MEETING OF THE SCOTTISH CIVIL JUSTICE COUNCIL

MONDAY 15 JUNE 2026, 10:30AM

JUDGES' CONFERENCE ROOM, PARLIAMENT HOUSE

Tea, coffee & refreshments from 10am

1. **Welcome, apologies and agreement of public and private papers**

2. **Previous meeting**
   2.1 Items considered by correspondence ***(Paper 2.1)***

3. **Governance**
   3.1 SCJC Strategy ***(Paper 3.1 & 3.1A)***
   3.2 Annual Report 2025-26 & Work Programme 2026-27 ***(Paper 3.2 & 3.2A)***

4. **Aarhus Convention**
   4.1. Update on Stakeholder Meetings ***(Paper 4.1)***
   4.2. Update on Complaint ***(Paper 4.2 & 4.2A)***
   4.3. Public Consultation on the extension of PEOs ***(Paper 4.3 & 4.3A-D)***

5. **Work Programme**
   5.1 Format of Judgments ***(Paper 5.1 & 5.1A-B)***
   5.2 Update from the Group Procedure Working Group ***(Paper 5.2)***
   5.3 Interim Awards of Expenses ***(Paper 5.3 & 5.3A)***
   5.4 Simplified Table of Fees (final) ***(Paper 5.4 & 5.4A-D)***

6. **AOB**

7. **Dates of next meetings**
   - Monday 28 September
   - Monday 14 December

ITEMS CONSIDERED BY CORRESPONDENCE

Purpose

1. To provide the Council with a note of the outcomes from items considered by correspondence since the Council meeting held on 8 December 2025.

Matters considered

2. There has been 2 matters considered by correspondence since the December 2025 meeting:

Administrative Matters

- **IBC 2025.20** was issued to members on 18 December 2025. It invited members to consider and approve the draft minutes from the Council meeting held on 8 December 2025. One response was received. The minutes and agreed papers were then published on the Council's website.

- **IBC 2026.02** was issued to members on 6 March 2026. It invited members to consider and approve draft rules that introduce a unit-based costing methodology to provide a simplified table of fees for officers of court. Two responses were received. The draft rules were approved. They will be laid and made once the election is past and the Scottish Parliament reconvenes.

Recommendation

3. Members are invited to note the contents of this update.

Secretariat to the Scottish Civil Justice Council
June 2026

SCJC STRATEGY

Purpose

1. To consider a revised draft SCJC Strategic Plan for discussion and approval, following the previous strategy development sessions held in March and May 2026.

Background

2. The SCJC has undertaken two strategy sessions in March and May 2026 – on the first occasion considering those areas that the SCJC ought to focus on within its proposed strategy and on the second, considering a draft plan.

3. Through the discussions in May 2026, clear feedback was provided that more work was needed to give the proposed draft greater focus and ambition while also ensuring that what was proposed was realistic and achievable. It was also acknowledged that there needed to be a clearer focus on how what the Council planned to deliver through its Annual Work Programme would support delivery of the strategic objectives. There was also feedback that the strategic plan needed to be informed by user experience and need - i.e. that the plan was directed at solving real issues and having a meaningful impact on the fairness, accessibility and efficiency of the Scottish civil justice system. It was also agreed that there were a range of current, important workstreams and the Council would need to consider how these related to the proposed strategic direction of the Council.

Revised Draft Strategic Plan

4. Following the two strategy sessions, the draft Strategic Plan has been substantially revised in the following ways:

    a. The purpose and vision within the Strategic Plan were further refined, along with an outline of the approach that the SCJC will adopt in delivering its objectives.

    b. Four strategic themes, and associated objectives for each, have been defined. These themes are:
        i. Enhancing Civil Justice through Digital Innovation.
        ii. Scotland as a Forum of Choice.
        iii. Maintaining the Rules.
        iv. Sustainable Delivery.

    c. Each of these themes have been defined as a problem statement with associated objectives created to address each theme. These objectives and themes have been directly informed by the discussions and feedback at the strategy sessions.

    d. Some of these objectives are specific and deliverable in and of themselves. Others refer to undertaking further user research and engagement to better

define the challenges and issues to which the Council ought to direct its attention. This is intentional and is intended to signal that for the work of the Council to be meaningful and have impact, it must be informed by user need, before proposals are brought forward to the Council.

e. The Strategic Plan also outlines how the delivery of the objectives will be taken forward through the Annual Work Programme. Given the contingent nature of some of the objectives (see point (d) above) it is not immediately possible to map out a three year deliver plan. What the document does do is explain that the Annual Work Programme will be organised by the Strategic Themes and that specific actions to advance these themes and deliver the objectives will be captured in the Annual Work Programme (refer paper 3.2). As the Council undertakes further research and engagement on the key issues it will be considering how each Annual Work Programme can be adapted accordingly.

5. At the previous strategy sessions, it was noted that there required to be adequate resource provided to the Council to deliver on its ambitions. In this regard, Council are also advised that recruitment is underway for additional policy resource to support the SCJC in the delivery of this Strategic Plan, once its approved.

Recommendation

6. **The Council is invited to consider, and approve, the draft Strategic Plan with whatever level of discussion is required.**

Secretariat to the Scottish Civil Justice Council
June 2026

Scottish Civil Justice Council

Scottish Civil Justice Council

Strategic Plan 2026-29

WORKING DRAFT

Last updated

03.06.2026

Contents

Chair's Foreword

In the 13 years since the Scottish Civil Justice Council held its first meeting in June 2013 it has prioritised delivering the key sets of rules needed to introduce the major structural reforms recommended by the Scottish Civil Courts Review in 2009, with those changes forming a subset of the total of 128 rules instruments the Council has now proposed to the Court of Session for consideration and enactment to date. Since taking up my role as the Chair of the Council, it has been increasingly clear to me that the time is right for the Council to take a clear and strategic approach to its future direction and focus – and its responsibility for keeping the Scottish civil justice system under review. This Strategic Plan is intended to signal this change of focus and direction.

For the next three years the Council, its committees, and its working groups will focus more of their attention on engaging with users, commissioning research and making recommendations tangibly to improve the way the civil justice system operates. The strategic objectives prioritised within this paper will help to optimise the value gained from the time contributed by Council and committee members, and all those who engage with the work of the Council, enabling the Council to recommend substantial improvements within the civil justice system.

The Rt. Hon. Lord Pentland
Lord President
Chair of the Scottish Civil Justice Council

PURPOSE AND VISION

Our purpose

The Council's purpose is to make the civil justice system fairer, more accessible, and efficient, so that it continues to respond to the evolving needs of society.

Our vision for civil justice

The Council will advance a modern, world-class civil justice system that supports the needs of its users by:

- Enabling civil disputes to be dealt with as efficiently as possible so that the matters in dispute are capable of being resolved within a reasonable time and at a proportionate cost.

- Enabling civil disputes that do warrant a judicial intervention to gain access to a trusted, independent and impartial forum for hearing and resolving those civil disputes, including high profile and specialist litigation, using procedures that are as simple as possible for all to access, understand and use.

Our approach

In delivering our vision for civil justice, we will:

- Be purpose-driven – in delivery of each of our strategic themes, our interventions and recommendations will be guided by the need to make the system fairer, more accessible and efficient.

- Take a whole system approach – by directing our efforts to those areas of civil activity where this Council is the public body best placed to progress a given change that can help to optimise the system to the benefit of all users.

- Focus on delivery – we will maintain a clear focus on progressing our key reform areas from start to finish.

- Be evidence-led – we will review the available literature and, where needed, commission relevant internal or external research to secure robust qualitative and quantitative data to support evidence-based decision making.

- Maintain a user focus - we will engage with users, Scottish Government and other stakeholders to identify where reform is most needed and what policy options are most appropriate for the Council to recommend in meeting that need.

STRATEGIC THEMES AND OBJECTIVES

Theme 1: Enhancing Civil Justice through Digital Innovation

The pace of change of technology, including most recently artificial intelligence, provides a significant opportunity to enhance the way in which the civil justice system operates. There is, however, a need to review the processes within the system before simply overlaying new technologies on existing processes. In addition, there are significant challenges posed to the system by practitioners and party litigants using artificial intelligence.That must be better understood.

Against this backdrop, there is not a clear and shared understanding of the key issues and options for improvement within the civil justice system. Parties who find themselves in a position where they have a need to enforce or defend their legal rights should also be able to find and use the most appropriate mechanism to resolve their civil problems, in a manner proportionate to the matters in dispute.

In this regard, accessing the insights and experience of practitioners and parties in civil actions is invaluable in identifying the systemic issues where an intervention by this Council is most likely to add value.

The Council must better inform itself on the user experience of the civil justice system, what works well and what needs to be enhanced. The Council must then harness digital technologies and artificial intelligence to transform and enhance the efficiency and accessibility of the services delivered through the Scottish civil justice system. This will then shape future investment priorities to be considered by the Scottish Courts and Tribunals Service and others, when progressing further civil justice reform.

