

## **Scotland's non-compliance with the Aarhus Convention on prohibitive expense: Recommendations for a plan of action on judicial expenses**

### Summary

The UNECE Aarhus Convention aspires to enshrine a substantive human right to a healthy environment, as well as guaranteeing the procedural rights of access to information, public participation, and access to justice and effective remedies in environmental matters. The Scottish Government is responsible for ensuring that our legal system complies with the requirements of the Convention in the devolved context.

The Aarhus Convention's governing institutions have now made ten consecutive findings – dating from 2014 – that the Scottish civil justice system does not meet the Convention's Article 9(4) 'not prohibitively expensive' requirement. In its latest decision from October 2021, the Aarhus Meeting of the Parties request reform 'as a matter of urgency'<sup>1</sup> with a clear action plan by 1 July 2022.<sup>2</sup>

To work towards compliance with Article 9(4) of the Aarhus Convention and thereby remove the cost barrier of accessing justice, ERCS recommends the following three reforms on judicial expenses:

- amend regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002 to make legal aid available in public interest litigation; civil society organisations (including community groups and NGOs) should also be eligible for such support;
- replace the rule that expenses follow success – and associated Protective Expenses Order (PEO) regime –with 'qualified one-way costs shifting' (QOCS) for Aarhus cases;
- reform court fees so that they are funded by the state rather than litigants.

These reforms on judicial expenses can and should be delivered now to work alongside and inform the development of the forthcoming Human Rights (Scotland) Bill.

There is also a need to deliver compliance with the Aarhus Convention more strategically to address the other barriers to accessing justice as well as the cost barrier. In addition to the immediate need for reform of judicial expenses, the establishment of an environmental court or tribunal in Scotland offers a way to secure full compliance.

## Scotland's commitment to environmental human rights and access to justice

In September 2021 the Scottish Government committed to consulting for a new Human Rights Bill within 'the coming year'.<sup>3</sup> The Bill will see a range of new human rights introduced into Scots law including the human right to a healthy environment 'with substantive and procedural elements'.<sup>4</sup>

The **substantive** human right to a healthy environment will be new for Scotland.<sup>5</sup> It will see a healthy environment guaranteed as a fundamental human right, according to six defining features of clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.<sup>6</sup>

By contrast, the **procedural** right is not new: it is guaranteed by the UNECE Aarhus Convention which the United Kingdom has participated in since 2005.<sup>7</sup> The Convention aspires to enshrine a substantive right and fully guarantees the procedural rights of access to information, public participation in decision-making, and access to justice and effective remedies in environmental matters.<sup>8</sup> The Scottish Government is responsible for ensuring that our legal system complies with the requirements of the Convention in the devolved context.

In other contexts, the Scottish Government has reaffirmed its commitment to access to justice as crucial to the functioning of the rule of law. Responding to the 2013 Review of the Expenses and Funding of Civil Litigation, the Scottish Government stated 'our justice system is meant to be one in which anyone with a genuine claim has the opportunity to vindicate his or her rights. Clearly, the cost of litigation cannot be allowed to act as a barrier which prevents the system from working'.<sup>9</sup> It also stated '[a] guiding principle is that it should be affordable for an individual to pursue a genuine claim. Otherwise, access to justice is illusory'.<sup>10</sup>

The National Taskforce for Human Rights Leadership has underscored the importance of ensuring a more accessible, affordable, timely and effective judicial route to remedy (Recommendations 21-26).<sup>1</sup> The reforms that are recommended here could apply across all human rights.

### The Aarhus Convention: Scotland's non-compliance on 'prohibitive expense'

Article 9 of the Aarhus Convention requires parties to the Convention to ensure that everyone, whatever their financial circumstances, has affordable access to justice. Its provisions are summarised as follows:

- Article 9(2) requires '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 [environmental] decision, act or omission and other relevant provisions of this Convention'.
- Article 9(3) requires 'access to administrative or judicial procedures' to challenge breaches by private and public bodies of national environmental laws.
- Article 9(4) requires that all these procedures, including those for challenging breaches of environmental laws, must be 'fair, equitable, timely and not prohibitively expensive'.

