peace and thereby initiate proceedings. The court can make an order for the abatement of the nuisance under section 82 and where this notice is ignored; make a nuisance order under section 83.

The Gibraltar Public Services Ombudsman investigates complaints in relation to administrative action taken by public authorities. The Public Services Ombudsman is established by the Public Services Ombudsman Act 1998. Complaints may be made by a person aggrieved and, except in special circumstances, must be made within six months of that person being given first notice of the matters alleged. The Ombudsman will send a report of his investigation to the person aggrieved and the authority investigated. Where he considers that an injustice has been caused as a consequence of maladministration and will not be remedied, he may submit a special report to the Chief Minister who shall lay it before the Gibraltar Parliament.

Most public authorities will also have internal complaints mechanisms. If the result is unsatisfactory the complainant can go to the relevant Ombudsman or seek a judicial review.

VII Legal Standing

The legal standing of non-governmental organisations and unincorporated associations in Gibraltar, and the rules for bringing a private civil action in nuisance, reflect that of England and Wales.

VIII Legal Representation

Gibraltar has an adversarial system. It is not compulsory to have a lawyer in any environmental hearing, whether at a planning or other inquiry or a judicial review.

IX Evidence

Rules relating to evidence in criminal and civil cases in Gibraltar reflect those of England and Wales.

X Injunctive Relief

Where legislation states that the bringing of the appeal does not suspend the decision or notice, that decision or notice will have immediate effect. In cases where the usual rule is that the notice is of no effect until the appeal is determined, the authority may be able to serve another notice to halt the activity immediately – e.g a stoppage order in planning cases – Town Planning Act 1999, section 40. Where the Appeal Tribunal thinks fit, it may suspend the stoppage order pending the determination of the appeal, section 41.

Rules relating to the granting of injunctions and the effect of such in Gibraltar reflect those of England and Wales.

A decision by a court to award an injunction can be appealed to a higher court. Usually the appellant will need leave from either the court that issued the injunction or the appeal court.

XI Costs

An applicant seeking access to justice in environmental matters may have to pay court fees, lawyers' fees, expert witness' fees, expenses for other witnesses and the costs involved in preparing documents, plans etc.

Court fees

There are no court fees in respect of criminal cases at first instance but an appeal to a higher court may involve a fee.

Information on court fees for civil actions in Gibraltar can be obtained from the Supreme Court Registry.

Costs

The level of fees will vary considerably, depending on the nature and complexity of the case, the experience of the lawyer and the amount of documents. As Gibraltar has a fused legal profession, barristers and solicitors may both appear in court and have direct contact with clients. This means that it is possible to instruct only one lawyer in a case which may reduce the level of costs.

Injunctions

There is no different level of fee in injunction cases. Usually the party seeking an injunction will have to give an undertaking in damages.

Awards of costs

The rules in relation to costs in Gibraltar follow those of England and Wales.

XII Financial Assistance Mechanisms

Under the Supreme Court Rules 2000, the Civil Procedure Rules of England and Wales, including those rules relating to costs, are applicable to Gibraltar except where alternative rules are provided for under Gibraltar law.

Civil legal assistance in Gibraltar is provided by the Registrar of the Supreme Court. The provision of legal aid and assistance is governed by the Legal Aid and Assistance Act and the Legal Aid and Assistance Rules.

Criminal legal aid may be available for defendants in criminal prosecutions.

When considering an application for legal assistance, the Registrar shall refer the application to a solicitor or barrister on a panel who shall investigate the merits of the applicants' case and report his findings to the Registrar. On receiving the report, the Registrar will investigate the means of the applicant. If he considers the matter to be a proper one for legal assistance, the assistance shall be granted.

There are no legal clinics specialising in environmental cases in Gibraltar. However the Citizens Advice Bureau will either help with environmental cases or pass the matter on to someone who can help.

XIII Timeliness

The Environmental Agency must determine an IPPC application within 3 months of receiving the application. This period may be extended if an agreement is reached between the Environmental Agency and the applicant.

Applications for other licences may not have a legal requirement for determination within a specific time but authorities are encouraged to say how long it will take to issue the licence.

If a planning permit application is not determined within the required time it will be deemed to have been refused and the applicant may appeal to the Development Appeals Tribunal.

Court procedures

The time limitations for the bringing of judicial review applications in Gibraltar reflect those of England and Wales.

Time limits for the bringing of civil actions in nuisance, trespass or negligence in Gibraltar are set out in the Limitation Act. Under section 4 of the Limitation Act an action founded on a tort – such as nuisance – must be brought within 6 years from the date on which the cause of action accrued. In some circumstances, a civil action in negligence may be brought after the standard 6 year limitation period has expired.

Duration of cases

The duration of the case depends on the complexity of the legal and factual issues.

Deadline for judgments

There are no set deadlines for judges to give judgments. In some cases the judge will give judgment immediately after the advocates have addressed the Court. In other cases judgment will be given later.

As there are no set deadlines there are no sanctions against courts delivering decisions in delay.

XIV Other Issues

Representations on the environmental effect of a development can be made to the Development and Planning Commission during the EIA or planning permission process.

Alternative Dispute Resolution exists in Gibraltar. It is strongly encouraged by the civil courts. The pre-action protocol of England and Wales for judicial review applies to Gibraltar.

Mediation is frequently used in civil claims between individuals or corporate bodies.

XV Being a Foreigner

Nationality has no bearing on the ability of a person to prosecute or defend a claim before the Court.

Use of different languages is allowed in court procedures. Languages such as French or German can be used with an interpreter.

In criminal cases the court service will arrange for an interpreter for the duration of the case. In civil cases it is for the parties to make such arrangements and pay the fees.