Objectives

The Council will address this theme through the following objectives:

1.1 Undertaking qualitative and quantitative user research and engagement focussed on the opportunities to enhance the efficiency of the civil justice system and to enhance user experience.

1.2 Developing proposals for civil justice system improvement, enabled by digital technologies and artificial intelligence, and recommendations for policy solutions to address the needs identified through user engagement and research.

1.3 Accepting the significant impact that AI is having, and will continue to have, on the system, the Council will establish an AI Working Group. This group will, in support of any future digital developments, assess the opportunities arising, the potential implementation issues, the ethical and operational considerations, and the steps needed for the system to effectively engage with artificial intelligence, and the impacts of this technology.

1.4 Explore the development of a digital ‘front door’ for civil justice, supporting ease of access to and navigation of the civil justice system.

Theme 2: Scotland as a Forum of Choice

Scotland has a range of advantages as a system – it is smaller, more agile, quicker, and lower cost – which can be competitive advantages in attracting business to the Scottish system. This has clear benefits for the development and practice of law in Scotland and the esteem of the Scottish civil justice system and Scots Law. Scotland being a forum of choice may also create wider benefits for the Scottish economy.

The Council must better understand and leverage the competitive advantages of the Scottish civil justice system to support Scotland being a forum of choice for resolving different types of civil disputes.

Objectives

The Council will address this theme through the following objectives:

2.1 Continuing to develop proposals to enhance the opt-in procedure and continue consideration of the consultation on the introduction of an opt-out procedure, for group proceedings – as provided for by the Scottish Parliament. The Group Proceedings Working Group will continue to assess the responses to the Council's Call for Evidence[1] in Scotland, as well as the responses to the similar Call for Evidence[2] issued by the Department for Trade and Industry in 2025.

2.2 Undertaking research and engagement on options for specialist dispute resolution within Scotland, including the potential demand for, and value of, specialist courts. Based on this research, the Council will develop further proposals for wider consultation.

2.3 Undertaking research and engagement on options for further development of non-court civil dispute resolution options in Scotland, including mediation.

2.4 Developing a public education and stakeholder management plan to more actively curate an image of the benefits of conducting dispute resolution within Scotland.

[1] https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations
[2] https://www.gov.uk/government/calls-for-evidence/opt-out-collective-actions-regime-review-call-for-evidence/opt-out-collective-actions-regime-review-call-for-evidence

Theme 3: Maintaining the Rules

In discharging its statutory functions of keeping the civil justice system, and the practice and procedure of the Court of Session and the Sheriff Courts under review, the Council must ensure that the system, practice and procedure do keep pace with legislative change, both in terms of domestic law and in complying with international treaty obligations. In this regard, the Council currently has a backlog of rule change requests requiring consideration and possible development.

In addition, one of the statutory guiding principles of the Council is that practice and procedure in the civil courts should be as similar as possible, where appropriate. It is a fact that a vast amount of civil justice is undertaken through the Scottish Tribunals, the rulemaking for which does not currently fall within the remit of the Council – notwithstanding a long-standing intention for this function to eventually move from the Scottish Government to the Council.

Objectives

The Council will address this theme through the following objectives:

3.1 The Council will work with the Scottish Government to review the backlog of rules requests to consider whether all requests require action by the Council and, where action is required, the relative priority of those requests – before considering how the Council addresses each request.

3.2 The Council will continue to implement the strategy it approved relating to improving compliance with the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

3.3 The Council will work closely with the Scottish Government and the Scottish Courts and Tribunals Service to understand the intended timescales for any transfer of Tribunal rule-making functions to the Council and will undertake such preparatory work as may be necessary for taking on those functions.

Theme 4: Sustainable Delivery

Since its establishment, the Council has prioritised delivering the key sets of rules needed to introduce the major structural reforms recommended by the Scottish Civil Courts Review in 2009. The Council is now developing its strategic approach to how it delivers across all its functions, with a particular focus on keeping the civil justice system under review and providing advice and recommendations to the Lord President on the development of, and changes to, the civil justice system.

As form follows function, the Council must now review how it organises its own activities. This is to ensure it is best able to back up the ambition outlined in this strategy with the capability, capacity and ways of working needed to deliver tangible outcomes, while delivering value for money.

The Council must also consider how it builds the profile of the work undertaken by the Council, to ensure that the Council is able to demonstrate to the public that it is delivering value for money.

Objectives

The Council will address this theme through the following objectives:

4.1 The Council will undertake a review of its committee structures and ways of working, making recommendations to the Lord President on how the Council should revise its governance structures to best enable the delivery of the Council's strategic objectives.

4.2 The Council will work closely with the Scottish Courts and Tribunals Service to review the secretariat support provided to the Council, with a view to ensuring that the Council has access to the skills, experience and expertise required to deliver its strategic objectives.

4.3 The Council will develop a public education and stakeholder management plan to ensure that the Council is effectively communicating what it does, why it does it, and how to effectively engage with the work of the Council.

DELIVERY

The specific actions and priorities that will progress delivery of this strategy will be detailed within the Council's annual work programmes. These work programmes will be organised by the delivery themes outlined in this strategy and will include both the priorities outlined in this plan and any additional priorities identified through the research and engagement identified in this plan.

This strategy and the current and future annual work programmes will be published on the Council's website.

The Council will, as part of its review of its committee structure and ways of working, consider how best to organise its activities in a way that uses the skills and experiences of Council members, and which draws on sources of expertise across the breadth of Scottish civil society.

The Council will monitor delivery of the objectives in the Strategic Plan at its quarterly meetings and provide an overall assessment of progress as part of its annual report.

Further information and contacts

Full information about the Council and its activities is available at www.scottishciviljusticecouncil.gov.uk. The website is updated regularly with news about the Council and provides full details of Council and committee meetings, publications, draft rules under consideration and new rules made.

The Council welcomes all feedback in relation to this strategy, the general direction of travel and the practical workings of the rules of court.

You can contact us as follows:

Email scjc@scotcourts.gov.uk

Telephone: 0131 240 6776

Post: Scottish Civil Justice Council
Parliament House
Edinburgh
EH1 1RQ

You can also follow us on X (formally Twitter) @ScottishCJC for the latest updates.

Scottish Civil Justice Council

APPROVAL OF THE ANNUAL REPORT AND WORK PROGRAMME

Purpose

1. To seek approval of the Annual Report for 2025/26 and the Annual Programme for 2026/27 ***(Paper 3.2A)***.

Background

2. To facilitate an appropriate level of scrutiny by others section 5 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 ("*the Act*") requires the Council to prepare an 'annual report' on its activities during each financial year along with a programme to convey its objectives and priorities for the coming year:

> *s5 - Annual programme and report*
>
> *(1) The Council must prepare an annual plan setting out its objectives and priorities for each yearly period beginning on 1 April before the start of that period ("the programme").*
>
> *(2) The Council must prepare an annual report on its activities as soon as reasonably practicable after the end of each yearly period ending on 31 March ("the report").*
>
> *(3) The report must include a summary of the recommendations made (if any) by the Council during the period covered by the report.*
>
> *(4) The Council must lay a copy of the programme and the report before the Scottish Parliament.*
>
> *(5) In complying with the duty in subsection (4), the Council may combine the programme for the coming year with the report for the ending year.*

3. The key points to note are:

- ACCOUNTABILITY - under subsection 5 (4) a copy of the programme and the annual report for the SCJC must be laid before the Scottish Parliament, with subsection 5 (5) then enabling that information to be provided within the one combined report.

- FORMAL RECOMMENDATIONS – under subsection 5 (3) the annual report must include any formal recommendations made (if any) to the Lord President and/or Scottish Ministers.

- TIMING – under subsection 5 (2) the combined report should be prepared "as soon as reasonably practicable" after the end of each year.

Content of the Report

4. The draft Annual Report for 2025/26 and the Annual Programme for 2026/27 ***(Paper 3.2A)*** is attached. To provide comparability with previous reports the information required is provided in the following format:

    - A **Foreword** by the Lord President as Chair.
    - An **About Us** section – which conveys the standing information on the Council, its committees and the arrangements made for policy and legal support.
    - A **Key Achievements** section - which provides a narrative on the progress delivered within the 2025-26 reporting period which included:
        - Three sets of new rules being proposed to the Court of Session for consideration and approval;
        - Five public consultations being run and analysed to inform the development of policy positions; and
        - No formal recommendations being made to the Lord President that proposed changes to the wider civil justice system.
    - An **Annual Programme** section – which summarises the key activities to be progressed within the coming year (2026-27). As noted in paper 3.1, the content of this Annual Programme has been organised in line with the proposed Strategic Themes set out within the draft SCJC Strategic Plan. Further revisions to the annual work programme may be required, following discussion and any amendment of that draft Strategic Plan.

Next Steps

5. Subject to any changes that may arise from consideration by members, this combined report will be tabled with the Scottish Parliament and published online via the Council's website.