The main governing body of the Convention is the Meeting of the Parties (MoP) which meets every three years. The Aarhus Convention Compliance Committee (ACCC) exists to review compliance with the provisions of the Convention with a view to reaching findings about individual Parties. Its expert members are drawn from the Convention's signatory states.

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<sup>1</sup> National Taskforce for Human Rights Leadership (Mar 2021) [National Taskforce for Human Rights: leadership report](#), Recs 21-26

At MoP-4 in 2011, the United Kingdom was found to be in non-compliance with the Convention and the findings had implications for Scotland; at MoP-5 in 2014, MoP-6 in 2017 and MoP-7 in 2021 (Decisions V/9n, VI/8k and VII/8s respectively) similar findings were made, and Scotland's legal system was specifically assessed and found to be in non-compliance with Article 9(4) 'not prohibitively expensive' requirement. The MoP and ACCC have now made ten consecutive findings that the Scottish civil justice system does not meet the Convention's Article 9(4) 'not prohibitively expensive' requirement. A timeline is detailed in the Appendix.

Organisations including Friends of the Earth Scotland, RSPB and Scottish Environment LINK have been making the case for reform for over a decade now.<sup>11</sup>

### Meeting of the Parties: summary of findings October 2021

The seventh Meeting of the Parties (MoP-7) ran from 18-22 October 2021 and endorsed the latest report (August 2021) of the ACCC in making its finding of non-compliance in relation to the United Kingdom. Key findings are as follows:

- 'Endorses the findings of the Committee with respect to decision VI/8k that...While welcoming the progress made in that direction, the Party concerned has not yet met the requirements of paragraph 2 (a), (b) and (d) with respect to Scotland;'<sup>12</sup>
- 'Reaffirms decision VI/8k and requests the Party concerned to, as a matter of urgency, take the necessary legislative, regulatory, administrative and practical measures to:
  - (a) Ensure that the allocation of costs in all court procedures subject to article 9, including private nuisance claims, is fair and equitable and not prohibitively expensive;

- (b) Further consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice;
- (d) Establish a clear, transparent and consistent framework to implement article 9 (4) of the Convention;<sup>13</sup>
- ‘Requests the Party concerned to:
  - (a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations in paragraphs 2, 4, 6 and 8 above’.<sup>14</sup>

The ACCC’s August report, endorsed by the decision, includes, at paragraphs 81-113 (Part I),<sup>15</sup> the detail of which aspects of Scotland’s legal system are non-compliant. These centre around numerous problems with Scotland’s Protective Expenses Order regime, ambiguities over the availability of legal aid and whether court fees are covered by Protective Expenses Orders.

### The ‘prohibitive expense’ of judicial procedures in Scotland

In Scotland, the main way of challenging breaches of environmental laws by public bodies is by raising judicial review proceedings in the Court of Session. An individual bringing a judicial review (the ‘petitioner’) can expect to pay tens or hundreds of thousands of pounds in expenses. This is the case whether they win or lose, and despite the mechanisms that have been introduced to cap costs.

A petitioner’s prohibitive expenses come from three key sources: (1) the petitioner’s legal team; (2) the respondent’s expenses (and those of third-party interveners); and (3) court fees. This section examines the mechanisms in place which should help petitioners with these expenses and outlines how they are failing to work in practice.

## 1. The petitioner's legal team

A petitioner must pay their own legal team if they lose. The legal team usually consists of both counsel (advocates or solicitor advocates) and solicitors. These expenses alone can typically range from £20,000 to £100,000, depending on the complexity of the case, the willingness of lawyers to limit their fees, and whether the case goes to appeal.

Means-tested legal aid is available to help people with the costs of legal advice or representation in the courts. However, even if an individual is eligible for legal aid, it is extremely unlikely that it will be granted for environmental cases.<sup>16</sup> This is because Regulation 15 Civil Legal Aid (Scotland) Regulations 2002 places limitations on a person making an application for legal aid when there may be another person who has a joint interest in the matter.<sup>17</sup> Most environmental cases, by their nature, typically raise issues of broad public concern. This is typically referred to as public interest litigation. Furthermore, civil legal aid is available only to 'persons.' This rule effectively excludes environmental NGOs and incorporated or unincorporated community groups.

