

ERCS calls on the Scottish Government to deliver **An enforceable right to a healthy environment**

In July 2022, the United Nations adopted a landmark resolution recognising the human right to a clean, healthy and sustainable environment, and that environmental damage has negative implications for the effective enjoyment of all human rights for present and future generations.

Over 160 out of 193 UN Member States now recognise the right because it is a critical tool for holding public bodies and big polluters to account on the environment. The Scottish Government must catch up.

The right includes both substantive and procedural elements

The substantive part:

- > 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
- > Healthy biodiversity and ecosystems

The procedural part:

- > Access to information
- > Participation in decision making
- > Access to justice

Recommendations

Ensure full compliance with the Aarhus Convention's access to justice requirements and reform legal expenses to make environmental litigation affordable

- > Meet all six recommendations to address breach of Article 9
- > Reform legal aid
- > Replace loser pays rule with qualified one-way costs shifting

Recommendations

Create a dedicated Scottish Environment Court which is affordable and accessible for everyone, fair, timely and effective

- > An institutional purpose to promote access to justice
- > Ability to appoint judges and experts
- > Comprehensive jurisdiction
- > Powers to set rules and procedures
- > Act as a one-stop shop

Recommendations

Guarantee the highest standards for the six features

- > Define to the highest standards
- > Enforce against public bodies and polluters
- > Oblige duty bearers to comply
- > Courts to apply environmental principles
- > Provide effective remedies

Key legislative processes for 2025–26

Right to a healthy environment

- > Natural Environment Bill
- > Wellbeing & Sustainable Development Bill
- > Ecocide (Prevention) Bill
- > Land Reform Bill

Legal expenses

- > Repeal regulation 15 of Civil Legal Aid Regulations 2002

Scottish Environment Court

- > Crofting Bill – Scottish Land Court/Lands Tribunal for Scotland merger
- > Specialist Working Group to revisit section 41 of the Continuity Act 2021

Looking to the 2026 Holyrood elections

We are in a triple planetary crisis of climate breakdown, biodiversity loss, and the pervasive pollution of our air, land and sea.

Recognising the right to a healthy environment in Scots law has the potential to transform policy choices to tackle environmental, socio-economic and health inequalities in Scotland.

Manifesto priorities

We urge all parties to recognise an enforceable right to a healthy environment in their manifestos by supporting:

- > **The right to a healthy environment in a Scottish Human Rights Bill**
- > **Legal aid reform**
- > **A Scottish Environment Court**
- > **Equal right of appeal in planning**

Further
reading

