



**Scottish
Civil Justice
Council**

RESEARCH ON THE COST CAPS USED IN PRACTICE: within Protective Expenses Orders

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EXECUTIVE SUMMARY

Purpose

1. For each Protective Expenses Order (PEO) granted under the ‘cost capping regime’ for environmental cases; this research paper documents the caps used in practice (*relative to the default caps of £5,000 and £30,000*).

Background

2. The implementation actions on signing the Aarhus Convention did include the need to establish a “cost capping regime” for environmental cases in Scotland.
3. In response the Scottish Government ran a Public Consultation in January 2012 and published its response in September 2012. The subsequent policy decisions led to the initial PEO Rules¹ as commenced with effect from 25 March 2013.

The existing rules:

4. The PEO Rules have now been in place for 11 years, with 3 amending rules instruments made to date (*in 2015, 2018 & 2024*). Given the commitment made to a PEO Rules Review within the 2024-25 Work Programme, there is an expectation of further rule changes to follow.
5. In terms of the cost capping regime the default cap of £5,000, and the reciprocal cross cap of £30,000 flow from RCS rule 58A.7 (1):

58A.7 - Terms of protective expenses orders

1) A protective expenses order must—

(a) Limit the applicant’s liability in expenses to the respondent to the sum of **£5,000**, or such other sum as may be justified on cause shown; and

(b) Limit the respondent’s liability in expenses to the applicant to the sum of **£30,000**, or such other sum as may be justified on cause shown.

6. The use of the legal phrase “on cause shown” within that rule is the equivalent to saying “where a valid reason has been demonstrated to the satisfaction of the court”. To assess whether this cost capping rule was working as intended the Council needed to establish a) the cost caps set within each environmental PEO issued to date and b) the extent to which any of those default caps had been varied up or down. Hence the request made for the secretariat to undertake this research on the practical outcome from the rules in use.

¹ Act of Sederunt (Rules of the Court of Session Amendment) (Protective Expenses Orders in Environmental Appeals and Judicial Reviews) 2013 (SSI [2013/81](#))

The use of manual data collection:

7. Applications for a PEO are made by lodging a motion and, given the low transaction volumes, the data by motion lodged is not tracked automatically within the courts digital case management system.
8. Given that practical constraint “manual” data collection was required. In practice that meant using online searches to identify media coverage by case, along with any references made within legal publications, to help isolate the relevant cases where a PEO had been considered. That reliance on public domain information does carry a risk of omission, so readers should note that this paper may exclude some cases where a PEO was considered. If readers are aware of other PEO related cases then please email: scjc@scotcourts.gov.uk.

The research request made:

9. To confirm that the cost capping rule (*r 58A.7 (1)*) was working as intended the information sought was:
 - A count of those environmental actions where a PEO had been considered;
 - A listing by case name for each case;
 - A breakdown of the caps and cross caps used in each case;
 - The relevant ‘court opinion references’ in order to access and view:
 - The reasoning behind any caps that were varied downwards;
 - The reasoning behind any caps that were varied upwards; and
 - Whether any rule change had been suggested within any court opinion.

The research outcome:

10. From 2005 to 2024 a total of 28 cases have been identified where a motion for a PEO was considered by the court. Of those 28 cases: there were 16 cases that considered the use of a PEO under the cost capping regime established in 2013, with a further 12 cases that considered the use of a PEO under the common law.

PART 1 – COST CAPS - IN ENVIRONMENTAL PEO’S (2013-2024)

11. In the 11 years since the ‘cost capping regime’ was introduced in 2013; this manual research identified 16 Aarhus cases where a PEO was considered by the court. The outcome was that at least 1 PEO was granted by the court in 12 of those cases, with no PEOs made in the other 4:

Type of PEO	Vol	Case Ref:	Reported	First Opinion Ref:	Petitioner	Outcome
Environmental PEO’s (2013 - 2024)	1	XA52/13	12 JUL 2013	[2014] CSOH 30	Sally Carroll	granted
	2	P420/14	22 JUL 2014	[2014] CSOH 116	Friends of Loch Etive	refused
	3	P843/14	31 OCT 2014	[2014] CSOH 172A	John Muir Trust	refused
	4	P807/14	20 MAR 2015	[2015] CSOH 27	St Andrews Environmental Protection	granted

Research on the cost caps used in practice

5	P1328/14	14 APR 2015	[2015] CSOH 41	J Mark Gibson	granted
6	P28/15	18 JUL 2016	[2016] CSOH 103	Royal Society for the Protection of Birds	granted
7	P29/15	18 JUL 2016	[2016] CSOH 104	Royal Society for the Protection of Birds	granted
8	P30/15	18 JUL 2016	[2016] CSOH 105	Royal Society for the Protection of Birds	granted
9	P31/15	18 JUL 2016	[2016] CSOH 106	Royal Society for the Protection of Birds	granted
10	P162/17	20 OCT 2017	[2017] CSOH 135	Simon Byrom	refused
11	P375/17	14 FEB 2018	[2018] CSOH 11	Jordanhill Community Council	granted
12	P1032/16	21 NOV 2018	[2018] CSOH 108	Matilda Gifford	refused
13	P719/18	01 MAR 2019	[2019] CSOH 19	No Kingsford Stadium Ltd	granted
14	P414/20	08 JAN 2021	[2021] CSOH 1	Scottish Creel Fishermen's Association	granted
15	P1102/20	21 OCT 2021	[2021] CSOH 108	Trees for Life	granted
16	P107/23	23 JUN 2023	[2023] CSOH 39	Open Sea's Trust	granted

Notes:

1. Volume: a count of 1 = the first opinion issued in a case
2. Case reference number – is the unique identifier allocated to each case
3. Date reported – is the date shown in the first reported opinion by case
4. First opinion reference - reflects a format of [YYYY] - court fora – opinion number
5. Petitioner – first person listed in the format of 'pursuer X v defender Y'
6. Outcome: GRANTED = PEO considered and at least 1 granted REFUSED = PEO considered and no PEO made

12. Annex 2 – provides further information for the 16 cases listed in table 1.1.

The caps and cross caps applied (in environmental cases):

13. For the 12 environmental cases where an environmental PEO was granted by the court; the default caps were used in 11 cases and 1 case had both caps varied downwards to nil (on cause shown):