Recommendation

6. **Subject to any typographical or stylistic amendments, members are invited to consider and approve the publication of the combined Annual Report for 2025/26 and the Annual Programme for 2026/27 *(Paper 3.2A).***

Scottish Civil Justice Council Secretariat
June 2026

Scottish Civil Justice Council

Paper 3.2A

Scottish Civil Justice Council

Annual Report 2025/2026 & Annual Programme 2026/2027

WORKING DRAFT – 03 JUNE 2026

www.scottishciviljusticecouncil.gov.uk

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Report number: SCJC/2025/01

Laid before the Scottish Parliament by the Scottish Civil Justice Council in pursuance of section 5(4) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 on DD MMM 2026.

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Published by the Scottish Civil Justice Council

Contents:

Chair's Foreword

It is a pleasure to introduce the thirteenth Annual Report of the Scottish Civil Justice Council, covering the period from 1 April 2025 to 31 March 2026.

During this reporting period there were three sets of draft rules proposed by the Council and given legal effect by the Court of Session. Those instruments enacted permanent procedures to replace a range of temporary measures provided during the pandemic and clarified the approach to judicial settlements under the Hague Convention. In addition, members have considered compliance with the Aarhus Convention in some detail, including a strategy to improve compliance.

There were two new Public Consultations published. The first sought feedback on adopting unit-based charging to fix the regulated charges that can be made by officers of court and the second sought views on extending the availability of cost protection in environmental cases. The Council published two Consultation Analysis reports to reflect the feedback received for those consultations, with a further three reports issued for the live consultations carried forward at the beginning of this period. Those consultations covered proposals made regarding the use of the signet, the use of online intimation and extending the scope of the simplified divorce procedures.

I am also delighted to introduce our Annual Work Programme for 2026-27, which represents the first steps in the Councils new direction, outlined in our Strategic Plan 2026-29, as we look to increasingly focus on our responsibility for keeping the Scottish civil justice system under review, and explore the opportunities to enhance the fairness, accessibility and efficiency of Scottish civil justice.

I am grateful for the support of all Council and Committee members for the voluntary time they so generously contribute and would also like to acknowledge the hard work and ongoing commitment of the policy staff within the secretariat and legal staff within the Lord President's Private Office.

The Rt. Hon. Lord Pentland
Lord President
Chair of the Scottish Civil Justice Council

About us

Introduction

The Scottish Civil Justice Council is an independent advisory body, established under the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013[1] *(the 2013 Act)*.

Our key functions are:

- To keep the civil justice system under review and make recommendations to the Lord President on the development of, and changes to, the civil justice system.
- To keep practice and procedure under review, and then prepare draft civil procedure rules, draft fees rules and draft inquiry procedure rules for consideration, approval and enactment by the Court of Session.
- To provide advice on any matter relating to the civil justice system that may be requested by the Lord President.

Our approach to fulfilling those functions is informed by the following guiding principles:

- The civil justice system should be fair, accessible and efficient.
- All proposed rules should be as clear and easy to understand as possible.
- Practice and procedure should, where appropriate, be similar in all civil courts.
- Methods of resolving disputes outside the courts should, if appropriate, be promoted.

Members undertake an assessment of compatibility with those principles when proposing any new rules or recommending wider changes to the civil justice system.

[1] https://www.legislation.gov.uk/asp/2013/3/contents

Who we are

The Scottish Civil Justice Council was established with effect from May 2013 to promote continuous improvement within the civil justice system. Under the 2013 Act it is to have not more than 20 members, who encompass a broad range of interests and experiences across the civil justice system. The following membership categories are provided for:

Judicial members

- The Lord President.
- 1 Judge of the Court of Session.
- 1 sheriff principal or sheriff.
- 2 additional judicial office holders appointed by the Lord President.

Standing appointments

- The Chief Executive of the Scottish Courts and Tribunals Service.
- The principal officer of the Scottish Legal Aid Board.
- 1 member appointed by the Scottish Ministers.

Legal members

- At least 2 practising advocates (“advocate members”).
- At least 2 practising solicitors (“solicitor members”).

Other members

- At least 2 persons (“consumer representative members”).
- Up to 6 other persons considered by the Lord President to be suitable to be members of the Council (“LP members”).

Membership

The current members within each membership category are:

Category	Name
Chair The Lord President and Lord Justice General, by virtue of that office.	The Right Hon. Lord Pentland
Standing Appointments Chief Executive of the Scottish Courts and Tribunals Service, by virtue of that office.	Malcolm Graham
Principal officer of the Scottish Legal Aid Board, by virtue of that office.	Colin Lancaster
1 member appointed by the Scottish Ministers.	Denise Swanson
Judicial members At least 4 judges appointed by the Lord President including a minimum of: 1 judge of the Court of Session, and 2 sheriffs principal or sheriffs.	The Hon. Lord Ericht The Hon. Lady Carmichael Sheriff Principal Ross Sheriff McCartney Sheriff Johnston
Advocate members At least 2 practicing advocates appointed by the Lord President in consultation with the Faculty of Advocates.	Fiona Drysdale KC Usman Tariq KC
Solicitor members At least 2 practicing solicitors Appointed by the Lord President in consultation with the Council of the Law Society of Scotland.	Iain MacRae Nicola Irvine
Consumer representative members At least 2 persons appointed by the Lord President in consultation with the Scottish Ministers who, between them, appear to the Lord President to have — (i) experience and knowledge of consumer affairs, (ii) knowledge of the non-commercial legal advice sector, and (iii) an awareness of the interests of litigants in the civil courts.	Thomas Docherty Vacancy
LP members Up to 6 other persons appointed by the Lord President in consultation with the Scottish Ministers who are considered by the Lord President to be suitable to be members of the Council.	Sheriff Jillian Martin-Brown Adam McKinlay KC

To assist the Council in carrying out its function the following observers attend meetings:

Rachel Grant	Legislation Implementation Team, Scottish Courts and Tribunals Service.
Chris Fyffe	Deputy Principal Clerk of Session, Scottish Courts and Tribunals Service.

Standing Committees

The standing committees that assist the Council in carrying out its statutory functions are:

Committee	Chair	Remit & Functions
Access to Justice	The Hon. Lady Carmichael	To monitor the effect on access to justice and the operation of the civil justice system; to keep relevant rules under review; to develop and consider proposals for modification and reform and, where appropriate, to draft rules for SCJC consideration.
Costs and Funding	The Hon. Lord Harrower	To monitor matters that can be regulated by the Court of Session including the award of expenses and fees provisions; to keep the relevant rules, tables and fees under review; to consider proposed reforms and progress recommendations and draft rules.
Family Law	The Hon. Lady Wise	To monitor family actions and cases involving children; to keep the family law civil rules under review; to make proposals for change to ensure, via court rules and guidance, that cases are dealt with expeditiously and efficiently; to review, develop and promote a case management structure; to make recommendations for change and propose drafts new rules where required. At its core, the Committee has, as a paramount consideration, the welfare of children.
Personal Injury	The Hon. Lady Haldane	To keep the personal injury civil rules under review; to make proposals for change; to develop rules relating to action to be taken before proceedings are brought; to encourage fair, just and timely settlement of disputes; to make provision for any type of personal injury claim of any value at any stage of proceedings; and to make recommendations for change and new rules where necessary.
Rules Rewrite	The Rt. Hon. Lord Pentland, Lord President	To oversee the management of the Rules Rewrite Project; to develop a framework for reviewing new rules prepared under that project & to progress the reforms under the Courts Reform (Scotland) Act 2014; to consider those issues that do not fall under other Committee remits.

Policy and Legal Support

Under section 62 of the Judiciary and Courts (Scotland) Act 2008, the statutory function for providing the property, services and staff to support the work of the Council sits with the Scottish Courts and Tribunals Service (SCTS).

- *Policy Support* - for the 2025/26 financial year the budget allocated to the SCJC funded running costs and a complement of 7 posts (6.2 FTE) within the secretariat - 1 Director Strategy, 1 Secretary to the Council, 1 Business Manager, 1 Policy Manager, 2 Policy Officers and 1 Executive Officer.

- *Legal Support* - legal support for the drafting of rules instruments is provided for within the separate SCTS budget allocated to fund the Lord President's Private Office (LPPO). To provide career development options, the lawyers within that office are normally seconded from the Scottish Government Legal Directorate.

Key achievements and ongoing work

Summary of the new rules made in 2025-26

The following summarises, by date made, the three sets of draft court procedure rules the Council submitted to the Court of Session for consideration and approval during the current reporting period:

- The Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Miscellaneous) (Amendment) 2025 was made on **5 June 2025** and came into force from 1 July 2025. It corrected a typographical error within the rules that covered requests for judicial settlements under Article 11 the 2019 Hague Convention.

- The Act of Sederunt (Intimation and Service) 2025 was made on **29 October 2025** and came into force on 1 December 2025. It made permanent the existing working practice adopted during the pandemic whereby a requirement for a document be placed on the walls or doors of civil courts is fulfilled by making an abbreviated notice available online, via the Scottish Courts and Tribunals Service website.

