

# Efficiency savings and costs of a Scottish Environment Court

## Briefing, February 2025

### Introduction

The Environmental Rights Centre for Scotland (ERCS) carries out advocacy in policy and law reform to improve environmental rights and compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.<sup>1</sup>

Previous ERCS briefings and reports have identified the need for a dedicated Scottish Environment Court with a comprehensive jurisdiction to increase access to justice, address the current fragmentation in routes to remedy and develop judicial expertise.<sup>2</sup> This briefing considers the potential efficiency savings to be gained from the establishment of such a court and prospective costs, based on figures from comparable courts and tribunals.

### Efficiency savings of a Scottish Environment Court

- **Reduced fragmentation:** Environmental litigation is currently carried out in several different forums in Scotland, resulting in a system that is fragmented and inefficient. While there are already specialist courts and tribunals ranging from heraldry (Court of the Lord Lyon) to parking penalties (General Regulatory Chamber – First Tier Tribunal for Scotland), environmental disputes are split across the Court of Session, Sheriff Courts, the Scottish Land Court, the Department for Planning and Environmental Appeals, Lands Tribunal for Scotland, and the Scottish Information Commissioner.
- **Simpler and faster routes to remedy:** An accessible environmental court or tribunal (ECT), with broad rules of standing, would reduce the possibility that unresolved minor or local disputes will lead to delay in permissible development through lengthy judicial review challenges.<sup>3</sup> Many ECTs use alternative dispute resolution (ADR) such as negotiation and mediation, which in some circumstances may lead to more agreeable outcomes for all of the parties involved, and could reduce the court's and parties' time and costs. For example, in 2022 the New South Wales Land & Environment Court finalised 72% of cases by ADR processes and negotiated settlement, without the need for a court hearing.<sup>4</sup>
- **Improved administrative efficiencies:** The Scottish Government has already justified a proposed merger of the Scottish Land Court and Lands Tribunal for Scotland on the basis of administrative efficiency.<sup>5</sup> An ECT could achieve efficiency benefits by reducing the risk of having multiple legal proceedings arising out of the same environmental dispute, providing administrative costs savings and increasing convenience for all parties.



## Costs of comparable courts and tribunals

It is hard to accurately estimate the costs of establishing and operating a new ECT, as this will depend on the institutional design, scope, demand, caseload, and the extent of savings from the current system. However, other specialist courts and tribunals offer a benchmark for prospective costs and benefits.<sup>6</sup> In Scotland, relevant comparable examples include the All-Scotland Sheriff Personal Injury Court and the proposed Sexual Offences Court.

The All-Scotland Sheriff Personal Injury Court (ASSPIC) was established in 2015 following the passage of the Courts Reform (Scotland) Act 2014. The Bill's explanatory notes estimated one-off costs of £127,000 and recurring annual savings from 2016/17 of £64,000 (approx. £170,000 and £86,000 when adjusted for inflation), see Figure 1.<sup>7</sup> According to Freedom of Information data obtained from the Scottish Courts and Tribunals Service (SCTS), the ASSPIC has since operated with seventeen staff, with salary costs amounting to approximately £500,000 annually.<sup>8</sup>

Personal Injury Court		One Off Costs	Recurring Savings (from 2016/17)
Scottish Government	Judicial Salaries		(£57,000)
SLAB	Legal Aid Budget		(£1,200,000) <sup>29</sup>
Scottish Court Service	Payroll (Clerks)		(£7,000)
	Project Team	£107,000	
	Procedures	£10,000	
	IT Upgrade	£10,000	
<b>Total</b>		<b>£127,000</b>	<b>(£64,000)</b>

**Figure 1: Personal Injury Court – financial implications (Scottish Parliament 2014)**

The SCTS's FOI response states that,

*'The ASSPIC did not create new court business. It provided a centre of expertise for business that would otherwise have been held in local sheriff courts and/or the Court of Session.'*

Prior to the establishment of the ASSPIC,

*'The Court of Session was inundated with a high volume of low value civil cases and...progressing that caseload was not an appropriate use of the scarce time of the Outer House judges.'*<sup>9</sup>

While it is not possible to definitively assert that transferring cases from the Court of Session would automatically reduce costs, conducting hearings at the appropriate tier of the judicial system may be salient to ECT proposals, although this will depend on its scope and jurisdiction.