The Scottish Government consulted on legal aid reform in 2019 and aims to introduce a Legal Aid Reform Bill in the Parliamentary term 2021-2026.<sup>18</sup> In August, the ACCC asked to be provided with the text of the relevant legislative provisions at any early stage for its consideration.<sup>19</sup>

### Recommendation 1

**To move towards compliance with Article 9(4) of the Aarhus Convention, the Government should amend regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002 to make legal aid available in public interest litigation; civil**

**society organisations (including community groups and NGOs) should also be eligible for such support.**

## **2. The respondent's expenses (and those of third-party interveners)**

If a petitioner loses their case, they must pay the expenses of the opposing side (the 'respondent'). There may also be liability for the expenses of any intervening third parties – such as developers. Commonly known as the 'loser pays' rule, these expenses can be exorbitant. For example: in 2017, the John Muir Trust's unsuccessful attempt to challenge a windfarm development led to it facing costs of £189,000 to the respondent (the Scottish Government), plus £350,000 to the intervener (energy company SSE). The John Muir Trust eventually reached a settlement to pay the Scottish Government £75,000 and the energy company SSE £50,000. This combined total of £125,000 in costs to the other side was in addition to the Trust's expenses for its own legal team of around £150,000.<sup>20</sup> The John Muir Trust has described a 'David versus Goliath nature of charities taking on multinational corporations.'<sup>21</sup>

The Protective Expenses Order (PEO) regime exists to protect the petitioner from paying the respondent's expenses. They are an Order, given by a judge, that the petitioner will only have to pay up to a certain amount (a 'cap'). Under the current PEO rules, a petitioner can apply for a PEO at the start of their case, and the cap is set at £5,000.<sup>22</sup> However, there are several problems with PEOs which were comprehensively assessed by the ACCC.<sup>23</sup> These problems include but are not limited to the following. First, the PEO is not guaranteed: the respondent can oppose the application for a PEO, and/or the judge may decide not to grant the PEO (this was the case in the example cited above). Second, £5,000 is itself prohibitively expensive for prospective petitioners, particularly bearing in mind given the distributive nature of environmental injustices. Third, the amount of £5,000 may be raised or lowered 'on



cause shown,’ which according to the ACCC ‘introduces legal uncertainty and could have a chilling effect’.<sup>24</sup>

PEOs have further exacerbated barriers to accessing justice because in the situation where the petitioner successfully obtains a PEO and wins their case, a ‘cross-cap’ of £30,000 applies. This means the petitioner can only recover up to £30,000 from the respondent. There are two main problems with this. First, as with the £5,000 cap, this amount may be raised or lowered ‘on cause shown’. Second and crucially, the cross-cap means the petitioner must pay all the expenses of their legal team that go above £30,000 – which may be tens of thousands of pounds. The cross-cap therefore puts the petitioner in a lose-lose situation: if they go to judicial review they can expect to pay tens, if not hundreds of thousands of pounds whether they win or lose, even if they manage to secure a PEO.

The PEO regime is not meeting the problems created by the loser pays rule and must therefore be overhauled. Qualified one-way costs shifting (QOCS) have recently been introduced for personal injury claims in Scotland<sup>25</sup> in recognition of the imbalance of power and resources between parties.<sup>26</sup> This could be introduced for environmental cases where the same situation exists. If QOCS were to be introduced in environmental judicial reviews, the general rule would be that a petitioner would not be liable for the expenses of any other parties if the judicial review were unsuccessful – a petitioner would still be able to claim their expenses from the respondent if the judicial review were successful. QOCS in the context of personal injury claims has been praised for facilitating a more accessible, affordable and equitable civil justice system.<sup>27</sup> Such a model of good practice could be applied to all human rights public interest litigation.