- The Act of Sederunt (Electronic Signature and Electronic Transmission of Documents) 2025 was made on **29 October 2025** and came into force on 1 December 2025. It made permanent the existing working practice adopted during the pandemic whereby any requirement in court rules for documents to be sent to a person could be fulfilled by transmitting those documents to the person electronically or transmitting them (electronically or otherwise) to a solicitor engaged to act on that person's behalf.

The Calls for Evidence published in year

Call for evidence - on Modes of Attendance

From 1 October 2025 to 22 December 2025 the Access to Justice Committee ran a Call for Evidence on 12 questions regarding user experiences with the Modes of Attendance rules. The committee is considering the 20 responses received.

Call for evidence - on Group Procedure

From 24 October 2025 to 23 January 2026 the Group Procedure Working Group ran a Call for Evidence on 17 questions related to the lessons learned to date from using the opt-in procedure and whether (or not) the Group Procedure rules should additionally provide for the opt-out option. That group is considering the 26 responses received.

The Public Consultations published in year

During this reporting period the Council published two new Public Consultation exercises to inform its policy positions:

Simplified Tables of Fees for Officers of Court

From 28 May 2025 to 22 August 2025, the Council ran a Public Consultation that sought feedback on adopting unit-based charging as its preferred methodology for pricing the regulated fees charged by Messengers-at-Arms and Sheriff Officers. The views from the 26 respondents were set out in the Consultation Analysis published on **12 September 2025**. The Councils subsequent decision to proceed was set out in the Consultation Response report as published on **2 December 2025**, and that amending rules instrument will be made and laid early in the coming financial year.

Extension of Protective Expenses Orders (PEOs)

From 8 August 2025 to 28 November 2025 the Council ran a Public Consultation seeking feedback on a proposed set of draft rules extending the availability of protective expenses orders in environmental cases. The main proposal made would have provided an ability to access cost protection within the sheriff courts regarding summary applications made under the Environmental Protection Act 1990. A summary of the feedback received from 11 respondents was published on **3 December 2025** within the Consultation Analysis report, with the key message being that the proposed scope should go much further. The Council agreed and will consult again during 2026 on a revised set of rules with a significantly wider scope. The full detail of the policy decisions taken can be viewed online within the Consultation Response report published on **20 January 2026**.

The consultations carried forward

The following three consultations were opened for comment in the previous planning period (2024/25) with a view to the feedback received being analysed within this year (2025-26):

Modernisation of the Signet

This consultation was carried forward with a closing date for responses of 21 May 2025. The views of the 3 respondents were reflected in the Consultation Analysis report uploaded to the Councils website on **9 June 2025**. The Royal Mint subsequently approved a design for the digital signet which enables the manufacture

of a physical signet seal for ceremonial use. Once that physical signet seal is made available the draft rules proposing a signetted Order for Service will be proposed to the Court of Session for approval.

Online Intimation

This consultation was carried forward with a closing date for responses of 25 April 2025. The views of the 6 respondents were reflected in the Consultation Analysis report uploaded to the Councils website on **30 June 2025**. The main proposal made was to make permanent the provision whereby any document that was required to be advertised on the walls or doors of civil courts could equally be advertised by making an abbreviated notice of those documents available online. The decision taken was to proceed with that proposal. That change was enacted by the Act of Sederunt (Intimation and Service) 2025 and came into force from **1 December 2025**.

Simplified Divorce

This consultation was carried forward with a closing date for responses of 9 May 2025. The views of the 10 respondents were reflected in Consultation Analysis report uploaded to the Councils website on **17 September 2025**. The subsequent instruction of draft rules to implement this proposed change remains on hold, as it requires a prerequisite change to the law of evidence. A proposal to make that change in primary legislation was included within Part 4 of the Scottish Governments Family Law Consultation which had a closing date of 21 April 2026.

Other matters progressed by letter or report

Monitoring the Aarhus concerns for Scotland

To help inform the next steps to be taken to improve compliance with the Aarhus Convention a further “Update on the Aarhus Concerns for Scotland” was tabled and discussed by the Council at its September 2025 meeting.

Resolving the Aarhus concerns for Scotland

The Council considered a detailed Aarhus Strategy paper at its December 2025 meeting, which conveyed the strategic approach needed to achieve full compliance with the Aarhus Convention. As one part of delivering on that strategy, draft rules with a significantly widened scope are now being prepared to support the commitment made to run a 2026 Public Consultation.

Monitoring the pending transfer of rulemaking for the Tribunals

To inform the likely timing of the future 'transfer of function' order for rule making under the Tribunals (Scotland) Act 2014, the Council monitors the tribunal jurisdictions transferred in and the future transfers that remain pending.

Research Papers

To inform the ongoing review of how Protective Expenses Orders (PEO) are being used in practice, the Council published a 3rd research report on **14 August 2025** to provide "Research on the Incidence of Interveners" in environmental cases.

Formal Recommendations Made

During the reporting year from 1 April 2025 to 31 March 2026 the Council made no formal recommendations on the development of the civil justice system in Scotland[2].

[2] *Where such recommendations are made then under Section 5 (23) of the 2013 Act a summary must be provided within this Annual Report*.

Annual Work Programme for 2026/2027

Under section 5 of the 2013 Act, the Council must table with the Scottish Parliament, an annual work programme for the coming year. This year, the Annual Work Programme has been organised by the themes contained in the Council's new Strategic Plan 2026-27. [ADD LINK ONCE ONLINE]

Theme 1: Enhancing Civil Justice through Digital Innovation

- The Council will establish a Digital transformation and AI Working Group, with a nominated judicial lead, with a formal remit and membership to be agreed, including input within that group from practitioners who are already active users of AI tools.

- Initial priorities for this working group will be:
    - Commissioning research and engagement activity, and analysing the results of that activity, to understand how digital technologies and artificial intelligence has been used to good effect to enhance the fairness, accessibility and efficiency of civil justice around the world, and to consider to what extent these solutions would apply in the Scottish civil justice system.
    - Undertake engagement activity with key users and wider stakeholders to understand current challenges and pain points within the Scottish civil justice system, and to better understand where intervention by the Council will have the most impact in terms of improving the civil justice system.
    - Considering both the opportunities and risks presented to the Scottish civil justice system by artificial intelligence, and to advise the Council on what controls might need to be built into the civil justice system to enable opportunities to be exploited and risks to be mitigated.
    - Considering how to respond to the increasing use of anonymised digital assets[3].
    - Commissioning research and engagement on mitigating the risks of digital exclusion and improving digital inclusion – with a view to supporting development of a digital 'front door' for civil justice.

- By the end of the first year, the working group will develop outline priorities for enhancing civil justice through the use of digital technologies and artificial intelligence, with those options developed further in the second year of the strategic plan.

[3] As covered during parliamentary scrutiny of the Digital Assets (Scotland) Bill

Theme 2: Scotland as a Forum of Choice

- The Council will continue its work on how to improve the existing group procedure for those using the 'opt-in' option and to assess the potential for commencing the 'opt-out' option (as provided for by the Scottish Parliament within the 2018 Act[4]), and progress consideration of the feedback received to its Call for Evidence on Group Procedure which closed on 23 January 2026. The Group Procedure Working Group will first prepare and publish a Discussion Paper to narrow the issues and inform policy options. Following that narrowing of the issues, the group will prepare a set of draft rules to support running a Public Consultation on the proposed amendments.

- We will undertake and/or commission research on the demand for, and value of, specialist dispute resolution before considering whether to develop specific policy options.

- As part of our implementation of the approved strategy for improving our compliance with the Aarhus Convention, we will:

    - Research the volume of environmental actions initiated across both the courts and tribunals, given the potential trendline of increased litigation arising from the impacts of climate change.

    - Commission an academic study, or other independent research, to progress the debate on whether (or not) establishing a specialist environmental court or tribunal could in practice assist with the efficient disposal of business.

Theme 3: Maintaining the Rules

- The Council will consult on the extension of Simple Procedure to include Simple Procedure Special Claims (SPSC) and consider further the feedback received to its Call for Evidence[5] on Modes of Attendance which closed on 22 December 2025.

- The Council will progress the implementation of the actions identified within its Aarhus Strategy[6] including progressing the public commitment[7] to consult again on "Extending the availability of Protective Expenses Orders (PEOs)".

[4] The Civil Litigation (Expenses and Group Proceedings) Act 2018 *(ASP 2018/10)*
[5] https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations
[6] https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/scjc-meeting-papers/20251208/paper-4-1---aarhus-strategy.pdf?sfvrsn=59e5ce0f_1
[7] https://www.scottishciviljusticecouncil.gov.uk/news/2026/01/20/widening-the-availability-of-costs-protection-in-environmental-cases

- As part of the Council's function of keeping the rules under review, at a minimum within the coming year, the priority instruments we aim to have drafted, approved and proposed to the Court of Session for enactment include:

    - Extending the availability of Protective Expenses Orders - Subject to considering the feedback to its 2026 Public Consultation, the Council will propose a draft Act of Sederunt for enactment in line with the scope conveyed in the Consultation Response[8] paper issued following the Council's 2025 consultation.