Table 1.2 – COST CAPS FIXED - WITHIN AN ENVIRONMENTAL PEO

Vol	Case Ref:	Reported	First Opinion Ref:	Petitioner	Outcome	Cap	Cross Cap
1	XA52/13	12 JUL 2013	[2014] CSOH 30	Sally Carroll	granted	£5,000	£30,000
2	P807/14	20 MAR 2015	[2015] CSOH 27	St Andrews Environmental Protection	granted	£5,000	£30,000
3	P1328/14	14 APR 2015	[2015] CSOH 41	J Mark Gibson	granted	£5,000	£30,000
4	P28/15	18 JUL 2016	[2016] CSOH 103	Royal Society for the Protection of Birds	granted	£5,000	£30,000
5	P29/15	18 JUL 2016	[2016] CSOH 104	Royal Society for the Protection of Birds	granted	£5,000	£30,000
6	P30/15	18 JUL 2016	[2016] CSOH 105	Royal Society for the Protection of Birds	granted	£5,000	£30,000
7	P31/15	18 JUL 2016	[2016] CSOH 106	Royal Society for the Protection of Birds	granted	£5,000	£30,000
8	P375/17	14 FEB 2018	[2018] CSOH 11	Jordanhill Community Council	granted	£5,000	£30,000
9	P719/18	01 MAR 2019	[2019] CSOH 19	No Kingsford Stadium Ltd	granted	£5,000	£30,000
10	P414/20	08 JAN 2021	[2021] CSOH 1	Scottish Creel Fishermen's Association	granted	£5,000	£30,000
11	P1102/20	21 OCT 2021	[2021] CSOH 108	Trees for Life	granted	£5,000	£30,000
12	P107/23	23 JUN 2023	[2023] CSOH 39	Open Sea's Trust	granted	£Nil	£Nil

Notes:

1. Volume: a count of 1 = the first opinion issued in a case
2. Case reference number – is the unique identifier allocated to each case
3. Date reported – is the date shown in the first reported opinion by case
4. First opinion reference - reflects a format of [YYYY] - court fora – opinion number
5. Petitioner – first person listed in the format of 'pursuer X v defender Y'
6. Outcome: GRANTED = PEO considered and at least 1 granted REFUSED = PEO considered and no PEO made
7. Cap = the limit placed on the expenses payable by the pursuer if they lose the case
8. Cross Cap = the limit placed on the expenses payable to the pursuer if they win the case

14. The reason for that 1 case where both caps were varied downward to nil was not stated within the reported court opinions for that Open Sea's Trust case. Court officials have subsequently confirmed that, on cause shown, an unopposed motion² requesting that "neither party will be liable for the expenses of the other" was agreed by the court.

² on 19 April 2023

PART 2 – COST CAPS USED IN COMMON LAW PEO’S (2005-2024)

15. For the 19 year period from December 2005 to June 2024; this manual research has identified 12 cases where a common law PEO was considered. At least 1 PEO was granted in 7 of those 12 cases, with no PEOs made in the other 5:

Table 2.1 - PEO CONSIDERED – IN COMMON LAW ACTIONS						
Type of PEO	Vol	Case Ref:	Reported	First Opinion Ref:	Petitioner	Outcome
common law PEO's (2005 - 2013)	1	P856/05	09 DEC 2005	[2005] CSOH 165	Mary McArthur	refused
	2	P1225/09	20 JAN 2010	[2010] CSOH 5	Marco McGinty	granted
	3	XA53/10	22 FEB 2011	[2011] CSOH 10	Road Sense / William Walton	granted
	4	P876/11	29 FEB 2012	[2012] CSOH 32	Mary Theresa Doogan	refused
	5	P762/12	26 SEP 2012	[2012] CSOH 156	Scotch Whisky Association	granted
	6	XA120/14	08 APR 2013	[2015] CSOH 35	Hillhead Community Council	granted
	7	P255/13	01 MAY 2013	[2013] CSOH 68	Newton Mearns Residents	refused
	8	P698/12	24 SEP 2013	[2013] CSOH 158	Sustainable Shetland	granted
common law PEO's (2013 - 2024)	1	P1293/17	01 MAR 2018	[2018] CSOH 8	Andy Wightman MSP	granted
	2	P680/19	13 AUG 2019	[2019] CSOH 68	Joanna Cherry QC MP	granted
	3	A76/20	30 JUL 2020	[2020] CSOH 75	Martin James Keating	refused
	4	P395/22	09 NOV 2022	[2022] CSOH 81	John Halley	refused

Notes:
 1. Volume: a count of 1 = the first opinion issued in a case
 2. Case reference number – is the unique identifier allocated to each case
 3. Date reported – is the date shown in the first reported opinion by case
 4. First opinion reference - reflects a format of [YYYY] - court fora – opinion number
 5. Petitioner – first person listed in the format of 'pursuer X v defender Y'
 6. Outcome: GRANTED = PEO considered and at least 1 granted REFUSED = PEO considered and no PEO made

16. Annex 3 – provides further information for each case listed in table 2.1.

17. Annex 4 – provides information on one additional common law case. It has been excluded from the case count as no PEO was sought by that petitioner.

The caps and cross caps applied (in common law cases):

18. Of the 7 common law cases where a PEO was granted; comparable caps of £5,000 and £30,000 were used in the 2 cases that have arisen since the cost capping regime was introduced (in 2013). In the 5 common law cases granted a PEO prior to 2013 the court had taken a more varied approach to the caps set:

Table 2.2 – COST CAPS FIXED - WITHIN A COMMON LAW PEO								
	Vol	Case Ref:	Reported	First Opinion Ref:	Petitioner	Outcome	Cap	Cross Cap
	1	P1225/09	20 JAN 2010	[2010] CSOH 5	Marco McGinty	granted	£30,000	1S +1 J
	2	XA53/10	22 FEB 2011	[2011] CSOH 10	Road Sense / William Walton	granted	£40,000	Not stated
	3	P762/12	26 SEP 2012	[2012] CSOH 156	Scotch Whisky Association	granted	nil	nil
	4	XA120/14	08 APR 2013	[2015] CSOH 35	Hillhead Community Council	granted	£1,000	£15,000
	5	P698/12	24 SEP 2013	[2013] CSOH 158	Sustainable Shetland	granted	£5,000	£30,000
	1	P1293/17	08 FEB 2018	[2018] CSOH 8	Andy Wightman MSP	granted	£5,000	£30,000
	2	P680/19	13 AUG 2019	[2019] CSOH 68	Joanna Cherry QC MP	granted	£5,000	£30,000