## **Recommendation 2**

**To move towards compliance with Article 9(4) of the Aarhus Convention, the Government should replace the rule that expenses follow success – and associated PEO regime – with ‘qualified one-way costs shifting’ (QOCS) for environmental cases.**

### **3. Court fees**

A petitioner must pay court fees. The fee for a petition is £319. The fee for a hearing before a bench of one or two judges is £213 for every 30 minutes of a hearing (or part thereof).<sup>28</sup> Hearings can take in the region of 15-20 hours, running total court fees into several thousands of pounds.<sup>29</sup> The Scottish Government has suggested to the ACCC that it ‘expects’ PEOs to cover all stages of the judicial review procedure, including court fees. The ACCC has noted that ‘expect’ is an insufficient guarantee to ensure compliance with the Convention, and that clarity is required.<sup>30</sup>

The Faculty of Advocates takes the position that ‘as a matter of principle the civil justice system should be funded by the state, not litigants.’ It warns that the Scottish Government’s aim to fully recover the cost of the business undertaken in the courts may be illegal.<sup>31</sup> A joint NGO report on barriers to public interest litigation recommends that the Scottish Government ‘consider introducing a presumption that court fees will be waived for registered charities and not-for-profit organisations and community groups in public interest cases, including interventions.’<sup>32</sup>

## **Recommendation 3**

**To move towards compliance with Article 9(4) of the Aarhus Convention, the Government should reform court fees so that they are funded by the state rather than litigants.**

## Other barriers on access to justice

Prohibitive expenses are not the only barrier to access to justice on the environment, which must also be 'be fair, equitable, timely'.<sup>33</sup> A group of NGOs from different sectors identified four persistent barriers which exist in relation to public interest litigation: poor access to information about court cases, limitations to who can take a case to court ('standing' issues), short time-limits for taking cases, and limited culture of using public interest litigation.<sup>34</sup> Additional barriers specific to environmental cases include the lack of merits review at judicial review,<sup>35</sup> a lack of specialism on environmental law and science, and a fragmented and inefficient system for dealing with environmental disputes.<sup>36</sup> To strategically address these barriers to access to justice, a recent report by the Environmental Rights Centre for Scotland sets out the case for establishing a specialist environmental court or tribunal as a way to secure full compliance with the Aarhus Convention.<sup>37</sup>

## Conclusion

The UNECE Aarhus Convention's 7<sup>th</sup> Meeting of the Parties Decision VII/8S reaffirms the Aarhus Convention's Compliance Committee's findings that the Scottish civil justice system does not meet the Convention's Article 9(4) 'not prohibitively expensive' requirement. This is the tenth consecutive finding since 2014 and the governing bodies now request reform of administrative and judicial procedures 'as a matter of urgency' with a clear action plan by 1 July 2022.

This briefing has summarised the mechanisms in place which should help petitioners with judicial expenses and outlined how they are failing to work in practice. Building on the experience and advocacy of the environmental NGO sector over the past decade, we recommend three reforms to move Scotland towards compliance.

The Scottish Government's commitment to incorporate the human right to a healthy environment with substantive and procedural elements is welcome.

Notwithstanding, it is vital that the Government acts now on access to justice on the environment. These reforms on judicial expenses can and should be delivered now to work alongside and inform the development of the forthcoming Human Rights (Scotland) Bill.

These recommendations are without prejudice to the need to secure full compliance with the Aarhus Convention more strategically, which we consider could be met through the establishment of an Environmental Court.

This response is supported by:

Badenoch & Strathspey Conservation Group  
Cairngorms Campaign  
Friends of the Earth Scotland  
Planning Democracy  
RSPB Scotland  
Scottish Wild Land Group  
Making Rights Real  
Inclusion Scotland  
Human Rights Consortium Scotland

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## Appendix

### **Timeline of Aarhus Convention's governing institutions' findings of non-compliance which are relevant to Scotland's legal system**

The 1998 Aarhus Convention entered into force, following ratification by 16 signatory states in accordance with its Article 20, on 30 October 2001. The UK ratified the Convention in 2005. The first Meeting of the Parties ('MoP') was held in October 2002. It established the Aarhus Convention Compliance Committee (ACCC) which was given a mandate to review compliance by parties with their Convention obligations and reporting back to each successive MoP. The ACCC now meets 3 times a year. Further MoPs have taken place every three years. The seventh MoP was due to take place in 2020, but due to Covid was deferred until October 2021.