    - Fees of Messengers-at-Arms & Sheriff Officers – The Council will propose a draft Act of Sederunt for enactment in line with its Consultation Response[9] paper on simplifying the table of fees for officers of court.

    - Format of Judgments – The Council will propose a draft Act of Sederunt for enactment in response to a judicial request made.

    - Interest on Expenses (in the Sheriff Appeal Court) – The Council will propose a draft Act of Sederunt for enactment in response to a judgment issued by the Sheriff Appeal Court.

    - Taxation of Judicial Expenses – The Council will propose a draft Act of Sederunt for enactment, to adjust party and party expenses for inflation and to respond to a judgment issued regarding the application of reductions in simple procedure cases.

    - Withdrawal of Postal Copies: (of documents served) – The Council will propose a draft Act of Sederunt for enactment, to remove the unnecessary duplication that arises when officers of court are required to post out copies of documents already served.

- In addition, suggestions for rule changes are made to the Council through several channels, including from court judgements, members of the Council, court practitioners, professional bodies, members of the public and the Scottish Government. There is a backlog of such requests. The Council will review this backlog, consider the relative priority of these requests and consider what further action, if any, may be required within the year to either progress consideration of these proposals or to deprioritise this work. These are outlined below.

    - Suggestions brought forward by Council members in previous years that raise items to be taken forward subject to the availability of resources:

Count	*Description*
1	Rules Rewrite *(the New Civil Procedure Rules)*

[8] https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/extending-the-availability-of-peos/20260120---consultation-response---peos.pdf?sfvrsn=7336335e_1

[9] https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/extending-the-availability-of-peos/consultation-response---simplified-fees.pdf?sfvrsn=944f3f9b_1

2	Inner House Rules
3	Mandatory use of Civil Online
4	Lay representation, lay support and party litigants
5	Extension of Simplified Divorce *(awaits a change to the law of evidence)*

- Suggestions raised by members of the public, organisations, practitioners, judiciary and court officials through the Council's website:

Count	*Description*
1	Pre Action Protocol – for Personal Injury
2	Pre Action Protocol – for Clinical Negligence
3	Pre Action Protocol – for Disease
4	Withdrawal of Agents (RCS Chap. 30)
5	Caveats
6	Electronic Recording of Evidence
7	Public Interest Interventions
8	Appointment of assessors under the Equality Act
9	Historic Abuse – Nominal Defenders
10	E-Motions
11	Pursuers Offers (for PI cases under £5k)
12	Inhibition in execution
13	Reporting Restriction Orders
14	Insolvency rules – model law

- Proposals made by officials within both the Scottish Government and UK Government for new rules or amendments prior to the commencement of relevant sections within primary legislation.

Count	*Description*
1	Civil Litigation (Expenses & Group Proceedings) (S) Act 2018 - *Sec 9*
2	Civil Litigation (Expenses & Group Proceedings) (S) Act 2018 - *Sec 10*
3	Civil Litigation (Expenses & Group Proceedings) (S) Act 2018 - *Sec 11*
4	Damages (Investment Returns and Periodical Payments) (S) Act 2019
5	Civil Partnership (S) Act 2020
6	Children (S) Act 2020
7	Female Genital Mutilation (Protection & Guidance) (S) Act 2020
8	Defamation and Malicious Publication (S) Act 2021
9	Domestic Abuse (Protection)(S) 2021
10	Moveable Transactions (S) Act 2023
11	Hunting with Dogs (S) Act 2023
12	Trusts and Succession (S) Act 2024
13	Bankruptcy and Diligence (S) Act 2024
14	Judicial Factors (S) Act 2025
15	Child Support (Enforcement) Act 2023

- In preparation for any future transfer of tribunal rule-making powers, the Council will work with the President of Scottish Tribunals, chamber presidents and the SCTS to:
  - Assess the scale of the amendments required to the rules in use.
  - Prepare and publish a plan to progress those amendments.

Theme 4: Sustainable Delivery

- The Council will undertake a review of its committee structures and ways of working, making recommendations to the Lord President on how the Council should revise its governance structures to best enable the delivery of the Council's strategic objectives.

- The Council will develop a public education and stakeholder management plan to ensure that the Council is effectively communicating what it does, why it does it, and how to effectively engage with the work of the Council.

Further information and contacts

Full information about the Council and its activities is available at www.scottishciviljusticecouncil.gov.uk. The website is updated regularly with news about the Council and provides full details of Council and committee meetings, publications, draft rules under consideration and new rules made.

You can also follow us on X (formally Twitter) @ScottishCJC for the latest updates.

The Council welcomes all feedback in relation to the practical workings of the rules of court. You can contact us as follows:

Email scjc@scotcourts.gov.uk

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Scottish Civil Justice Council

UPDATE ON STAKEHOLDER MEETINGS

Purpose

1. To update members on progress with stakeholder engagement meetings.

Background

2. In August 2025, Council members agreed it would be helpful for the Council to engage with interested groups on the Aarhus Convention. Malcom Graham, Thomas Docherty and Sheriff Frances McCartney agreed to meet with groups on behalf of the Council.

3. In December 2025, the Council agreed its approach to the Aarhus Convention. An offer was then made to meet with any group who had provided a consultation response to the earlier 2025 consultation.

4. In March 2026, the following meetings proceeded with those who took up that offer to meet:

Date	Meeting held with
27 Mar 2026	Environmental Rights Centre for Scotland (ERCS)
30 Mar 2026	Professor Tom Mullen (Glasgow University)
31 Mar 2026	Open Seas Trust

5. Positive feedback was received at all 3 meetings. Those attending were very appreciative of the approach taken by the Council to Aarhus, as seen in the Aarhus strategy adopted by the Council in December 2025 and understood why the Council had taken the decision to consult again during 2026. Those attending also welcomed the opportunity to meet directly with Council members. Discussions reflected the content of previous responses lodged regarding cost protection in environmental cases, and wider discussions as to taking environmental challenges forward.

Recommendations

6. **It is recommended that the Council notes the round of engagement meetings that have taken place**

Secretariat to the Scottish Civil Justice Council
June 2026

UPDATE ON COMPLAINT

Purpose

1. To update members on the complaint, before the Aarhus Convention Compliance Committee, and the response now submitted to that complaint by the UK state.

Background

2. The Aarhus Convention Compliance Committee (ACCC) has a dedicated webpage for each communication lodged, to enable all submissions made by the communicant and the party to be viewed online: *https://unece.org/env/pp/cc/accc.c.2025.216_united_kingdom*

3. The key dates are:

   - MAR 2025 - the Environmental Rights Centre Scotland (ERCS) lodged a complaint before the Compliance Committee, under communication reference ACCC/C/2025/216.

   - JUN 2025 - the ACCC met and decided communication 2025/216 met their de minimus level and could proceed to the next stage

   - NOV 2025 - the ACCC secretariat emailed the UK member state asking for it to respond (within 5 months).

   - APR 2026 – DEFRA lodged the UK response to communication 2025/216

4. From the dedicated UNECE webpage members can view that UK response online and access the 19 supporting documents lodged.

5. For ease of use we have attached a PDF of that UK Response ***(Paper 4.2 A)***.

6. It is the UK that is the signatory to the Convention, and the party to the complaint. The SCJC is not a party, although the Compliance Committee permits observations to be made directly to it by interested parties.

The positions taken by the UK member state

7. DEFRA has responded on behalf of the UK Government. The UK position is that there is no breach of the Aarhus Convention. The UK response can be summarised as follows:

Inadmissible due to manifest unreasonableness

It is argued the Compliance Committee should reconsider its decision to find the complaint admissible on the basis that it is factually incorrect to say there was no public participation prior to the 2024 Act of Sederunt in question. It is argued that the 2024 Act of Sederunt is a continuum of a consultation that took place in 2017, and of a Working Group set up thereafter. The detailed timeline relied upon is found in paragraph 7 onwards of the UK response.

Recourse to domestic remedies

It is argued that, as the Compliance Committee is generally obliged to consider domestic remedies available to a complainant (subject to some qualifications), that the Committee should now consider the complaint inadmissible. In support of this argument, it is noted that judicial review proceedings could have been taken, but also that the SCJC carried out a PEO consultation in 2025 and has committed to a 2026 consultation on PEO rules.

Compliance with Article 8

It is argued that there has been full compliance with Article 8, noting that the requirement in Article 8 is not absolute and given the nature of the obligation, there has not been a breach. Further it is argued that specific steps in consultation are not always required (set out at paragraph 33).