Notes:
 1. Volume: a count of 1 = the first opinion issued in a case
 2. Case reference number – is the unique identifier allocated to each case
 3. Date reported – is the date shown in the first reported opinion by case

4. First opinion reference - reflects a format of [YYYY] - court fora – opinion number
5. Petitioner – first person listed in the format of 'pursuer X v defender Y'
6. Outcome: GRANTED = PEO considered and at least 1 granted REFUSED = PEO considered and no PEO made
7. Cap = the limit placed on the expenses payable by the pursuer if they lose the case
8. Cross Cap = the limit placed on the expenses payable to the pursuer if they win the case

19. To paraphrase the information from the reported court opinions, the reasons the court setting caps above £5,000 in those 2 pre-2013 cases were:

20 Jan 2010 - *McGinty (capped at £30,000)* - in this case the petitioner did have sizeable resources available to continue the proceedings. The court considered it just³ to make an order “restricting in advance the amount of the respondents' expenses for which the petitioner could be found liable in the event that the petition is unsuccessful to an amount not exceeding £30,000”. That order was also to include provision that “in the event that the petition is successful, the petitioner's expenses recoverable from the respondents be restricted to the expenses of an agent and one senior counsel acting without a junior”.

<https://www.bailii.org/scot/cases/ScotCS/2010/2010CSOH5.html>

22 Jan 2011 - *Road Sense / William Walton (capped at £40,000)* - in this case the petitioner did have sizeable resources available to continue the proceedings, to the sum of about £78,000⁴. Given those circumstance the court concluded that a maximum award of £40,000 would be just. <https://www.bailii.org/scot/cases/ScotCS/2011/2011CSOH10.html>

20. To paraphrase the reasons for the 2 caps set below £5,000:

23 September 2012 – *Scotch Whisky Association* – in this case the petitioner was intending to make a 5,000 word submission as an intervener in the public interest. Paragraph 11 records the courts' decision that “no party will be liable to another in expenses in respect of the Minute and any written intervention including any procedure following thereon”

<https://www.bailii.org/scot/cases/ScotCS/2012/2012CSOH156.html>

8 April 2015 - *Hillhead Community Council (capped at £1,000 & £15,000)* – in this case the petitioner was actually grant funded by the respondent (the Scottish Ministers) but a small amount of additional fundraising (£4,000) was undertaken to meet the costs of the proceedings in part. The rates set were as agreed between the parties. The low caps of £1,000 and £5,000 reflected the additional fundraising element only, as seeking expenses from normal running costs would compromise the objectives that Ministers had set when funding that grant.

[https://www.bailii.org/cgi-bin/format.cgi?doc=/scot/cases/ScotCS/2015/\[2015\]CSOH35.html&query=\(HILLHEAD\)+AND+\(COMMUNITY\)+AND+\(COUNCIL\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/scot/cases/ScotCS/2015/[2015]CSOH35.html&query=(HILLHEAD)+AND+(COMMUNITY)+AND+(COUNCIL))

PART 3 – COMMON THREADS (WITHIN THE MEDIA COVERAGE)

21. This research has relied on reviewing relevant online media coverage to isolate the civil actions relevant to this report. As a by-product; a number of recurrent threads were identified within the press releases made. The secretariat has fact checked each common thread to assess whether further research was needed.

³ Refer para. 12 of the court opinion

⁴ Refer para. 47 of the court opinion

Thread 1 – “on cause shown” is a vague term

22. As this form of words is unique to Scots law potential litigants may find the phrase “on cause shown” unfamiliar at first sight. That said, having reached the stage of reading the rules they will not be put off by the need to do a simple internet search on “what does the phrase X mean”. The responses to that search should soon convey that it equates to saying “*where a valid reason can be demonstrated to the satisfaction of the court*”.
23. In practice; that means any potential litigant can quickly familiarise themselves with that phrase, so the suggestion that this is such a “vague term” that it would create significant uncertainty appears to be a misperception. On that basis there is no justification for researching thread 1 further, nor making a rule change.

Thread 2 – “on cause shown” introduces legal uncertainty and has a chilling effect

24. The phrase “on cause shown” is unique to Scots law and it is deeply embedded within the primary and secondary legislation of Scotland. That term would be perceived as providing “legal certainty” within this jurisdiction and those trained in the law are unlikely to give that form of words a second thought.
25. Suggesting the phrase leads to “legal uncertainty” lacks credibility when it actually provides the opposite (legal certainty). Suggesting it is such an unfamiliar form of words that it have a material chilling effect on potential litigants also lacks credibility. On that basis there is no justification to research thread 2 further, nor for making a rule change.

Thread 3 – the ability of the court to review the caps upwards creates uncertainty

26. For this thread it was appropriate to undertake research to confirm the caps actually applied in practice since cost capping was introduced in 2013. The evidence now provided within Tables 1.2 and 2.2 should reassure potential litigants that a) the courts will use the default caps as a matter of routine (*because part 1 of the rule says the court “must”*) and b) any variation of a default cap up or down (*under part 2 of the rule*) would only happen if a party was able to clearly demonstrate to the court that there was a really good reason to do so. Potential litigants that reach the stage of reading the rules will readily understand that it is a two part rule and that the potential for an exception to be made does needs to be read in that context.
27. Any argument made suggesting uncertainty means that part 2 of this rule (the exception) is being used entirely out of context. That would be erroneous, as well as providing a disservice to the comprehension skills of potential litigants. Reading this rule “in the round” does provide certainty around how the court will approach its decision making, enabling potential litigants to make informed decisions on whether to litigate. On that basis the research provided in Tables 1.2

and 2.2 is sufficient to address this thread. There is no justification for changing part 2 of the rule⁵.

Thread 4 – the level of the caps should be reviewed

28. The implication of this thread is that an adjustment for inflation should be considered. The Consumer Price Index (CPI) was 98.1 in March 2013 and had increased to 134.1 by June 2024, which implies a multiplier of 1.367. If the Council was to adjust for inflation using that multiplier it implies revising the £5,000 cap to say £7,000, and revising the £30,000 cross cap to say £42,000. A number of the consultation responses in 2012 expressed a concern that even a £5,000 cap would have a chilling effect for a number of potential litigants. Those respondents will prefer the caps to remain constant, as inflation has reduced the purchasing power equivalent to £3,657.
29. Retaining the same cap amounts does provide consistency for users and it supports the statutory guiding principle for the Council to ensure that rules are easy to use and understand. On that basis thread 4 does not require further research beyond the check already made on the CPI. The presumption is the Council will be content to retain the existing caps.