The ACCC and MoP's findings of non-compliance in relation to Scotland's legal system due to prohibitive expenses are summarised below:

- 2011: The UK was first formally held to be in breach of its obligations by Decision IV/9i of the Aarhus Convention's Meeting of the Parties ('MoP'). Prohibitive expenses were cited as one of four reasons: The MoP found: 'By failing to ensure that the costs for all court procedures subject to article 9 were not prohibitively expensive, and in particular by the absence of any clear legally binding directions from the legislature or judiciary to this effect, the Party concerned failed to comply with article 9, paragraph 4, of the Convention'<sup>38</sup>;
- 2013: As part of the UK's response to Decision IV/9i, a new chapter 58A was added to the Rules of the Court of Session in Scotland in March 2013, introducing a statutory scheme of protective expenses orders for some environmental judicial reviews<sup>39</sup>;



- 2014: In its subsequent report to the fifth MoP, the ACCC noted this progress, but nevertheless found for the first time that Scotland's legal system, specifically, was not compliant with Articles 9 and 3 of the Convention, along with the UK's two other jurisdictions: 'By not taking sufficient measures to ensure that the costs for all court procedures subject to article 9 in England and Wales, Scotland and Northern Ireland are not prohibitively expensive, and in particular, by not providing clear legally binding directions from the legislature or the judiciary to this effect, the Party concerned continues to fail to comply with article 9, paragraph 4, of the Convention'<sup>40</sup>;
- 2014: The 5<sup>th</sup> MoP duly endorsed this finding in Decision V/9n: 'By not taking sufficient measures to ensure that the costs for all court procedures subject to article 9 in England and Wales, Scotland and Northern Ireland are not prohibitively expensive and, in particular, by not providing clear legally binding directions from the legislature or the judiciary to this effect, the Party concerned continues to fail to comply with article 9, paragraph 4, of the Convention'<sup>41</sup>;
- 2014 – 2017: Despite amendments to Chapter 58A of the Rules of the Court of Session in 2015<sup>42</sup> and a Scottish Government consultation on 'environmental justice' in 2016<sup>43</sup>, the ACCC, in its progress reviews of Decision V/9n in 2015<sup>44</sup> and 2017<sup>45</sup> continued to find that Scotland's legal system was non-compliant;



- In its report to the 2017 MoP, the ACCC again found that Scotland's legal system was not in compliance with the requirements of Article 9(4)<sup>46</sup>;
- 2017: The 6<sup>th</sup> MoP again endorsed the Committee's findings in Decision VI/8k;<sup>47</sup>
- 2017: A further consultation in 2017 was followed by a second set of amendments to Chapter 58A in 2018,<sup>48</sup> but the ACCC again found, in its first and second reviews of the UK's progress in responding to Decision VI/8k, that Scotland was still non-compliant;<sup>49</sup>
- Following the Compliance Committee's invitation to UK eNGOs to participate in its final progress review year before the 7<sup>th</sup> MoP, ERCS contributed for the first time to the UK eNGO response<sup>50</sup>;
- In August 2021, the ACCC again found Scotland to be non-compliant.<sup>51</sup>
- The MoP took place 18-22 October 2021 and again endorsed the ACCC's findings.