Recommendations

8. Members are asked to note the position.

Secretary to the Scottish Civil Justice Council
June 2026

B E F O R E:

THE AARHUS CONVENTION COMPLIANCE COMMITTEE

RE: COMMUNICATION ACCC/C/2025/216

WRITTEN RESPONSE OF THE UNITED KINGDOM

A. INTRODUCTION

1. By letter dated 17 November 2025, the Government of the United Kingdom was informed by the United Nations Economic Commission for Europe ("**UNECE**"), as Secretariat of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("**Aarhus Convention**" or "**Convention**"), that the Compliance Committee of the Aarhus Convention ("**the Committee**") had made a preliminary determination that Communication ACCC/C/2025/216 is admissible (**"the Communication"**). The Communication alleges that the United Kingdom has not complied with article 8 of the Convention by failing to facilitate public participation during the preparation of a regulation in Scotland, the Act of Sederunt (Rules of the Court of Session 1994 Amendment)(Protective Expenses Orders) 2024 (**"the 2024 PEO Amendments"**).

2. The United Kingdom was invited to submit to the Committee by 17 April 2026 any written explanations or statements clarifying the matter referred to in the Communication and describing any responses that may have been made in the meantime.

3. In response to this invitation, the United Kingdom makes three submissions:

    a. The Communication is inadmissible under paragraph 20(c) of the annex to decision I/7 because it is manifestly unreasonable, as it relies wholly on factual assumptions which are incorrect;

    b. The matter referred to in the Communication should be pursued at the level of domestic procedures rather the compliance mechanism, since the

Communicant has not exhausted, or even attempted, domestic remedies; and

c. If the Communication is admissible, the United Kingdom has complied with its obligations under article 8, having effectively promoted public participation in the process of preparing the 2024 PEO Amendments.

4. Each submission shall be addressed in turn.

B. INADMISSIBILITY DUE TO MANIFEST UNREASONABLENESS

5. The Government of the United Kingdom contests the admissibility of the Communication and invites the Committee to reconsider its preliminary determination.[1] The United Kingdom affirms and restates its position, as presented during the preliminary hearing on the admissibility of the Communication before this Committee on 2 June 2025. In particular, the United Kingdom maintains that the Communication is manifestly unreasonable because it is wholly reliant upon an incorrect and unfounded assertion: specifically, that "there was no public participation during the preparation of the 2024 Act of Sederunt by the SCJC [the Scottish Civil Justice Council (**"SCJC"**)]".[2]

6. Contrary to the Communicant's assertion, the SCJC took a series of necessary, appropriate and timely steps to promote public participation in the process of preparing the 2024 PEO Amendments, just as it has done for the preparation of all court rules in Scotland.

7. On 28 March 2017, the SCJC issued a public announcement that a consultation had been launched on draft rules for Protective Expenses Orders (Annex 1). As indicated in that announcement, the consultation was open for a period of just over three months, closing on 23 June 2017. The purpose for the consultation was expressed in the following terms:

> "The draft rules seek to ensure that, where applicable, the rules regulating applications for Protective Expenses (PEOs) in environmental proceedings operate so as to give proper effect to the requirement, under the Aarhus Convention and European Union law,

[1] UNECE, *Guide to the Aarhus Convention Compliance Committee*, 2nd edition, 2019, para. 126.
[2] Communication, para. 37.

that proceedings should be 'not prohibitively expensive'. The rules, developed by the Council, propose a new procedural model for applications for PEOs."[3]

8. In an effort to promote public participation in the process, the SCJC issued invitations to contribute to the process directly to 48 persons and entities, from a broad cross-section of society, including environmental advocacy groups, academics, legal practitioners, government departments and agencies, and industry representatives.[4]

9. During the formal period of public consultation, the SCJC received 15 responses on the draft rules for PEOs.[5] These responses were published on the SCJC website on 21 July 2017.[6]

10. On 31 October 2017 the SCJC published a Consultation Report (Annex 5) which summarised the proposals received from the participants and analysed the key issues arising from their responses. Three issues were brought to the attention of the SCJC for the first time by the participants in the public consultation:

    a. that PEOs should 'carry over' and continue to apply as standard in appeals from the Outer House to the Inner House of the Court of Session;

    b. that a new provision should be added to the rules to ensure that all financial information provided by the petitioner or respondent is confidential; and

    c. that a provision was needed to provide greater clarity on potential exposure to the expenses of an intervener in judicial review proceedings.

11. The SCJC established a working group to consider these issues arising from the consultation and to make recommendations on rule revisions to the SCJC.

12. On 27 November 2018, the SCJC announced the publication of new rules on PEOs in environmental proceedings, explaining that these new rules "aim to enhance access to justice by preventing court actions relating to the environment being 'prohibitively

[3] Annex 1; see also the SCJC Consultation on Draft Court Rules in Relation to Protective Expenses Orders (Annex 2).
[4] The list of individuals and entities invited to participate in the consultation is at Annex 3.
[5] Responses were received from various actors, including: St Andrews Environmental Protection Association Ltd (STEPAL); Aberdeenshire Council; The Faculty of Advocates; The John Muir Trust; Glasgow City Council; The Society of the Solicitor Advocates; RSPB Scotland; The Scottish Information Commissioner; East Ayrshire Council; The Law Society of Scotland; Scottish Environment LINK Legal Governance Subgroup; The University of Glasgow School of Law; The Scottish Government; MacRoberts; and an unidentified respondent.
[6] A copy of the website hosting the submitted responses is at Annex 4.

expensive' to members of the public".[7] These new rules were enacted in the Act of Sederunt (Rules of the Court of Session 1994 Amendment)(Protective Expenses Orders) 2018, which came into force on 10 December 2018 (**"2018 PEO Rules"**).[8]

13. In summary, the 2018 PEO Rules provided: a new procedure for PEO applications to be made; a new process for determining applications, including oppositions; amendments to provisions granting PEOs in certain proceedings relating to the environment; a new definition of 'prohibitively expensive' and provisions for making applications; and limits on liability for expenses, with the possibility for those limits to be adjusted where cause is shown.

14. Other changes to the PEO regime which had been suggested by participants in the public consultation required further research and policy development before they could be implemented in the PEO rules, and the SCJC added this work to its annual work programme.

15. The three outstanding issues which had been identified by public participants during the consultation, set out in paragraph 10 above, gained the attention of this Committee in the context of the Committee's review of the United Kingdom's Third Progress Report concerning compliance with decision VI/8k in 2020. During that process, a number of observers – including the Communicant – submitted their views on the PEO rules in Scotland to the Committee. Many of those observers, including the Communicant, framed the three outstanding issues as potential issues of non-compliance. In its Report on compliance dated 2 September 2021, this Committee welcomed the progress which had been made in establishing costs protection in appeals brought by respondents in Scotland, but indicated that it considered the 2018 PEO Rules to be insufficient, with further change required in respect of the three outstanding issues, among others.[9]

16. Following the Committee's review, the Communicant provided extensive comment to the Scottish Government (which was relayed to the SCJC) on the outstanding issues concerning the PEO rules.

[7] SCJC announcement of 2018 PEO Rules, 27 November 2018, Annex 6.
[8] Annex 7.
[9] Report of the Compliance Committee on compliance by the United Kingdom, Part I, ECE/MP.PP/2021/59, 2 September 2021, para. 113.

17. On 28 June 2024, the SCJC announced that it had proposed to the Court of Session an instrument amending the PEO rules. Following approval by the Scottish Parliament, this instrument entered into force on 1 October 2024 as the Act of Sederunt (Rules of the Court of Session 1994 Amendment)(Protective Expenses Order) 2024.[10]

18. As the SCJC explained in its announcement of the 2024 PEO Amendments:

> "The Council consulted on the Protective Expenses Order (PEO) rules in 2017, with the key changes then enacted as the 2018 PEO Rules. These latest amendments further support environmental actions being raised ***and implement a further three suggestions made by respondents to that 2017 consultation*** which are:
>
> - That a PEO should carry over to proceedings in the Inner House as standard, regardless of whether the petitioner or respondent is appealing the original decision;
> - That a provision should be added to explicitly provide for the confidentiality of all financial information provided by the petitioner or respondent; and
> - That a provision should be added so that there is improved clarity on the potential exposure to an intervener's expenses."[11]

19. The SCJC noted that it would "continu[e] to assess what more can be done via rules in support of environmental actions in the sheriff court and will consult again when appropriate to do so." The SCJC also noted that it continued working on its "plan of action to address the remaining Aarhus concerns raised, where they would result in an amendment to court rules."[12]

20. Far from a failure to promote public participation, as the Communication incorrectly alleges, the SCJC organised and administered a formal process of public consultation concerning the improvement of the PEO rules in Scotland which was open, accessible and transparent. As the preceding paragraphs describe, the SCJC took clear and considered steps to increase public input in the rule reform process by publicising its efforts and directly inviting a range of individuals and entities, representing a diverse range of interests, to contribute to the consultation. Furthermore, the SCJC continued to assemble information concerning the public's views on the PEO rules during the formal compliance process conducted by this Committee and otherwise.