CONCLUSIONS

30. The conclusions arising from this research are:

- *Reasons for granting or refusing a PEO* – the court opinions reported to date provide a significant body of evidence from the court having considered environmental PEO's in 16 Aarhus related cases over the last 11 years (*an average of 1.45 per annum*). The Council, and the public concerned, can view the reasons given on whether to grant or refuse each motion within the reported court opinions that are available online via:
 - The judgements page on the SCTS website; or <https://www.scotcourts.gov.uk/judgments/#/>
 - The databases page on the BAILLI website: <https://www.bailii.org/databases.html>
- *Upward variations “on cause shown”* – rule 58A.7 (1) has 2 distinct parts. Under part 1 the court “must” use the default caps within every Environmental PEO. Under the reference made to “on cause shown” in part 2 of the rule; the court will not make an exception unless a really good reason to do so was demonstrated to the satisfaction of the court. The policy expectation remains that any actual exceptions made by the court under part 2 of the rule would

⁵ *Judicial discretion is specifically included within this rule to ensure that it does align with the statutory guarantee of judicial independence that is provided for within the domestic law of Scotland; under [section 1](#) of the Judiciary and Courts (Scotland) Act 2008 ([ASP 2008/6](#)).*

arise very rarely. The evidence available from this research confirms that as being a realistic expectation;

- **Over the last 11 years the default caps have been used in 11 of the 12 environmental PEOs granted to date;**
 - **1 exception was made that varied the £5,000 cap downwards to nil on cause shown; and**
 - **No exceptions were made that varied the £5,000 cap upwards.**
- *Suggested rule changes* – this research has confirmed that RCS Rule 58A.7 (1) is operating as intended. No comments made by the judiciary within the relevant court opinions suggested there was any need to amend the rules. The common threads that have run through the media coverage have been fact checked and do not require further research. None of those threads justify the consideration of a rule change.
 - *Automated flags* – the secretariat has noted that enabling court officials to add a digital marker or flag when registering a motion, or when uploading court opinions, may provide a low cost digital solution that could help reduce the workload involved in replicating this research.

NEXT STEPS

31. The next steps are:

FUTURE UPDATES – the secretariat's planning assumption is that annual PEOs volumes are likely to remain in single digits each year for some time. A material volume increase will be needed to justify repeating this research.

AARHUS CONVENTION – uploading this research to the SCJC website will assist DEFRA when collating the “2nd progress report on the UK Plan of Action” (As the formal mechanism for Aarhus updates⁶ to the UNECE).

**Secretariat to the Scottish Civil Justice Council
August 2024**

⁶ This paper meets the information request made by the UNECE at paragraph 9 (c) of decision VII/8s

BIBLIOGRAPHY

Court Opinions:

Many court decisions are made orally at the time of the hearing. Others may be reserved and issued, usually in writing, at a later date. In relation to certain cases, written decisions from the Court of Session are normally published, while those from the sheriff courts may be published in relation to cases which involve:

- A matter of principle;
- A particular point of general public importance; or
- An issue of legal significance

There will be circumstances when a particular decision is not published in the interests of justice. The reported court opinions for all cases listed in this report are available online via:

- The judgements page on the SCTS website; or
<https://www.scotcourts.gov.uk/judgments/#/>
- The databases page on the BAILLI website;
<https://www.bailii.org/databases.html>

Consultations – By the Scottish Government

Legal Challenges to Decisions by Public Authorities under the Public Participation Directive 2003/35/EC: A Consultation

<https://www.webarchive.org.uk/wayback/archive/20150219185224/http://www.gov.scot/Publications/2012/01/09123750/12>

Legal challenges to decisions by Public Authorities under the Public Participation Directive 2003/35/EC: Scottish Government Response to Consultation Findings (Sep 2012, SG)

<https://www.webarchive.org.uk/wayback/archive/20150220233029/http://www.gov.scot/Publications/2012/10/6740/downloads>

Consultations – by the Council

Consultation – on draft court rules in relation to Protective Expenses Orders (SCJC, Mar 2017)

<https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations/consultation-on-draft-court-rules-in-relation-to-protective-expenses-orders>

Analysis of Responses - in relation to Protective Expenses Orders (SCJC, Nov 2017)

https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/consultation-on-draft-rules-for-protective-expenses-orders/final-report-consultation-on-draft-rules-in-relation-to-protective-expenses-orders---analysis-of-responses-october-2017.pdf?sfvrsn=2492bd2_2

BIBLIOGRAPHY...continued

Existing Rules:

Act of Sederunt (Rules of the Court of Session Amendment) (Protective Expenses Orders in Environmental Appeals and Judicial Reviews) 2013

<https://www.legislation.gov.uk/ssi/2013/81/contents/made>

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 4) (Protective Expenses Orders) 2015

<https://www.legislation.gov.uk/ssi/2015/408/contents/made>

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Protective Expenses Orders) 2018

<https://www.legislation.gov.uk/ssi/2018/348/contents/made>

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Protective Expenses Orders) 2024

<https://www.legislation.gov.uk/ssi/2024/196/contents/made>

Press Releases:

Information about protective expenses orders: EIR release (Oct 2023, SG)

Table 1 – Lists the annual volume of PEO's considered up to Sep 2022 (20 cases - 14 granted, 6 refused)

Table 2 – Provides the case references for the decisions made (20 cases – 15 environmental, 5 common law)

<https://www.gov.scot/publications/information-about-protective-expenses-orders-eir-release/>

- *ERRATA – some cases were omitted in error*
- *ERRATA – the case mix differs (this paper reflects statements made within each court opinion)*

GLOSSARY

The relevant terms used for the purposes of this paper are:

<i>Term</i>	<i>Meaning</i>
Aarhus Case	<p>Relevant proceedings that include a challenge to a decision, act or omission on grounds subject to the provisions of Article 6 of the Aarhus Convention.</p> <p><i>That currently covers:</i></p> <ul style="list-style-type: none"> • <i>Applications to the supervisory jurisdiction of the court, including applications under section 45(b) (specific performance of a statutory duty) of the Court of Session Act 1988(20), and</i> • <i>Appeals under statute to the Court of Session.</i>
ACCC	Acronym for – Aarhus Convention Compliance Committee (ACCC).
Cause shown	A term in Scots Law that means - where a valid reason has been demonstrated to the satisfaction of the court.
CSIH	Acronym for – the Inner House of the Court of Session (CSIH).
CSOH	Acronym for – the Outer House of the Court of Session (CSOH).
Common Law PEO	An application made under the common law. A common law PEO can be applied for in any civil proceedings and there can be procedural differences.
Environmental PEO	An application under the cost capping regime established by the PEO Rules. These PEO applications can be applied for in those civil proceedings taken in the public interest that do have an impact on the environment.
PEO	Acronym for – a Protective Expenses Order (PEO). Scotland uses an adversarial legal system, with the general principle for expenses being that “expenses follow success” (<i>which equates to “loser pays”</i>). In circumstances that result in a significant imbalance of power between the parties to a civil action, the court will consider making a PEO if it is in the “interests of justice” to do so.
PEO Rules	<p>RCS Chapter 58A (Protective Expenses Orders in Environmental Appeals and Judicial Reviews). Chapter 58A was first enacted by the Act of Sederunt (Rules of the Court of Session Amendment) (Protective Expenses Orders in Environmental Appeals and Judicial Reviews) 2013: https://www.legislation.gov.uk/ssi/2013/81/introduction/made</p> <p>Those PEO rules have since been amended 3 times (in 2015, 2018 and 2024).</p>
SCTS	Acronym for – Scottish Courts and Tribunal Service.
UKSC	Acronym for – UK Supreme Court (UKSC).
UNECE	Acronym for – United Nations Economic Council for Europe (UNECE).

ANNEX 1 – KEY MILESTONE DATES

2005 – The first common law application for a PEO in Scotland was made but rejected. Within that written court opinion⁷ the court did recognise that it was competent for a PEO to be granted provided the relevant tests in case precedent could be met. In practice that did not happen until four years later.

2010 – This is the year in which the first ‘common law PEO’ was granted⁸ in Scotland.

2013 – The implementation of the Aarhus Convention required PEO Rules to be established in order that would provide a simple “fixed cost capping regime” for Aarhus related environmental cases. The Scottish Government undertook a Public Consultation in 2012 that led to the initial version of the PEO rules⁹ being enacted and coming into force from 25 March 2013.

2024 – In the 11 year period since those PEO Rules were first commenced, amendments had been made on 3 occasions:

- *In 2015* – the PEO Rules were amended to ensure the definition of the type of claims covered was consistent with a judgement of the UK Supreme Courts;
- *In 2018* – the PEO Rules were completely rewritten; avoiding the high costs of mandatory hearings by adopting a more streamlined process that could support the court making decisions “on the papers”. In addition judicial independence was supported by providing the flexibility for the judiciary to move the cost caps up or down “on cause shown”; and
- *In 2024* – a further 3 amendments were made to incorporate responses to the 2017 Public Consultation by the Council (which were then repeated as Aarhus concerns). That amending instrument introduced a duty of confidentiality, allowed PEOs to be carried forward to appeals irrespective of who was appealing, and confirmed that costs would not normally be awarded for or against an intervener.

⁷ *McArthur v Lord Advocate [2005] CSOH 165 (regarding: deaths from contaminated blood)*

⁸ *McGinty v Scottish Ministers [2010] CSOH 5 (regarding: a proposal for a power station in Hunterston).*

⁹ *Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 4) (Protective Expenses Orders) 2015 (SSI [2015/408](#))*

ANNEX 2 – CASE SUMMARIES – ENVIRONMENTAL ACTIONS

From 2013 to 2024 (16 cases):

1	Sally Carroll			
	Opinion – 12 JUL 2013 Opinion – 17 JAN 2014 Opinion – 07 OCT 2015	[2014] CSOH 30 [2014] CSOH 6 [2015] CSIH 73	Case Ref:	XA52/13
	Case Name	Sally Carroll v Local Review Body of Scottish Borders Council		
	Court Procedure	Statutory Appeal		
	Type of motion	Environmental PEO		
	Environmental concern	Environmental impact – of wind turbines within 1km of a residence		
	Legal basis of challenge	s239 – Town and Country Planning (Scotland) Act 1997		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		

2	Friends of Loch Etive			
	Opinion – 22 JUL 2014 Opinion – 27 MAY 2015	[2014] CSOH 116 [2015] CSOH 61	Case Ref:	P420/14
	Case Name	Friends of Loch Etive v Argyll and Bute Council		
	Court Procedure	Judicial Review		
	Type of motion	Environmental PEO		
	Environmental concern	Environmental impact – of permitting a rainbow trout farm on Loch Etive		
	Legal basis of challenge	- not stated		
	PEO cost cap (applicant)			
	PEO cost cap (respondent)			
	PEO outcome	REFUSED (<i>ability to proceed in the absence of a PEO</i>)		

3	John Muir Trust			
	Opinion – 31 OCT 2014 Opinion – 04 DEC 2015 Opinion – 29 APR 2016 Opinion – 22 JUL 2016	[2014] CSOH 172A [2015] CSOH 163 [2016] CSIH 33 [2016] CSIH 61	Case Ref:	P843/14
	Case Name	John Muir Trust v SSE Generation Ltd & SSE Renewable Developments (UK) Ltd		
	Court Procedure	Judicial Review + Reclaiming Motion		
	Type of motion	Environmental PEO		
	Environmental concern	Environmental Impact – wind farm (Stronelaig, south of Fort Augustus)		
	Legal basis of challenge	Reg.14A - Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000		
	PEO cost cap (applicant)			
	PEO cost cap (respondent)			
	PEO outcome	REFUSED		

4	St Andrews Environmental Protection Association			
	Opinion – 20 MAR 2015 Opinion – 10 JAN 2018	[2015] CSOH 27 [2016] CSIH 22	Case Ref:	P807/14
	Case Name	St Andrews Environmental Protection Association Ltd v Fife Council		
	Court Procedure	Judicial Review + Judicial Review		
	Type of motion	Environmental PEO		
	Common law concern	Planning Decision - Housing Development on Greenbelt Land		
	Legal basis of challenge	s25 & s37(2) - Town and Country Planning (Scotland) Act 1997		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		
	Notes:	1. As the 2 opinions were silent on PEO's, the details were confirmed from a PEO made on 18 June 2015		