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- <sup>1</sup> Aarhus Meeting of the Parties (2021) [Draft decision VII/8s on compliance by the United Kingdom of Great Britain and Northern Ireland](#), § 2(a) (adopted at MoP-7, October 2021)
- <sup>2</sup> Ibid., § 9(a)
- <sup>3</sup> Scottish Government (Sept 2021) [A Fairer, Greener Scotland: Programme for Government 2021-22](#), p 49
- <sup>4</sup> National Taskforce for Human Rights Leadership (Mar 2021) [National Taskforce for Human Rights: leadership report](#), Rec 2
- <sup>5</sup> Ibid., p 77
- <sup>6</sup> Ibid.
- <sup>7</sup> United Nations Economic Commission for Europe (UNECE) (1998) [Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters \('Aarhus Convention'\)](#)
- <sup>8</sup> United Nations Economic Commission for Europe (UNECE) (1998) Aarhus Convention, [Art 1](#)
- <sup>9</sup> Scottish Government (2014) [Review of Expenses and Funding of Civil Litigation in Scotland: A Report by Sheriff Principal James A Taylor: Scottish Government Response](#), p 7
- <sup>10</sup> Ibid., p 12
- <sup>11</sup> Friends of the Earth Scotland (2010) [PE1372: Petition on access to justice in environmental matters](#); Friends of the Earth Scotland (2011) [Tipping the Scales: Complying with the Aarhus Convention on Access to Environmental Justice](#); Frances McCartney for Friends of the Earth Scotland (2015) [Litigation Over the Environment](#); Friends of the Earth Scotland (2015) [An Environmental Court or Tribunal for Scotland](#); Friends of the Earth Scotland (2017) [Evidence to the Justice Committee on the Civil Litigation Bill 2017](#); RSPB, Friends of the Earth, Friends of the Earth Scotland, and Environmental Rights Centre for Scotland (29 Oct 2020) [Re: UK's 3rd Progress Report on Aarhus Convention Decision VI/8k](#); RSPB, Friends of the Earth England, Wales, and Northern Ireland, Friends of the Earth Scotland, and Environmental Rights Centre for Scotland (19 July 2021) [Re: Compliance Committee's draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement decision VI/8k](#);
- Friends of the Earth Scotland (18 Dec 2020) [letter to the Equalities and Human Rights Committee](#)
- <sup>12</sup> Aarhus Meeting of the Parties (2021) [Draft decision VII/8s on compliance by the United Kingdom of Great Britain and Northern Ireland](#), § 2(a)1(b)
- <sup>13</sup> Ibid., § 2(a), (b) and (d)





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<sup>14</sup> Ibid., § 9(a)

<sup>15</sup> Aarhus Convention Compliance Committee (Aug 2021) [Report of the Compliance Committee on compliance by the United Kingdom of Great Britain and Northern Ireland – Part I\\*](#), see §§ 81-113 and [Part II\\*](#), §53(b); for summary see Environmental Rights Centre for Scotland (Sept 21) [Access to justice on the environment, and whether Scotland is providing it](#)

<sup>16</sup> Scottish Environment LINK Legal Governance Subgroup (May 2017) [Legal Aid Review Consultation response](#)

<sup>17</sup> [Civil Legal Aid \(Scotland\) Regulations 2002, Regulation 15](#)

<sup>18</sup> Scottish Government (Sept 2021) [A Fairer, Greener Scotland: Programme for Government 2021-22](#), p 103

<sup>19</sup> Aarhus Convention Compliance Committee (Aug 2021) [Report of the Compliance Committee on compliance by the United Kingdom of Great Britain and Northern Ireland – Part I\\*](#), § 112.

<sup>20</sup> TFN (16 May 2017) [Huge legal costs could cripple campaigning charities](#)

<sup>21</sup> M Daniels quoted in [Herald](#) (10 Oct 21)

<sup>22</sup> [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Protective Expenses Orders\) 2018](#)

<sup>23</sup> Aarhus Convention Compliance Committee (Aug 2021) [Report of the Compliance Committee on compliance by the United Kingdom of Great Britain and Northern Ireland – Part I\\*](#); §§ 83-109

<sup>24</sup> Ibid. § 90

<sup>25</sup> Qualified One Way Cost Shifting was introduced under the [Act of Sederunt](#) (Rules of the Court of Session 1994, Sheriff Appeal Court Rules, Sheriff Court Rules Amendment) (Qualified One-Way Costs Shifting) 2021, which amends the relevant court rules to support the implementation of section 8 of the [Civil Litigation \(Expenses and Group Proceedings\) \(Scotland\) Act 2018](#).

<sup>26</sup> Scottish Government (2014) [Review of Expenses and Funding of Civil Litigation in Scotland: A Report by Sheriff Principal James A Taylor: Scottish Government Response](#), p 14

<sup>27</sup> Law Society of Scotland (4 Jun 2021) [Qualified One Way Costs Shifting update](#)

<sup>28</sup> The Court of Session etc. Fees Order 2018 (SSI 2018/83), Schedule 3. The hearing fee does not apply to the first 30 minutes of the hearing of a motion. Discussed in Christman and Combe (2020) [Funding Civil Justice in Scotland: Full Cost Recovery, at What Cost to Justice?](#) 24(1) *Edinburgh Law Review* 49.



