

## Progress on access to environmental justice and next steps

### Briefing, June 2026

#### Summary

- The Aarhus Convention enshrines our procedural environmental rights. Scotland remains in breach of the Convention’s access to justice requirements.
- ERCS welcomes proposed changes to court rules that would reduce legal expenses.
- To guarantee full access to environmental justice, the Scottish Government should:
  - Replace Protective Expenses Orders with Qualified One-Way Cost-Shifting
  - Amend Regulation 15 of Civil Legal Aid Regulations 2002
  - Establish a dedicated Scottish Environment Court.

#### Introduction

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

This briefing summarises Scotland’s progress towards addressing its breach of the Convention’s access to justice requirements,<sup>2</sup> and the reforms needed in this parliamentary session to guarantee full access to environmental justice.

#### Background

The Aarhus Convention aims to promote environmental democracy. It guarantees our three procedural environmental rights: to be informed and have access to information about the environment; to participate in environmental decision-making; and to fair and affordable access to justice and effective remedies.

#### Access to justice: Scotland’s long history of non-compliance

Article 9(4) of the Convention requires that access to justice is ‘fair, equitable, timely, and not prohibitively expensive’.<sup>3</sup> The UK ratified the treaty in 2005 but remains non-compliant with Article 9. In Scotland, financial barriers including high legal fees, the ‘loser pays’ rule, and restrictions on eligibility for legal aid, prevent people from taking environmental cases to court.<sup>4</sup>



In 2021, the Convention's Meeting of Parties (MoP) adopted Decision VII/8s. This required the Scottish Government, as part of the UK, to implement six recommendations to address its non-compliance by the deadline of 1 October 2024.<sup>5</sup>

Scotland produced an action plan in 2022<sup>6</sup> but the Final Progress Report submitted in November 2024<sup>7</sup> showed the lack of progress towards meeting the recommendations.<sup>8</sup>

At the most recent MoP meeting in November 2025, the UK Government declined to endorse Decision VIII/8u, which detailed their breaches of the Convention relating to a lack of public participation in draft legislation and prohibitive legal expenses. This means endorsement will be delayed until 2029.<sup>9</sup> The UK Government's behaviour is a troubling signal of its weakening commitment to the rule of law.<sup>10</sup>

## Progress on access to environmental justice

### Legal expenses and the 'loser pays' rule

The 'loser pays' rule is the person's liability to pay the expenses of the opposing side if they lose. This can run into the tens or hundreds of thousands of pounds. Protective Expenses Orders (PEOs) are court orders which limit liability in expenses in certain types of environmental litigation. However, Scotland's PEO regime repeatedly has been found non-compliant with the Aarhus Convention's access to justice requirements.<sup>11</sup>

The most positive step in the Scottish Government's action plan was to ask the Scottish Civil Justice Council (SCJC) to review PEOs 'in order to make them compliant with Article 9(4)'.<sup>12</sup>

The SCJC's initial proposals were insufficient.<sup>13</sup> Following further advocacy from ERCS,<sup>14</sup> in November 2025, the SCJC carried out a public consultation on extending the availability of PEOs. It has since announced plans for a further consultation this summer on its revised rules, proposed for introduction in January 2027. If enacted, these changes would be an improvement in cost protection.<sup>15</sup>

While welcoming the proposed new rules, ERCS continues to advocate for replacing the PEO regime with Qualified One-Way Cost-Shifting. This is a system which is already successfully used for personal injury claims and removes the 'loser pays' rule.<sup>16</sup>

### Legal aid

The cost of paying a person's own legal team can typically range from £20,000 to £100,000 depending on the complexity of the case.

Legal aid helps low-income individuals to pay for legal advice and representation and promotes access to justice. ERCS has highlighted how the 'joint interest test' specified under Regulation 15 of the Civil Legal Aid Regulations 2002 makes it difficult to obtain legal aid for environmental cases.<sup>17</sup>



Following discussion with ERCS, the Scottish Legal Aid Board agreed to publish new guidance clarifying the scope of regulation 15, but no guidance has yet been published.