ANNEX 2 – CASE SUMMARIES – ENVIRONMENTAL ACTIONS...continued

5	J Mark Gibson			
	Opinion – 14 APR 2015 Opinion – 10 FEB 2016 Opinion – 15 APR 2016	[2015] CSOH 41 [2016] CSIH 10 [2016] CSIH 31	Case Ref:	P1328/14
	Case Name	J Mark Gibson v Scottish Ministers		
	Court Procedure	Judicial Review + Reclaiming Motion		
	Type of motion	Environmental PEO		
	Environmental concern	Environmental impact – of wind turbines 4.2km from house, and 4.6km from the Dark Sky Observatory (Dersalloch Wind Farm)		
	Legal basis of challenge	s36 - Electricity Act 1989		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		

6	RSPB			
	Opinion – 18 JUL 2016 Opinion – 16 MAY 2017	[2016] CSOH 103 [2017] CSIH 31	Case Ref:	P28/15
	Case Name	Royal Society for the Protection of Birds v Scottish Ministers		
	Court Procedure	Judicial Review + Reclaiming Motion		
	Type of motion	Environmental PEO		
	Environmental concern	Planning Decision – 110 turbines (Inch Cape Offshore Wind Farm)		
	Legal basis of challenge	s36 - Electricity Act 1989 + Reg. 22 - Marine Works (Environmental Impact Assessment) Regulations 2007		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		

7	RSPB			
	Opinion – 18 JUL 2016 Opinion – 16 MAY 2017	[2016] CSOH 104 [2017] CSIH 31	Case Ref:	P29/15
	Case Name	Royal Society for the Protection of Birds v Scottish Ministers		
	Court Procedure	Judicial Review + Reclaiming Motion		
	Type of motion	Environmental PEO		
	Environmental concern	Planning Decision – 75 turbines (Near na Gaoithe Offshore Wind Farm)		
	Legal basis of challenge	s36 - Electricity Act 1989 + Reg. 22 - Marine Works (Environmental Impact Assessment) Regulations 2007		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		

8	RSPB			
	Opinion – 18 JUL 2016 Opinion – 16 MAY 2017	[2016] CSOH 105 [2017] CSIH 31	Case Ref:	P30/15
	Case Name	Royal Society for the Protection of Birds v Scottish Ministers		
	Court Procedure	Judicial Review + Reclaiming Motion		
	Type of motion	Environmental PEO		
	Environmental concern	Planning Decision – 75 turbines (Seagreen Bravo Offshore Wind Farm)		
	Legal basis of challenge	s36 - Electricity Act 1989 + Reg. 22 - Marine Works (Environmental Impact Assessment) Regulations 2007		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		

ANNEX 2 – CASE SUMMARIES – ENVIRONMENTAL ACTIONS...continued

9	RSPB			
	Opinion – 18 JUL 2016 Opinion – 16 MAY 2017	[2016] CSOH 106 [2017] CSIH 31	Case Ref:	P31/15
	Case Name	Royal Society for the Protection of Birds v Scottish Ministers		
	Court Procedure	Judicial Review + Reclaiming Motion		
	Type of motion	Environmental PEO		
	Environmental concern	Planning Decision – 75 turbines (Seagreen Alpha Offshore Wind Farm)		
	Legal basis of challenge	s36 - Electricity Act 1989 + Reg. 22 - Marine Works (Environmental Impact Assessment) Regulations 2007		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		

10	Simon Byrom			
	Opinion – 20 OCT 2017 Opinion – 10 JAN 2018	[2017] CSOH 135 [2018] CSIH 3	Case Ref:	P162/17
	Case Name	Simon Byrom v Edinburgh City Council		
	Court Procedure	Judicial Review + Appeal		
	Type of motion	Environmental PEO		
	Common law concern	Planning Decision – in Conservation Area		
	Legal basis of challenge	Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997		
	PEO cost cap (applicant)			
	PEO cost cap (respondent)			
	PEO outcome	REFUSED		
	Notes:	1. CSIH opinion - Para 2 – notes PEO motion of Jan 2018 was refused		

11	Jordanhill Community Council			
	Opinion – 14 FEB 2018	[2018] CSOH 11	Case Ref:	P375/17
	Case Name	Jordanhill Community Council v Glasgow City Council		
	Court Procedure	Judicial Review		
	Type of motion	Environmental PEO		
	Environmental concern	Planning Decision – residential development		
	Legal basis of challenge	Town and Country Planning (Scotland) Act 1997		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		
	Notes -	1. Opinion [2018] CSOH 11 does not reference to the motion for a PEO		

12	Matilda Gifford			
	Opinion – 21 NOV 2018	[2018] CSOH 108	Case Ref:	P1032/16
	Case Name	Matilda Gifford		
	Court Procedure	Judicial Review		
	Type of motion	Environmental PEO		
	Environmental concern	Undercover policing - of environmental activists		
	Legal basis of challenge	- not stated		
	PEO cost cap (applicant)			
	PEO cost cap (respondent)			
	PEO outcome	REFUSED		

ANNEX 2 – CASE SUMMARIES – ENVIRONMENTAL ACTIONS...continued

13	No Kingsford Stadium Ltd			
	Opinion – 01 MAR 2019	[2019] CSOH 19	Case Ref:	P719/18
	Case Name	No Kingsford Stadium Ltd v Aberdeen Football club		
	Court Procedure	Judicial Review		
	Type of motion	Environmental PEO		
	Common law concern	Greenbelt Development – of 20,000 seat Football Stadium		
	Legal basis of challenge	s25 (1) a & s37 - Town and Country Planning (Scotland) Act 1997		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		
	Notes:	1. Whilst the opinion was silent on PEOs, the details were confirmed from a PEO made on 20 November 2018		

14	Scottish Creel Fishermen's Association			
	Opinion – 08 JAN 2021 Opinion - 23 DEC 2021	[2021] CSOH 1 [2021] CSIH 68	Case Ref:	P414/20
	Case Name	Scottish Creel Fishermen's Association v Scottish Ministers		
	Court Procedure	Judicial Review + Reclaiming Motion		
	Type of motion	Environmental PEO		
	Environmental concern	Challenge to a decision of Marine Scotland; to not take forward a proposed inshore fisheries pilot		
	Legal basis of challenge	Inshore Fishing (Scotland) Act 1984 + Sea Fish (conservation) act 1976 + Sea Fisheries Act 1968 + ministerial orders		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		