- <sup>29</sup> See also Friends of the Earth Scotland (2016) [Developments in Environmental Justice - Friends of the Earth Scotland response to the Scottish Government's consultation](#), p5
- <sup>30</sup> Aarhus Convention Compliance Committee (Aug 2021) [Report of the Compliance Committee on compliance by the United Kingdom of Great Britain and Northern Ireland – Part I\\*](#), § 94
- <sup>31</sup> Faculty of Advocates (Jan 2018) [Response to Consultation \(October 2017\) on Scottish Court Fees 2018-2021](#)
- <sup>32</sup> Human Rights Consortium Scotland, Clan Childlaw, Rape Crisis Scotland, Friends of the Earth Scotland, Shelter Scotland, Amnesty International, and Justright Scotland (2018) [Discussion Paper: Overcoming Barriers to Public Interest Litigation in Scotland](#), p 12
- <sup>33</sup> United Nations Economic Commission for Europe (UNECE) (1998) [Aarhus Convention](#), Article 9(4)
- <sup>34</sup> Human Rights Consortium Scotland, Clan Childlaw, Rape Crisis Scotland, Friends of the Earth Scotland, Shelter Scotland, Amnesty International, and Justright Scotland (2018) [Discussion Paper: Overcoming Barriers to Public Interest Litigation in Scotland](#)
- <sup>35</sup> RSPB, Friends of the Earth England, Wales, and Northern Ireland, Friends of the Earth Scotland, and Leigh Day (2015) [Communication to Aarhus Compliance Committee ACCC/C/2017/156](#), pp 7-10
- <sup>36</sup> Scottish Environment LINK (2018) [Report on the Feasibility of an Environmental Rights Centre Scotland](#), pp 31-36 on barriers, and Appendix II for Access to environmental justice case studies
- <sup>37</sup> Environmental Rights Centre for Scotland (Oct 2021) [Why Scotland needs an environmental court or tribunal](#)
- <sup>38</sup> Aarhus Meeting of the Parties (July 2011) [United Kingdom Decision IV/9i](#), § 3(a)
- <sup>39</sup> Scottish Statutory Instruments (2013) [No. 81 COURT OF SESSION Act of Sederunt \(Rules of the Court of Session Amendment\) \(Protective Expenses Orders in Environmental Appeals and Judicial Reviews\)](#)
- <sup>40</sup> Aarhus Convention Compliance Committee (2014) [Compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention\\*: Report by the Compliance Committee](#), §65 (a)
- <sup>41</sup> Aarhus Meeting of the Parties (2014) [Decision V/9n on compliance by the United Kingdom of Great Britain and Northern Ireland](#), § 2(a)
- <sup>42</sup> [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(No. 4\) \(Protective Expenses Orders\) 2015](#)
- <sup>43</sup> Scottish Government (2016) [Developments in environmental justice in Scotland: A consultation](#)



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- <sup>44</sup> Aarhus Convention Compliance Committee (2015) [First progress review of the implementation of decision V/9n on compliance by the United Kingdom with its obligations under the Convention](#) § 33
- <sup>45</sup> Aarhus Convention Compliance Committee (2017) [Second progress review of the implementation of decision V/9n on compliance by the United Kingdom with its obligations under the Convention](#) § 107
- <sup>46</sup> Aarhus Convention Compliance Committee (2017) Report of the Compliance Committee\*: Compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention, § 77
- <sup>47</sup> Aarhus Meeting of the Parties (2017) [Decision VI/8k Compliance by United Kingdom with its obligations under the Convention](#)
- <sup>48</sup> [Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Protective Expenses Orders\) 2018](#)
- <sup>49</sup> Aarhus Convention Compliance Committee (2019) [First progress review of the implementation of decision VI/8k on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention](#); UNECE ACCC (2020) [Second progress review of the implementation of decision VI/8k on compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention](#)
- <sup>50</sup> RSPB, Friends of the Earth, Friends of the Earth Scotland, and Environmental Rights Centre for Scotland (29 Oct 2020) [Re: UK's 3rd Progress Report on Aarhus Convention Decision VI/8k](#)
- <sup>51</sup> Aarhus Convention Compliance Committee (Aug 2021) [Report of the Compliance Committee on compliance by the United Kingdom of Great Britain and Northern Ireland – Part I\\*](#), see §§ 81-113 and [Part II\\*](#), §53(b)