



NORTHERN
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COMMISSION

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SPEAKER'S OFFICE

Mr William Hay MLA
Speaker of the Northern Ireland Assembly
Room 346
Parliament Buildings
Stormont
BELFAST, BT4 3XX

26 September 2013

Dear Mr Speaker

Planning Bill 2013

Please find enclosed copy of a letter from the Northern Ireland Human Rights Commission to the Minister for the Environment for your information.

Yours sincerely

Angela Stevens
Legal Services, Northern Ireland Human Rights Commission

Chief Commissioner: Professor Michael O'Flaherty ■ Director: Virginia McVea



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Mark H Durkan MLA
Minister for the Environment
Goodwood House
44 May Street
BELFAST
BT1 4NN

26 September 2013

Dear Minister

Planning Bill 2013

I write in respect of the above bill, amendments to which were introduced over the summer recess.

The Commission, pursuant to Section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights and, pursuant to Section 69 (3), shall advise the Executive Committee of the Assembly of legislative and other measures which ought to be taken to protect human rights. The Commission bases its position on those international human rights standards to which the United Kingdom commits itself as a matter of law, including the *European Convention on Human Rights* as incorporated by the *Human Rights Act 1998* and the treaty obligations of the Council of Europe and United Nations ('UN') systems.

By way of this letter the Commission advises on Clause 15 of the Planning Bill and on the matter of Third Party appeals.

Clause 15

The UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) was adopted on 25 June 1998 and entered into force on 30 October 2001. The Convention establishes a number of rights of the public with regard to the environment. Particularly relevant to Clause 15 of the Planning Bill are rights to challenge public decisions ("access to justice"). Article 3 of the Convention obliges the State Party to "...assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in

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seeking access to justice in environmental matters” and Article 9 (2) of the Convention requires each State Party to “ensure that members of the public concerned have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission of the relevant environmental decision making body”. The European Convention on Human Rights is also relevant in the planning context; in this particular case, the right to a fair hearing under Article 6 (1).

Clause 15 seeks to reduce the time limit for judicial review from three months to six weeks and also seeks to curtail the grounds upon which decisions can be judicially reviewed, restricting the grounds only to where there is an alleged conflict with human rights law or European law. The European Court of Human Rights has commented that time limits must not render an individual’s right of appeal theoretical¹ and access to a court must not be practically restrictive; in other words, the Convention is intended to “guarantee not rights that are theoretical or illusory but rights that are practical and effective”².

More generally, it is important to state clearly that judicial review plays an important and legitimate role in ensuring the proper administration of government and Clause 15 would, in effect, remove the court’s ability to review the legality, the rationality and the reasonableness of planning decisions. In this regard it may be observed that the pre-action protocol and judicial scrutiny on applications for leave already provide a robust framework to ensure that it is the cases with merit that proceed to full review. It is further noted that Order 53 (4) of the Rules of the Supreme Court (Northern Ireland) 1980 require that applications for judicial review be brought *promptly* and in any event within three months from the date when grounds for the application first arose, meaning it is open to the court to dismiss a case that has not been brought in a timely fashion, even within the space of three months.

Third Party Appeals

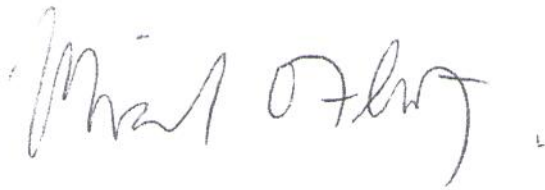
In relation to Third Party appeals, the Commission observes that the amendment introducing this right was widely supported but blocked by a Petition of Concern. The Commission previously responded to the Department of Environment consultation on Reform of the Planning System in Northern Ireland (October 2009) where we encouraged the Department to provide for third party appeal. Public participation and engagement in environmental decision making is a core value of the Aarhus Convention and the Commission is concerned that reducing the time limit and grounds for judicial review, coupled with no right of third party appeal creates a system whereby an objector to a planning application has limited capacity to effectively participate in the decision.

¹ *Hadjianastassiou v Greece* 16 EHRR 219

² *Airey v Ireland* (application no: 6289/79) 9 October 1979 para 24

We trust our advices will be taken into consideration in the progression of this Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael O'Flaherty', with a small mark to the right.

Professor Michael O'Flaherty
Chief Commissioner

Cc William Hay MLA, Speaker of the Northern Ireland Assembly