XVI Transboundary Cases

Part III of the Town Planning (Environmental Impact Assessment) Regulations, 2000 deals with developments likely to have a significant transboundary effect. Under regulation 14, where the Commission is aware that a relevant development carried out in Gibraltar is likely to have significant effect on the environment of (or otherwise seriously affect) another Member State it shall deliver a notice to the Minister with responsibility for the Environment.

The Minister shall send particulars of the development to the Member State, and give it a reasonable time to indicate whether it will participate in the EIA procedure. Where the Member State indicates it wishes to participate in the EIA procedure the authorities and public concerned shall be given an opportunity, before a permit for the development is granted, to forward to the Commission, their opinion on the information supplied. The Minister shall enter into consultations with the Member State concerned. When the application is determined, it shall inform the Member State of its decision, the reasons for that decision and where necessary a description of relevant measures to avoid, reduce or offset major adverse effects of the development.

Regulation 15 also makes provision for when the Minister for the Environment receives information on a project in another Member State that is likely to affect the environment in Gibraltar.

Related links

Legislation

- Gibraltar Constitution Order 2006 - http://www.gibraltarlaws.gov.gi/constitution/Gibraltar_Constitution_Order_2006.pdf
- Environmental Liability Regulations 2008 - http://www.gibraltarlaws.gov.gi/articles/2008s100.pdf
- Freedom of Access to Information on the Environment Regulations 2005- http://www.gibraltarlaws.gov.gi/articles/2005s165.pdf
- Limitation Act- http://www.gibraltarlaws.gov.gi/articles/1960-42o.pdf
- Nature Protection Act 1991- http://www.gibraltarlaws.gov.gi/articles/1991-11o.pdf
- Pollution Prevention and Control Regulations 2013- http://www.gibraltarlaws.gov.gi/articles/2013s042.pdf
- Public Health Act- http://www.gibraltarlaws.gov.gi/articles/1950-07o.pdf
- Supreme Court Act- http://www.gibraltarlaws.gov.gi/articles/1960-02o.pdf
- Supreme Court Rules 2000- http://www.gibraltarlaws.gov.gi/articles/2000s031.pdf
- Town Planning Act 1999- http://www.gibraltarlaws.gov.gi/articles/1999-39o.pdf
- Town Planning (Environmental Impact Assessment) Regulations 2000- http://www.gibraltarlaws.gov.gi/articles/2000s013.pdf

Public Bodies

- HM Government of Gibraltar Department of the Environment- https://www.gibraltar.gov.gi/new/environment
- Gibraltar Courts Services- http://www.gcs.gov.gi/index.php/justice-system/gibraltar-courts-service
- Environmental Agency http://www.environmental-agency.gi/
- Gibraltar Public Services Ombudsman http://www.ombudsman.org.gi/
- Gibraltar Citizens Advice Bureau http://cab.gi

Last update: 14/09/2016

Annex D: Isle of Man

The Isle of Man is a Crown Dependency and does not form part of the United Kingdom or of the European Union – Protocol 3 of the Accession Treaty 1972 applies to it. The Department of Environment Food and Agriculture is concerned with environmental matters. There is no specific legislation for EIA for projects on the Isle of Man but the Isle of Man Strategic Plan (Environment Policy 24) provides for EIA for development likely to have a significant effect on the environment. Judicial review of decisions on the environment can be done by a Petition of Doleance under the High Court Act 1991. There is no Freedom of Information Act for the Isle of Man. Access to environmental information can be obtained from the Isle of Man Government Laboratory. Statutory nuisances are provided for in Part 1 of the Public Health Act 1990. Individuals can bring an action against another person in common law for a nuisance, which can include an injunction.

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Annex B: Guernsey

The Bailiwick of Guernsey is a Crown Dependency and includes the separate jurisdictions of Alderney and Sark and the islands of Herm, Jethou and Lihou. Alderney and Sark have independent legislative, executive and judicial systems. Under Protocol 3 to the Accession Treaty of 1972 there is only a limited connection to the European Union for the purposes of free movement of goods. Other EU legislation does not generally apply. Pollution control law is mainly contained in the Environmental Pollution (Guernsey) Law 2004 while land use planning is provided for in the Land Planning and Development (Guernsey) Law 2005. There is provision for EIA in the Land Planning and Development (General Provisions) Ordinance 2007. Judicial review of decisions is available in the Royal Court of Guernsey under the rules in Practice Direction 3 of 2004. There is no freedom of information legislation in Guernsey. The Office of Environmental Health and Pollution Regulation has legal powers to prevent the recurrence of statutory nuisances under the Loi Relative à la Santé Publique, 1934 (as amended) and related legislation. Individuals can bring an action against another person in customary law for a nuisance, which can include an injunction.

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Annex C: Jersey

The Bailiwick of Jersey is a Crown Dependency. Under Protocol 3 to the Accession Treaty of 1972 there is only a limited connection to the European Union for the purposes of free movement of goods. International environmental legislation such as the Basel Convention on Wastes 1989 is implemented by statutes such as the Waste Management (Jersey) Law 2005. Environmental issues are dealt with mainly by the Planning and Environment Department. EIA is provided for by the Planning and Building (Environmental Impact) (Jersey) Order 2006. Government decisions on environmental matters can be challenged in the Royal Court by a petition of doleance which is “a remedy of last resort” in which the petitioner bears a heavy burden to show that a grave injustice needs to be remedied – *The Attorney General v Michel* [2006] JRC089. There is no freedom of information legislation in force in Jersey. Statutory nuisances can be dealt by the Minister under the Statutory Nuisance (Jersey) Law 1999, section 8 of which enables an action by a person aggrieved by a nuisance for which the Minister is responsible. Individuals can bring an action against another person in customary law for a nuisance, which can include an injunction.

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