21. The United Kingdom also rejects as unfounded the Communicant's 'secondary position', set out in its submissions on preliminary admissibility (at para. 7), that the 2017 consultation "has negligible relevance to the 2024 Act of Sederunt". As the

[10] Annex 8.
[11] Annex 9, emphasis added.
[12] Ibid.

preceding procedural history indicates, the preparation of the 2024 PEO Amendments was closely and clearly connected to the consultation process initiated in 2017.

C. RECOURSE TO DOMESTIC REMEDIES

22. The annex to decision I/7 provides that the Committee should take into account, at all relevant stages, any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.[13] Accordingly, the United Kingdom invites the Committee at this stage to determine the communication to be inadmissible under paragraphs 20 and 21 of the annex to decision I/7 on account of the fact that the Communicant has neither sought to use nor exhausted the judicial review procedures available to it under domestic law. Alternatively, the United Kingdom requests the Committee to exercise its discretion to determine that this matter should be pursued at the level of domestic procedures at the present time, and that these compliance proceedings should be discontinued.

23. The Communicant has asserted that judicial review is not available in respect of this matter because the Aarhus Convention "is not enforceable in Scotland" (Communication, para. 39). This assertion is incorrect; the remedial procedure of judicial review is indeed available in this matter and, in contradiction to the Communicant's contention, the status of the Aarhus Convention in the UK does not affect the availability of judicial review in this matter.

24. In general, the Court of Session has jurisdiction in Scotland over judicial review of the acts, omissions or decisions of administrative bodies and inferior tribunals, in exercise of which it ensures that the decision maker has not exceeded its authority or failed to perform its duty. Applications for judicial review in Scotland are today regulated by Chapter 58 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (Annex 10) read together with sections 27A–27D of the Court of Session Act 1988 (Annex 11). Although the Communicant made no attempt to pursue judicial review of the enactment of the 2024 PEO Amendments within three months, as is the usual requirement for applications for judicial review under subsection 1(a) of section 27A of the Court of

[13] Annex to decision I/7, para. 21; Guide to the ACCC (fn1), para. 116.

Session Act, it may nevertheless make an application for judicial review under subsection 1(b) of section 27A, since this provision allows the Court of Session to accept applications after the expiry of the three-month period where it considers it equitable to do so having regard to all the circumstances.

25. Moreover, the United Kingdom contends that the application of judicial review in Scotland is not "unreasonably prolonged", prohibitively expensive, nor is it a remedy which "obviously does not provide an effective and sufficient means of redress", within the meaning of paragraph 21 of the annex to decision I/7.

26. In addition, the United Kingdom observes that a process of public consultation concerning further reform of the PEO rules in Scotland was conducted by the SCJC in 2025,[14] and that the Communicant participated in that public consultation.[15] Furthermore, the United Kingdom affirms that the Communicant will have a further opportunity to participate as, in response to the feedback received, the SCJC has publicly committed to publish a further public consultation during 2026. This new consultation process will also concern the preparation of draft rules to extend PEOs to proceedings in the sheriff courts and Sheriff Appeal Court. With this new consultation process imminent, the United Kingdom maintains that domestic procedures are the appropriate setting for the Communicant to pursue this matter.

27. Given the opportunities to participate in the SCJC's public consultations on PEOs in both 2025 and 2026, and the availability of judicial review as a timely, effective and affordable remedy in this matter, and given the Communicant's failure to make use of this remedy, the United Kingdom calls on the Committee to determine that the present compliance proceedings should be discontinued.

D. COMPLIANCE WITH ARTICLE 8

28. In the event that the Committee determines that the communication is admissible, the United Kingdom submits that it has complied fully with article 8 of the Convention during the preparation of the 2024 PEO Amendments.

[14] A copy of the SCJC website hosting the various documents related to the 2025 consultation on PEO Rules is included at Annex 12.
[15] The list of participants in the 2025 consultation, including the Communicant, is shown at Annex 13.

29. Article 8 provides:

> "Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.
>
> To this end, the following steps should be taken:
>
> (a) Time-frames sufficient for effective participation should be fixed;
> (b) Draft rules should be published or otherwise made publicly available; and
> (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.
>
> The result of the public participation shall be taken into account as far as possible."

(i) Nature of the Article 8 obligation

30. The Committee has clarified that article 8 imposes on Parties an obligation to take action in order to promote effective public participation during the preparation by public authorities of generally applicable rules or regulations. In its findings in Communication 120, the Committee observed:

> "[Article 8] obliges the Parties to 'strive to promote effective public participation at an appropriate stage'. This expresses an obligation of a somewhat 'softer' nature than the obligations set out in articles 6 and 7, meaning that the Parties must show that they make efforts to provide for public participation in the preparation of legislation and other generally applicable legally binding normative instruments. In comparison with articles 6 and 7, article 8 gives the Parties greater leeway in deciding how to fulfil this obligation."[16]

31. As the preceding quote indicates, the nature of the obligation provided in article 8 is an obligation of conduct, as opposed to an obligation of result. The imperative enshrined in this article – that "*each party shall strive*" – requires Parties to "make efforts" towards the goal of promoting effective public participation, as the Committee explained in Communication 120 above. In its Implementation Guide to the Convention, UNECE has noted that article 8 provides "a comparatively soft obligation", and that it "uses indicative rather than mandatory wording for the steps to be taken."[17] According to UNECE, the determination of whether a Party has complied with its article 8 obligation is "not based on results, but on efforts. Parties are required to make efforts towards the attainment of public participation goals."[18]

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[16] Findings and recommendations with regard to Communication ACCC/C/2014/120 (Slovakia), ECE/MP.PP/C.1/2021/19, 23 September 2021, para. 103.
[17] United Nations Economic Commission for Europe, *The Aarhus Convention: An Implementation Guide*, 2nd edition, 2014, p. 181.
[18] Ibid.

32. As this last quote observes, and as the United Kingdom has previously emphasised to this Committee, the obligation imposed by article 8 concerns the promotion of effective public *participation* by each Party. The provision makes no mention of 'public consultation', nor does that term appear anywhere else in the Convention. The Committee has recognised that, given the general manner in which the obligation in article 8 is framed, "Parties are then left with some discretion as to the specificities of how public participation should be organized."[19] Similarly, the Implementation Guide has noted that, while "[t]here is no set formula for public participation", the object of article 8 is that:

> "[u]ltimately, public participation should result in some increase in the correlation between the view of the participating public and the content of the decision. In other words, the public input should be capable of having a tangible influence on the actual content of the decision. When such influence can be seen in the final decision, it is evident that the public authority has taken due account of public input."[20]

33. Although, as this Committee and the UNECE Implementation Guide recognise, Parties retain discretion as to the specific actions they might take in the circumstances in order to fulfil the article 8 obligation to strive to promote effective public participation, paragraphs (a)–(c) of article 8 provide further guidance as to steps that may be taken to this end. The United Kingdom submits that these specific steps are *not required in all circumstances* where a generally applicable binding rule is introduced. These steps are not themselves obligatory, but are *recommended means* by which the general obligation to apply effort to promote public participation might be fulfilled: according to the terms of article 8, these are steps which "*to this end* [of promoting public participation]… *should* be taken". In article 8, mandatory language ("shall") is reserved for two obligations: the general obligation of conduct ("Each Party *shall strive* to promote…") and the specific obligation to take into account the results of public participation ("The result of the public participation *shall* be taken into account as far as possible"). Parties retain the flexibility to take other steps, besides those listed in paragraphs (a)–(c) in order to fulfil the obligatory elements of Article 8.

(ii) Fulfilment of the requirements by the United Kingdom

[19] Findings and recommendations with regard to communication ACCC/C/2010/53 (United Kingdom), ECE/MP.PP/C.1/2013/3, 11 January 2013 at para. 84, affirmed by the Committee in Findings and recommendations with regard to communication ACCC/C/2017/150 (United Kingdom), ECE/MP.PP/C.1/2025/11, 14 October 2025, at para. 96.
[20] Aarhus Convention Implementation Guide (fn 17), p. 120.

34. The United Kingdom submits that it has complied with its obligations under article 8, having taken sufficient and suitable steps to promote effective public participation in the process of preparing rules for the provision of protective expenses orders in Scotland, including the 2024 PEO Amendments, as already set out above in paragraphs 7–21. Notwithstanding its position, stated at paragraph 33 above, that the steps listed in paragraphs (a)–(c) of article 8 are merely recommendatory, the United Kingdom submits that, in the course of its efforts to promote public participation, it has in any case completed each of those steps, and has fulfilled the obligation to take the results of public participation into account as far as possible. The following paragraphs particularise the efforts undertaken by the United Kingdom to the end of promoting effective public participation.

(a) Fixed time frame sufficient for effective participation

35. When announcing on 28 March 2017 the commencement of a formal consultation process on draft rules for PEOs, the SCJC provided and publicised a definite, fixed time frame that afforded the public a sufficient opportunity of just over three months to participate in the consideration of draft rules for PEOs.

36. In keeping with the requirements of article 8, this consultation was conducted "at an appropriate stage" and "while options [were] still open", well in advance of the enactment of the 2024 PEO Amendments, which were intended to implement the results of that consultation process.

