

Aarhus Convention

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**Friends of
the Earth
Scotland**

What is the Aarhus Convention?

The UNECE Aarhus Convention is an environmental treaty which establishes a number of environmental public rights. It is based on the premise that involving citizens in environmental decision making will improve environmental protection.

The Convention was adopted by the European Union in 1998 and entered into force in October 2001. It has been signed but not yet ratified by the UK government.

Aarhus has three pillars, all of which are at different stages of development and implementation.

Pillar 1 : Access to Environmental Information

The right of everyone to receive environmental information held by public authorities. Member States to comply by 14 Feb 2005. Premise : increased access to environmental information will contribute to greater public awareness, debate and participation in decision making, as well as helping to promote a new culture of openness and transparency.

How is Scotland ensuring compliance?

The Freedom of Information (Scotland) Act 2002 transposes the Directive on

Access to Information into law and will come into effect in stages up to 1 January 2005, along with the regulations which allow the implementation of the Act. The Act applies to all public authorities and will significantly change the way they handle information and public access to it. Changes include the disclosure of information within one month, clear and user friendly lists of environmental information, the provision of help from the public authority to assist applicants in reformulating vague requests and places for the public to examine information free of charge.

To make the process of disseminating information easier, SEPA has been obliged since 2003 to produce and provide free public access to an inventory of emissions as part of the European Pollution Emissions Register. They aim to increase the number of specified substances and the regularity of reporting over time.

What still needs to be done?

The information provided on each pollutant needs to be put in context by providing information on impacts; comparative and cumulative data; the nature of releases; past records and total emissions data for Scotland.

The figures are also only annual (and so discount occasional high releases) and are probably under estimates since the responsibility to return data lies with the companies themselves.

Pillar 2 : Public participation in environmental decision making

The right to participate from an early stage in environmental decision making. Member states to comply by 25 June 2005.

Requirements

The public must be given “early and effective opportunities” to participate in the preparation and any subsequent modification / review of plans or programmes which will have a significant effect on the environment, eg on water quality, air quality and waste.

The new Directive also improves the quality of public participation in projects which require an EIA, requiring the public to be informed that there has been an EIA sensitive planning application, details of where to send comments, and an indication of where to access the EIA data. The planning authority will also have to ensure that there are opportunities for the public to participate in the decision making process, which explicitly means participation *before* the planning authority takes any decision on the planning application.

What still needs to be done?

The government needs to introduce effective and timely national Regulations to implement the new Directive, as any planning decisions taken after 25 June 2005 which fail to comply with the Directive will almost certainly be struck down as illegal. However, the Executive believe that only small changes to existing procedures will be required and no consultation is necessary, since most of the requirements are covered by existing regimes, such as EIA, IPPC Directives.

Pillar 3: Access to Justice

The right to challenge, in a court of law,

public decisions that have been made without respecting the two previous rights or environmental law in general. Draft Directive concluded its first reading in EU Parliament on 31 March 2004.

Requirements

The intention of the draft Directive is to improve the enforcement of all environmental law, including all laws on protection of air, water, and soil, environmental impact and, importantly, town and country planning. It says that members of the public / organisations “with sufficient interest” should have rights of appeal or review procedures against consent related decisions which are “fair, equitable, timely and not prohibitively expensive”. The existing judicial review process does not meet all these criteria, and it is not suited to be the main appeals mechanism. This may be seen as strengthening the case for developing new approaches, such as an environmental court or tribunal.

Environmental groups will help with enforcement by being allowed to access administrative or judicial review proceedings before a court or some other independent body where they feel that the regulators have acted in contravention of the laws on environmental protection. This is different from the existing position (whereby challenge can be made only where there is an alleged element of illegality, irrationality or procedural impropriety) in that a whole new tier of initial review is to be introduced.

What still needs to be done?

The Directive is still in draft form, but once this has been passed by the European Parliament much work will be needed to ensure that new internal and judicial review procedures are sufficient to comply with the terms of the Directive.