15	Trees for Life			
	Opinion – 21 OCT 2021	[2021] CSOH 108	Case Ref:	P1102/20
	Case Name	Trees for Life		
	Court Procedure	Judicial Review		
	Type of motion	Environmental PEO		
	Common law concern	Licencing – for lethal control of beavers		
	Legal basis of challenge	Conservation (Natural Habitats, etc.) Regulations 1994 (SI 1994/2716) - as amended by Conservation (Natural Habitats, etc.) Regulations 2019 (SSI 2019/64).		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		
	Notes:	1. Whilst the opinion was silent on PEOs, the details were confirmed from a PEO made on 10 February 2021		

16	Open Sea's Trust			
	Opinion – 23 JUN 2023 Opinion - 25 APR 2024	[2023] CSOH 39 [2024] CSIH 9	Case Ref:	P107/23
	Case Name	Open Sea's Trust v Scottish Ministers		
	Court Procedure	Judicial Review		
	Type of motion	Environmental PEO		
	Common law concern	Fishing Licences - Having regard to the National Marine Plan		
	Legal basis of challenge	Marine (Scotland) Act 2010 + Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 + Fisheries Act 2020		
	PEO cost cap (applicant)	£Nil		
	PEO cost cap (respondent)	£Nil		
	PEO outcome	GRANTED		
	Notes:	1. Whilst the court opinions are silent on PEOs, the details of a PEO made on 19 Apr 2023 confirmed that neither party is responsible for the expenses of the other		

ANNEX 3 – CASE SUMMARIES – COMMON LAW ACTIONS

2005 to 2013 (8 cases preceded the cost capping regime being established in 2013)

1	Mary McArthur			
	Opinion – 09 DEC 2005	[2005] CSOH 165	Case Ref:	P856/05
	Case Name	Mary McArthur & others v Lord Advocate & Scottish Ministers		
	Court Procedure	Judicial Review		
	Type of motion	Common law PEO		
	Common law concern	Contaminated blood scandal		
	Legal basis of challenge	s1(1)(b) Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976		
	PEO cost cap (applicant)			
	PEO cost cap (respondent)			
	PEO outcome	REFUSED		
	Notes:	1. This opinion did confirm that it was competent to make a PEO in Scotland		

2	Marco McGinty			
	Opinion – 20 JAN 2010	[2010] CSOH 5	Case Ref	P1225/09
	Opinion – 04 OCT 2011	[2011] CSOH 163		
	Opinion – 13 SEP 2013	[2013] CSIH 78		
	Case Name	Marco McGinty v Scottish Ministers		
	Court Procedure	Judicial Review + Onwards Appeal to UKSC		
	Type of motion	Common law PEO		
	Environmental concern	Environmental impact - of a new thermal power station (at Hunterston), as part of the National Planning Framework		
	Legal basis of challenge	s3A - Town and Country Planning (Scotland) Act 1997		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED (JAN 2010)		
	Notes:	1. This PEO was the first granted in Scotland (on 20 Jan 2010)		

3	Road Sense / William Walton			
	Opinion – 22 FEB 2011	[2011] CSOH 10 [2011] CSOH 131 [2012] CSIH 19 [2012] UKSC 44	Case Ref:	XA53/10
	Case Name	<i>Originally</i> - Road Sense and Walton v Scottish Ministers <i>Changed to</i> – William Walton v Scottish Ministers		
	Court Procedure	Statutory Appeal + Onwards appeal to UKSC?		
	Type of motion	Common law PEO (<i>as this environmental case predates the cost capping regime</i>)		
	Common law concern	Environmental Impact – Aberdeen Bypass		
	Legal basis of challenge	Sch. 2 - Roads (Scotland) Act 1984		
	PEO cost cap (applicant)	£40,000		
	PEO cost cap (respondent)	Not stated		
	PEO outcome	GRANTED		
	Notes:			

4	Mary Theresa Doogan			
	Opinion – 29 FEB 2012	[2012] CSOH 32	Case Ref:	P876/11
	Case Name	Mary Theresa Doogan & others v Lord Advocate & Scottish Ministers		
	Court Procedure	Ordinary Cause		
	Type of motion	Common law PEO		
	Common law concern	Midwives – objecting to participation in medical terminations		
	Legal basis of challenge			
	PEO cost cap (applicant)			
	PEO cost cap (respondent)			
	PEO outcome	REFUSED		

ANNEX 3 – CASE SUMMARIES – COMMON LAW ACTIONS...continued

5	Scotch Whiskey Association			
	Opinion – 26 SEP 2012 Opinion – 03 MAY 2013 Opinion – 30 APR 2014 Opinion – 11 JUL 2014 Opinion – 21 OCT 2016	[2012] CSOH 156 [2013] CSOH 70 [2014] CSIH 38 [2014] CSIH 64 [2016] CSIH 77	Case Ref:	P762/12
	Case Name	Scotch Whiskey Association - petitioner		
	Court Procedure	Judicial Review – application to intervene		
	Type of motion	Common Law		
	Common law concern	Minimum unit pricing for alcohol		
	Legal basis of challenge	Alcohol (Minimum Pricing) (Scotland) Act		
	PEO cost cap (applicant)	Nil		
	PEO cost cap (respondent)	Nil		
	PEO outcome	GRANTED		
	Notes:	1. PEO decision issued by interlocutor dated 26/09/12		

6	Hillhead Community Council			
	Opinion – 08 APR 2013	[2015] CSOH 35	Case Ref:	XA120/14
	Case Name	Hillhead Community Council & others v Glasgow City Council		
	Court Procedure	Statutory appeal		
	Type of motion	Common law PEO (<i>by agreement between the parties</i>)		
	Common law concern	National Air Quality Strategy		
	Legal basis of challenge	Para. 35 - Schedule 9 - Road Traffic Regulations Act 1984		
	PEO cost cap (applicant)	£1,000		
	PEO cost cap (respondent)	£15,000		
	PEO outcome	GRANTED		
	Notes:	1. [2015] CSOH 35 (para. 2) – <i>this is an environmental case but the parties agreed a common law PEO was more appropriate to their circumstances</i>		

