



Scottish
Civil Justice
Council

EQUALITY IMPACT ASSESSMENT:

For the draft rules that accompany this consultation on:

Extending access to Protective Expenses Orders (PEOs)

PREPARED BY: The Secretariat to the Scottish Civil Justice Council (SCJC)

REGARDING: the draft rules that would support extending the availability of Environmental PEOs to the sheriff courts and to the Sheriff Appeal Court (SAC).

LAST UPDATED: 8 August 2025

Step 1 – POLICY BACKGROUND

Where the court grants an Environmental PEO an applicant will gain “cost protection” against an adverse award of expenses being made against them.

At present that option is limited to proceedings initiated within the Court of Session which excludes anyone wishing to raise public interest proceedings under the Environmental Protection Act 1990. As those civil actions need to be initiated within the sheriff courts there is not the option to seek an Environmental PEO

What is the purpose of this policy?

The policy objectives when extending these PEOs beyond the Court of Session are:

- *To improve access to justice* – by widening the availability of costs protection against an adverse award of expenses in environmental cases.
- *To provide comparable rules* – by mirroring the general approach taken in the existing PEO Rules within the sheriff courts and the Sheriff Appeal Court.
- *To improve Aarhus compliance* – by addressing the Aarhus concern regarding the “type of cases” covered by the PEO rules, given the inability to seek an Environmental PEO outwith the Court of Session.

Why is this policy being developed or revised now?

This change has the potential to raise the number of civil actions taken to protect the environment; by extending the availability of Environmental PEOs to include proceedings raised under the Environmental Protection Act 1990 in the sheriff court.

Consultation

Climate change and the protection of the environment are of increasing concern across all of civil society so a Public Consultation exercise will provide the widest range of feedback received.

How are staff and / or customers affected by this policy?

Court Users

Potential Litigants - those contemplating initiating a civil action in the public interest in order to protect the environment will be able to seek the cost protection that can be provided by a PEO. If granted that order would limit their financial exposure to an adverse award of expenses being made against them to £5,000 (*the default cap applied under a PEO*).

Judiciary and staff

Judicial Office Holders – will need an awareness of the procedural changes made.

Court Officials - will need an awareness of the procedural changes made.

What research has influenced the development of this policy?

Judicial Decision Making

To date the court has issued court opinions in 28 cases where one or more motions for a PEO was considered. This proposed change reflects the content of the extensive body of knowledge contained within those judgments.

Business Levels

This is an area with low transaction volumes. On average the court has only considered a motion for either a common Law PEO or an Environmental PEO in 1.4 cases per annum¹.

¹ In the 20 years from 2005 to 2025 there were a total of 28 cases where 1 or more motions for a PEO was considered by the courts; which equates to an average of 1.4 p.a.)

Technology

The ability for an applicant to lodge a motion, and for all parties to view that motion, is already covered within the functionality provided by Civil Online and ICMS.

There is no intention to specifically automate these low volume transactions

Equalities

The assumption is that someone with protected characteristics that wants cost protection would prefer to have a choice about what best meets their needs when deciding whether to seek an Environmental PEO or a Common Law PEO.

User Experience

The assumption is that all those seeking cost protection would prefer to have a choice, so that they can seek either an Environmental PEO or a Common Law PEO depending on their own personal circumstances.

How does this policy support the public sector equality duty?

The Council does not provide front line public services. It does provide 'functions of a public nature' when proposing draft court rules for consideration by the Court of Session, so it does give 'due regard' to the general equality duties under the Equalities Act 2010 which are:

Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.

Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.

Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

How has feedback from equality groups helped to shape this policy?

Running this 3 month public consultation provides an opportunity for all those with protected characteristics, and their representative bodies, to provide feedback on these proposed changes.

Step 2 – ASSESSMENT OF LIKELY EQUALITY IMPACTS

When considering equality impacts, readers should note the differing roles of the organisations that support the judiciary:

- The “rule making” function sits with the Scottish Civil Justice Council (SCJC) - it is responsible for making reasonable adjustments within any proposed rules in order to anticipate the needs of those with impairments.
- The “service delivery” function sits with the Scottish Courts and Tribunal Service (SCTS) - they deliver the frontline services, including digital services (*websites, video platform, telephone platform, helpdesks etc.*), that support the rules in use. They make the reasonable adjustments required within those front line services.

This EQIA is narrated from the Council’s perspective, to ensure it maintains a clear focus on the impacts arising from the **rule making** function.

IMPACTS APPLICABLE TO ALL COURT USERS & AS WELL AS ALL THOSE WITH PROTECTED CHARACTERISTICS	DIGITISATION These proposed rule changes do not add new digital services, so for the purposes of this EQIA no new digital impacts arise. Hence the common equality impacts in other procedures that flow from digital exclusion are not applicable. LEGAL TERMINOLOGY The law can dictate the use of complicated legal terminology that can make the procedures in the civil courts difficult to understand for both party litigants and represented parties; and that can be problematic for those with more complex communication needs. <u>Negative impacts – terminology:</u> • Those with communication difficulties will already have a sense of separation from the other people involved in a case, which will be heightened where the use of complex legal language and legal processes hinders their understanding and ability to participate in a case. <u>Reasonable adjustments - in court rules:</u> • <i>Usability</i> – the <i>draft rules</i> that accompany this proposal have been written as succinctly as possible so that they are easy to use and understand (relative to other procedures). <u>Reasonable adjustments - in working practices:</u> • <i>Participation</i> – the rules are underpinned by the existing duty on the judiciary to ensure the effective participation of parties within court proceedings.
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AGE	No significant impacts identified
DISABILITY	No significant impacts identified
GENDER REASSIGNMENT	No significant impacts identified
MARRIAGE & CIVIL PARTNERSHIP	No significant impacts identified
PREGNANCY & MATERNITY	No significant impacts identified
RACE	TRANSLATION For those who use English as a second language, or do not understand English at all, there is added complexity if using an interpreter to understand the requirements within the rules or to participate in a hearing. That act of translating can add significant time and cost to proceedings. <u>Positive Impacts – translation:</u> As the court can consider most cases seeking a PEO on the papers it has minimised the need for the translations that might otherwise have arisen to support a hearing.
RELIGION & BELIEF	No significant impacts identified
SEX	No significant impacts identified
SEXUAL ORIENTATION	No significant impacts identified.