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07 November 2025

Dear Sir/ Madam,

Extending the availability of Protective Expenses Orders (PEOs)

We refer to the above consultation to which I respond on behalf of the Scottish Courts and Tribunals Service (SCTS). The response is submitted by the SCTS acting in its role to provide efficient and effective administration to the courts and tribunals and does not include the views of the Judiciary.

The SCTS supports improving Aarhus compliance through the extension of PEOs to the Sheriff Appeal Court (SAC) and sheriff courts.

However, while the proposed rules aim to mirror those in the Court of Session, they do not fully reflect the distinct and established procedures in the SAC and sheriff courts. As currently drafted, the rules would introduce a separate process for what is expected to be a very small number of cases.

We believe it would be worthwhile to explore whether existing standard motion procedures in the SAC and sheriff courts could be adapted to support the policy intent. This would align with approaches taken with, for example, summary applications, where motions and minutes follow the Ordinary Cause Rules 1993 (Chapters 14 and 15). Using standard procedures would likely reduce confusion, benefiting court users.

The current Civil Online and ICMS platforms support lodging and processing motions, including handling relevant time limits. However, the consultation indicates that ICMS automation for PEO motions should not be considered due to anticipated low volumes of cases.

The above approach appears to be inconsistent with the SCTS's broader digital strategy. Additionally, the use of a manual process would introduce risk of inconsistency across the courts.

Implementing a bespoke procedure for PEOs in both courts would likely require notable system development, incurring significant costs. By contrast, if the existing

motion processes were used, this could allow for identification and tracking of PEO motions with minor adjustments to the case management system, supporting future policy reviews at minimal cost.

The SCTS are content for this response to be published and would be grateful if we could be kept informed of the progress of this consultation and for the opportunity to contribute to any revised impact assessment should legislative provisions be taken forward.

Yours faithfully

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

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