7	Newton Mearns Residents Flood Protection Group			
	Opinion – 01 MAY 2013 Opinion – 07 JUN 2013	[2013] CSOH 68 [2013] CSIH 70	Case Ref:	P255/13
	Case Name	Newton Mearns Residents Flood Protection Group		
	Court Procedure	Judicial Review		
	Type of motion	Common law PEO (<i>by agreement between the parties</i>)		
	Environmental concern	Housing development on greenfield site (54 houses)		
	Legal basis of challenge			
	PEO cost cap (applicant)			
	PEO cost cap (respondent)			
	PEO outcome	REFUSED		
	Notes:	1. [2013] CSOH 68 - Para 8 – <i>“important to note the motion is not made under the recently enacted PEO rules”</i>		

8	Sustainable Shetland			
	Opinion – 24 SEP 2013 Opinion – 03 DEC 2013 Opinion – 09 JUL 2014 Opinion – 09 FEB 2015	[2013] CSOH 158 [2013] CSIH 116 [2014] CSIH 60 [2015] UKSC 4	Case Ref:	P698/12
	Case Name	Sustainable Shetland v Scottish Ministers + Viking Energy Partnership		
	Court Procedure	Judicial Review + Reclaiming Motion		
	Type of motion	Common law PEO (<i>PEO of 7 November 2012 predates the cost capping regime</i>)		
	Common law concern	Environmental Impact – 103 Wind Turbines (Viking wind Farm) including: - Habitat Management Plan - Wildlife including the impact on Whimbrel - decision not to hold a public inquiry		
	Legal basis of challenge	s36 - Electricity Act 1989 + Wild Birds Directive 2009		
	PEO cost cap (applicant)	£5,000 / £5,000 / £Nil		
	PEO cost cap (respondent)	£30,000 / £60,000 / £45,000		
	PEO outcome	GRANTED		
	Notes:	1. <i>Whilst the 4 opinions are silent on PEOs - details were confirmed from the PEOs made on 7 November 2012 / 19 June 2013 / 3 December 2013</i>		

ANNEX 3 – CASE SUMMARIES – COMMON LAW ACTIONS...continued

2013 to 2024 (4 cases have arisen since the cost capping regime was established)

9	Andy Wightman MSP and Others			
	Opinion – 08 FEB 2018	[2018] CSOH 8	Case Ref:	P1293/17
	Opinion – 20 MAR 2018	[2018] CSIH 18		
	Opinion – 01 MAY 2018	[2018] CSIH 62		
	Case Name	Andy Wightman MSP and Others v Secretary of State		
	Court Procedure	Reclaiming Motion + Reclaiming Motion		
	Type of motion	Common law PEO		
	Common law concern	Objecting to - EU withdrawal (Brexit)		
	Legal basis of challenge	Article 50 of the Treaty on European Union		
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		

10	Joanna Cherry QC MP			
	Opinion – 30 AUG 2019	[2019] CSOH 68	Case Ref:	P680/19
	Opinion – 04 SEP 2019	[2019] CSOH 70		
	Opinion – 11 SEP 2019	[2019] CSIH 49		
	Case Name	Joanna Cherry QC MP & Others v advocate General		
	Court Procedure	Reclaiming Motion		
	Type of motion	Common law PEO		
	Common law concern	Objecting to – proroguing of UK Parliament		
	Legal basis of challenge			
	PEO cost cap (applicant)	£5,000		
	PEO cost cap (respondent)	£30,000		
	PEO outcome	GRANTED		

11	Martin James Keating			
	Opinion – 30 JUL 2020	[2020] CSOH 75	Case Ref:	A76/20
	Opinion – 05 FEB 2021	[2021] CSOH 16		
	Opinion – 30 APR 2021	[2021] CSIH 25		
	Judgement summary -			
	Case Name	Martin James Keating V Advocate General for Scotland		
	Court Procedure	Ordinary cause + ordinary cause + judicial review		
	Type of motion	Common law PEO		
	Common law concern	Independence referendum (without UK consent)		
	Legal basis of challenge	Scotland Act 1988		
	PEO cost cap (applicant)			
	PEO cost cap (respondent)			
	PEO outcome	REFUSED		
	Notes:			

12	John Halley			
	Opinion – 09 NOV 2022	[2022] CSOH 81	Case Ref:	P395/22
	Opinion – 10 FEB 2023	[2023] CSIH 9		
	Case Name	John Halley v Scottish Ministers		
	Court Procedure	Judicial Review		
	Type of motion	Common law PEO		
	Common law concern	Government Funding - to defend fitness to practice as part time sheriff		
	Legal basis of challenge	s34 (1) - Judiciary and Courts (Scotland) Act 2008. s21 - Courts Reform (Scotland) Act 2014		
	PEO cost cap (applicant)			
	PEO cost cap (respondent)			
	PEO outcome	REFUSED		

ANNEX 4 – CASE SUMMARIES - EXCLUDED CASES

For Completeness - it is noted that the case of *Uprichard v the Scottish Ministers* has been excluded; as no motion for a PEO lodged in that case:

1	Penny Uprichard	Opinion – 07 SEP 2011 Opinion - 10 NOV 2011 Opinion - 24 APR 2013	[2011] CSIH 59 [2011] CSIH 77 UKSC 2012/0034	Case Ref:	XA101/09
	Case Name	Penny Uprichard v Scottish Ministers & Fife Council			
	Court Procedure	Reclaiming Motion + Reclaiming Motion + Onwards Appeal to UKSC			
	Type of motion	Not Applicable (<i>no motion for a PEO was lodged</i>)			
	Common law concern	Environmental Planning – Fife Structure Plan - St Andrews			
	Legal basis of challenge	s238 - Town and Country Planning (Scotland) Act 1997			
		Notes:	<p>1. The absence of a PEO was insufficient to stop the “Uprichard” case being progressed through the Scottish Courts to the Inner House, and onwards to the UK Supreme Court.</p> <p>2. There was no motion lodged for a PEO in this case.</p> <p>3. 2 of the 3 opinions reported only make passing references to PEO’s:</p> <p style="margin-left: 20px;">a) The Inner House judgement (Para. 22) noted that, even in the absence of any PEO rules, the possibility of applying for such orders is still well known.</p> <p style="margin-left: 20px;">b) The UK Supreme Court judgement (Para. 54-56) noted a) that the appellant could have applied for a PEO earlier but chose not to and b) rejected the appellant’s argument that the Inner House had placed too much weight on that point.</p>		