The Scottish Government has committed to establishing a Sexual Offences Court as part of the Victims, Witnesses and Justice Reform (Scotland) Bill. The Bill's financial memorandum acknowledges that the new court will 'for the most part, utilise and draw on existing infrastructure', estimating initial set-up costs at £1.4m and recurring annual costs of less than £500,000 per annum. Costs relate to the following areas: establishing and operating the Court; prosecution of cases



within the Court; costs to the Scottish Legal Aid Board; and extending the power to impose orders for lifelong restrictions to judges sitting in the Court.<sup>10</sup>

The Environment Court of New Zealand is probably the national jurisdiction most comparable to Scotland (in terms of size, economy, and governance) where an environment court is currently operational. Its annual expenditure for 2023/4 was NZ \$9.8m,<sup>11</sup> which equates to approximately £4.5m.

In 2003, Macrory and Woods calculated the cost of establishing a new environmental tribunal for England and Wales as £1,715,000, accounting for members' salaries and expenses, staff salaries and expenses, accommodation, system administration, and training.<sup>12</sup> Adjusted for inflation, this would amount to around £3m – just 1.5% of the £197.5m budget for the SCTS in 2023/4.<sup>13</sup> Equivalent costs for Scotland, as a smaller jurisdiction handling fewer cases, would likely be lower.

## Conclusion

**The Scottish Government should establish a special committee or working group to revisit the case for a dedicated Scottish Environment Court.**

Data from comparable courts indicate that the costs of establishing a specialist ECT are unlikely to be significant in the context of the overall budget of the SCTS. The benefits to be gained from increased judicial expertise, affordable routes to remedy, and administrative efficiencies are likely to offset any initial costs and would deliver better outcomes in enforcing environmental law.

### For more information contact

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<sup>1</sup> United Nations Economic Commission for Europe (1998) [Convention on access to information, public participation in decision-making and access to justice in environmental matters](#)

<sup>2</sup> For an overview, see ERCS (May 2023) [Briefing: The clear and urgent case for a Scottish Environment Court](#); more detailed arguments are developed in ERCS/Christman (July 2021) [Why Scotland needs an environmental court or tribunal](#) and ERCS/Gemmell (March 2023) [The clear and urgent case for a Scottish Environment Court](#)

<sup>3</sup> Kimber (Jan 2022) [Environmental Courts – Models and Proposal for Ireland](#), Climate Bar Symposium, p.11

<sup>4</sup> Land & Environment Court of NSW (2022) [Types of Cases: Class 4 - Judicial review and civil enforcement](#)

<sup>5</sup> Scottish Government (Sept 2021) [Scottish Land Court and Lands Tribunal for Scotland consultation: Scottish Government response](#)

<sup>6</sup> ERCS contacted the Civil Law and Legal System Division of the Scottish Government's Directorate for Justice, and they informed us that, while financial information is held for the Scottish Courts and Tribunal Service across various budget categories such as staff costs or goods & services, they don't report costs for



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each separate court or tribunal. In general terms, the overall annual cost of an ECT would include administrative/corporate costs, facility costs, and staffing (including judicial costs), which is the single biggest cost. The average cost for administrative staff is £54k per person per annum, while judicial salaries range from £134-256k per annum.

<sup>7</sup> Scottish Parliament (2014) [Explanatory notes: Courts Reform \(Scotland\) Bill](#), p.53 and p.69

<sup>8</sup> Scottish Courts and Tribunals Service (Feb 2025) [Response to ERCS FOI request](#)

<sup>9</sup> *ibid*

<sup>10</sup> Scottish Parliament (2023) [Financial Memorandum: Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#), p.55

<sup>11</sup> New Zealand Environment Court (2024) [Report of the Registrar of the Environment Court](#), p.15

<sup>12</sup> Macrory and Woods (2003) [Modernizing Environmental Justice: Regulation and the Role of an Environmental Tribunal](#), p.62

<sup>13</sup> Scottish Government (February 2024) [Scottish Budget 2023 to 2024: spring budget revision](#)