## A dedicated Scottish Environment Court

Scotland's environmental sector has long advocated for a specialist environment court or tribunal to increase access to justice, address the current fragmentation in routes to remedy and develop judicial expertise on environmental matters.<sup>18</sup>

There is extensive literature demonstrating the efficacy of environmental courts and tribunals, and they exist in over 2,000 jurisdictions around the world.<sup>19</sup>

The need to establish a specialist environment court or tribunal has been under periodic consideration in Scotland for over forty years. Most recently, it was meant to be considered as part of the Scottish Government's review of the effectiveness of environmental governance in 2023.<sup>20</sup> ERCS, along with other experts, were disappointed by the review because it failed to properly consider this important question.<sup>21</sup>

## Recommendations

**To guarantee full access to environmental justice, we recommend that the Scottish Government:**

- Replace Protective Expenses Orders with Qualified One-Way Cost-Shifting
- Amend Regulation 15 of Civil Legal Aid Regulations 2002 to enable public interest environmental litigation
- Establish a dedicated Scottish Environment Court with a comprehensive jurisdiction.

## 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> This briefing provides an update to our previous analysis outlined in ERCS (June 2024) [Scotland's lack of progress on delivering access to justice](#)
- <sup>3</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>4</sup> These problems are detailed in ERCS (Sept 2025) [Advocacy Manifesto](#)
- <sup>5</sup> MoP (Oct 2021) [Decision VII/8s concerning compliance by the United Kingdom of Great Britain and Northern Ireland with its obligations under the Convention](#)
- <sup>6</sup> See ERCS (July 2022) [Evaluation of Scotland's action plan on access to environmental justice](#)
- <sup>7</sup> DEFRA (November 2024) [United Kingdom Final Progress Report to the Aarhus Convention Compliance Committee](#)
- <sup>8</sup> See ERCS (June 2024) [Scotland's lack of progress on delivering access to justice](#); and RSPB, Friends of the Earth England, Wales and Northern Ireland, and ERCS (Jan 2025) [Decision VII/8s \(United Kingdom\) - invitation to comment on Final Progress Report](#)
- <sup>9</sup> UNECE (Nov 2025) [Excerpt from the report of the eighth session of the Meeting of the Parties \(ECE/MP.PP/2025/2\)](#)
- <sup>10</sup> Barritt/Day (Dec 2025) [Standoff in Geneva threatens Access to Environmental Justice](#)
- <sup>11</sup> See ERCS (Nov 2021) [Recommendations for a plan of action on judicial expenses](#)
- <sup>12</sup> DEFRA (July 2022) [Plan of action for decision VII/8s \(United Kingdom\)](#)
- <sup>13</sup> ERCS (July 2024) [Scotland's new protective expenses rules remain non-compliant with the Aarhus Convention](#)
- <sup>14</sup> See [ERCS letter to SCJC, 21 May 2022](#); and [ERCS' complaint to the Aarhus Convention Compliance Committee](#)
- <sup>15</sup> ERCS (March 2026) [Proposed changes to court rules signal major step towards affordable access to justice](#), SCJC (Jan 2026) [Widening the availability of costs protection in environmental cases](#)
- <sup>16</sup> See ERCS (Nov 2023) [Protective Expenses Orders: Investigation reveals why legal expenses regime needs reform](#); ERCS (Nov 2022) [Protective Expenses Orders: access to information remains a barrier to justice](#)
- <sup>17</sup> ERCS (June 2025) [Reforming legal aid to deliver environmental justice](#)
- <sup>18</sup> ERCS (Feb 2025) [Efficiency savings and costs of a Scottish Environment Court](#) and ERCS (May 2023) [The clear and urgent case for a Scottish Environment Court](#)
- <sup>19</sup> Pring, C & Pring, G (2009) [Greening Justice: Creating and Improving Environmental Courts and Tribunals](#); United Nations Environment Programme/Pring, C & Pring, G (2016) [Environmental Courts & Tribunals: A Guide for Policy Makers](#)
- <sup>20</sup> Scottish Government (June 2023) [Report into the Effectiveness of Governance Arrangements, as required by section 41 of the UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#)
- <sup>21</sup> Scottish Government (Nov 2024) ['Summary of views expressed in response to the consultation' in Effectiveness of environmental governance arrangements: statement](#); Scottish Parliament (10 Dec 2024) [Official Report - Net Zero, Energy and Transport Committee \(Session 6\), 10 Dec 2024](#); Scottish Parliament (3 April 2025) [Net Zero, Energy and Transport Committee and Equalities, Human Rights and Civil Justice Committee Debate: The Aarhus Convention and Access to Environmental Justice](#)