

MINUTES
MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL
FRIDAY 8 AUGUST 2025, 10:30AM
JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

Present: Lord President (*Chair*)
Lady Carmichael (*via WebEx*)
Fiona Drysdale KC
Thomas Docherty
Lord Ericht
Malcom Graham (*SCTS*)
Colin Lancaster (*SLAB*)
Iain MacRae (*via WebEx*)
Sheriff Principal Ross

In attendance: Rachel Grant (*LIT*)
Edward McHugh (*LPPO*)
Jamie Macdonald (*judicial communications*)
Stuart Ritchie (*judicial communications*)

Support: Jessica Flynn (*secretariat*)
Craig McCorkindale (*secretariat*)
Graeme Welsh (*secretariat*)

Apologies: Sheriff Jillian Martin-Brown
Nicola Irvine
Sheriff Frances McCartney
Denise Swanson (*SG*)
Sheriff George Way

Item 1 - Welcome, introduction & apologies

1. The Chair welcomed members to the meeting and noted the apologies received.

Item 2 Article 8 of the Aarhus Convention

Item 2.1 - Next Steps: When promoting public participation (*Paper 2.1 & 2.1A*)

Step 1 – Plan for achieving compliance:

2. The meeting noted the progress that has been made to date and confirmed the Councils commitment to achieving compliance with the Aarhus convention regarding those matters that fall within its remit. The suggested timeline that ran into 2027 was seen as too long.

3. The Council agreed to shorten that timeline:

- **By drafting suggested amendments related to the 3 policy reconsiderations in parallel with running this first consultation; and**
- **Reconsidering whether there is a need to consult again in 2026.**

Step 2 – To publish the 2025 Public Consultation

4. The publication of the consultation was approved (*refer item 2.2 below*).

Step 3 – To provide input to the UK response to the Compliance Committee

5. Members noted that communication 2025/216 applies to the UK member state as the signatory to the convention; with DEFRA designated as the single point of contact to coordinate their response. The Council is currently compiling information to inform that UK response; with a view to DEFRA lodging their report with the compliance committee in November 2025.

Step 4 – To offer to meet with NGOs at an appropriate point

6. Members agreed that during the 3 month duration of the 2025 consultation it would be appropriate to add the opportunity for public participation by some representative bodies such as: Scottish Environment Link etc. along with environmental law centres such as the ERCS.

7. The Council agreed:

- **To instruct the preparation of a communications strategy to support this 2025 Public Consultation; and**
- **To then engage as appropriate via a sub-group of members including: *Thomas Docherty, Malcolm Graham, & Sheriff McCartney.***

Item 2.2 - Public Consultation: on extending access to PEOs (*Paper 2.2 & 2.2A-E*)

8. The papers as circulated were discussed and the key points noted from discussion were:
 - The usual list of consultees will be extended to include: academics, relevant businesses, respondents from the 2017 consultation, and relevant organisations from the PEO related cases to date;
 - The annexes will include the text for both articles 8 and 9;
 - The reference to fee exemptions in the BRIA will be commented on within the consultation paper itself;
 - A question will be added seeking feedback on any other sheriff court

- actions considered appropriate for the availability of costs protection;
- Members agreed to add an open question seeking areas for improvement over and above the Aarhus concerns; and
- Once it has been published a copy of the consultation pack will also be forwarded (for information) to the convener of the EHRCJ committee and to the researchers at SPICe;

9. The Council agreed that:

- **Subject to the amendments raised in discussion the content of the 2025 consultation and its questions were appropriate; and**
- **The finalised 2025 consultation pack should be emailed to the listed consultees and published online as soon as practicable.**

Item 2.3 - Research: on the incidence of interveners (Paper 2.3 & 2.3A)

10. The papers as circulated were discussed and the key points noted from discussion were:

- The definition of “interveners” will cover its 3 component parts; public interest interveners, statutory interveners and statutory office holders;
- The commentary in thread 2 will be split to differentiate prohibitive expense from interveners expenses; and
- With regard to those who do conflate the terms “intervener” and “third party” it was noted that third party procedure is not applicable within a judicial review.

11. The Council agreed that:

- **Subject to making the amendments raised in discussion, the research report should be published as soon as practicable.**

Item 2.4 - Having ‘due regard’ to the environmental principles (Paper 2.4 & 2.4A)

12. In terms of the “polluter pays” principle: it was noted that only a party that has caused an environmental harm would be considered to be a “polluter”.

13. The Council noted:

- **The “best practice” requirement to have “due regard” to the environmental principles; and**
- **The options intended to be used to evidence due consideration of those environmental principles.**

Item 2.5

14. Item 2.5 was withdrawn.

ITEM 3 - GOVERNANCE

Item 3.1 - The 'consultation process' used by the SCJC (Paper 3.1 & 3.1A)

15. The papers as circulated were discussed and the key points noted from discussion were:

- Para 7 – having the full narrative for each Gunning principle would assist;
- Para 13 - it would be helpful to add a comment on choosing “to consult again” on the same topic;
- Para 38 – given the potential to add delay a decision to add an open question seeking “any other comments” would be a matter for the Council, with the final wording then being a matter for the secretariats discretion;
- Para 39 - providing comment on making treaty rights justiciable is unnecessary as it is well covered within the other papers.

16. The Council agreed that:

- **Subject to the amendments raised in discussion, the updated paper on the Consultation Process (paper 3.1A) was agreed for publication.**

Item 4 - AOB

Papers to be marked private

17. To support open justice the Council agreed that all papers considered at the meeting are to be finalised in line with the discussions held and made publicly available online (*within the webpage for this meeting*).

Dates of next meetings

18. The next meetings of the Council will be held on:

- Monday 20 October 2025
- Monday 08 December 2025