37. The United Kingdom acted well within the scope of the discretion which, as the Committee has affirmed,[21] is retained by Parties to the Convention when it comes to the precise modalities for promoting public participation in the process of preparing relevant rules and regulations, when the SCJC decided that it was not necessary to open a new formal consultation period for the purposes of finalising the 2024 PEO Amendments.

38. In reaching this decision, the SCJC took into account a range of circumstances at that time. These circumstances included:

[21] Findings regarding Communication 120(Slovakia)(fn 16), para. 103.

a. the SCJC had already obtained during the 2017 consultation numerous indications from the public in respect of three issues which had not been addressed in the 2018 PEO Rules, namely: the availability of costs protection on appeal, the confidentiality of financial information, and the implied exposure to an intervener's expenses in judicial review proceedings;

b. the SCJC had access to the submissions received by this Committee in 2020 from observers, including a submission made by the Communicant, in response to the United Kingdom's Final Progress Report on decision VI/8k,[22] which commented on these three outstanding issues;

c. when conducting a public consultation, the SCJC follows the approach it has set out in its own guidance paper, 'The Consultation Process'.[23] That document reflects the guidance provided in the the Scottish Government's Consultation Guidance,[24] which incorporates the United Kingdom Government's Consultation Principles 2018.[25] These documents affirm that the overarching purpose of improving public consultation may be achieved by observing various principles, including: that a consultation should be clear and concise, should last for a proportionate amount of time, and should be targeted. The United Kingdom Consultation Principles recommend that consultations should not be conducted "for the sake of it", and that consultation responses should be taken into account when taking policy forward.[26]

39. In view of these numerous factors, the SCJC considered it appropriate and sufficient to rely on the 2017 consultation exercise for the purposes of drafting the amendments set out in the 2024 instrument. These 2024 amendments were themselves responsive to the input provided by the public during the formal consultation, and their drafting

[22] Observations on the United Kingdom's 3rd Progress Report on Aarhus Convention Decision VI/8k dated 29 October 2020 by the Royal Society for the Protection of Birds, Friends of the Earth, Friends of the Earth Scotland, Environmental Rights Centre for Scotland, Mr Roger Black, and Mr Benjamin Christman (Annex 14).
[23] Annex 15 provides the version of the SCJC consultation guidance applicable at the relevant time: 'The Consultation Process', published 31 January 2024. An updated version of the guidance, 'The "Consultation Process" Used by the SCJC', was published on 8 August 2025 and is attached at Annex 16.
[24] Annex 17.
[25] Annex 18.
[26] Government of the United Kingdom, Consultation Principles 2018, Annex 18, para. B.

represented a continuation and refinement of the process of introducing rules providing for PEOs in Scotland which was the subject of formal public consultation in 2017. The SCJC had gathered sufficient information from the public to make the necessary changes to the PEO rules, and it considered it vital to do so without delay given the importance of demonstrating the United Kingdom's continuing commitment to the objectives of the Convention.

40. The SCJC also considered that carrying out a second formal consultation in respect of the details of the particular amendments required would place an unnecessary burden on the public when numerous participants had already provided their views.

(b) Public availability of the draft rules

41. The SCJC published the draft rules making provision for PEOs at the launch of its consultation period in 2017 and made them available on the SCJC website.[27] The 2024 PEO Amendments were implemented in response to the comments concerning those draft rules which had been provided by the public during the consultation period in 2017, as well as in the formal review process carried out by this Committee, and otherwise, as listed above in paragraphs 15–16.

(c) Opportunity for public to comment

42. The public was given the opportunity to comment directly to the SCJC, the relevant public authority for these purposes, both during the formal consultation period, and at any time thereafter. The SCJC's website includes on its pages (including, in particular, those pages concerning PEOs, such as the announcement of the 2024 PEO Amendments (Annex 9), an invitation to the public to share comments on any court rules. Together with a direct link to the SCJC Secretariat's email address, each page states: "The SCJC welcomes feedback on any aspect of court rules. Please email your comments to the Secretariat."

(d) Taking the result of public participation into account as far as possible

[27] See Annex 19.

43. The SCJC duly took into account the contributions received from the public during the preparation process when formulating 2024 PEO Amendments. For a start, the content of the 2024 PEO Amendments show clearly the tangible influence of the public input, as they respond to proposals first articulated by the public during the 2017 consultation. Furthermore, the SCJC acknowledged the significance of the public's participation when it announced that the rules on PEOs had been amended by the 2024 PEO Amendments. The SCJC stated:

> "The Council consulted on the Protective Expenses Order (PEO) rules in 2017, with the key changes then enacted as the 2018 PEO Rules. These latest amendments further support environmental actions being raised and implement a further three suggestions made by respondents to that 2017 consultation which are:
> - That a PEO should carry over to proceedings in the Inner House as standard, regardless of whether the petitioner or respondent is appealing the original decision;
> - That a provision should be added to explicitly provide for the confidentiality of all financial information provided by the petitioner or respondent; and
> - That a provision should be added so that there is improved clarity on the potential exposure to an intervener's expenses."[28]

E. CONCLUSION

44. For these reasons, the Government of the United Kingdom therefore respectfully requests that the Committee make one of the following findings:

(1) the communication as a whole is inadmissible;

(2) these proceedings are discontinued, given the availability of domestic procedures; or

(3) the United Kingdom has complied with its obligations under article 8 of the Convention in the process of preparing the 2024 PEO Amendments.

45. The Government of the United Kingdom would be happy to answer any questions and provide further clarification in order to assist the Committee during its deliberations, including by making oral submissions if the Committee considers them necessary.

17 April 2026

[28] Annex 9.

LIST OF ANNEXES

1. SCJC announcement of the public consultation on draft rules for protective expenses orders, 28 March 2017.

2. SCJC Consultation Document: Consultation on Draft Court Rules in Relation to Protective Expenses Orders.

3. SCJC list of individuals and entities invited to participate in the public consultation.

4. List of responses received by SCJC during 2017 public consultation.

5. SCJC Consultation on Draft Court Rules in relation to Protective Expenses Orders: Analysis of Responses, October 2017.

6. SCJC announcement of 2018 PEO Rules, 27 November 2018.

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

8. Act of Sederunt (Rules of the Court of Session 1994 Amendment)(Protective Expenses Order) 2024.

9. SCJC announcement of the 2024 PEO Amendments, 28 June 2024.

10. Act of Sederunt (Rules of the Court of Session 1994) 1994, Chapter 58.

11. Court of Session Act 1988 (Annex 11), sections 27A–27D.

12. SCJC webpage regarding the 2025 consultation on the PEO Rules.

13. List of responses received by SCJC during 2025 public consultation.

14. Observations on the United Kingdom's 3rd Progress Report on Aarhus Convention Decision VI/8k dated 29 October 2020 by the Royal Society for the Protection of Birds, Friends of the Earth, Friends of the Earth Scotland, Environmental Rights Centre for Scotland, Mr Roger Black, and Mr Benjamin Christman.

15. SCJC Paper, 'The Consultation Process', version 1.1, 31 January 2024.

16. SCJC Paper, 'The "Consultation Process" Used by the SCJC', 8 August 2025.

17. Scottish Government's Consultation Guidance.

18. Government of the United Kingdom, Consultation Principles 2018, paragraph B.

19. 2017 Draft Protective Expenses Orders Rules.

Paper 4.3A

Scottish Civil Justice Council

PUBLIC CONSULTATION: on the extension of Protective Expenses Orders (PEOs)

10 June 2026 - WORKING DRAFT (v1.3)

CONTENTS

The accompanying documents have been provided to support the proposals made within this consultation paper:

- *Draft Rules*
- *Draft Business and Regulatory Impact Assessment (BRIA)*
- *Draft Equalities Impact Assessment (EQIA)*
- *Respondent Information Form (RIF)*

SECTION 1: RESPONDING TO THIS CONSULTATION

1. In December 2025, the Scottish Civil Justice Council (the Council) considered its approach to rules on Protective Expenses Orders (PEO) in cases within the scope of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention). Article 9 of the Convention provides certain rights to challenge environmental decision making. The Council agreed to consult on draft rules with a view to resolving issues with the rules on PEOs, as highlighted by the Aarhus Convention Compliance Committee.

2. Whilst a PEO can be obtained at common law (and the first PEO was granted under common law in McGinty v Scottish Ministers [2010] CSOH 5), this consultation is limited to the rules on PEOs for cases within the scope of Article 9 of the Aarhus Convention. The Council does not have wider information before it to suggest that there is a requirement to introduce a wider rule allowing PEOs in cases not involving Article 9 of the Convention.

3. This consultation proposes three broad changes: (1) the amendment of certain detailed parts of the existing rule within the Court of Session Rules; (2) the extension of those amended rules to a wider range of actions in the Court of Session; and (3) the introduction of similar rules to allow applications for a PEO in civil case before the Sheriff Appeal Court and Sheriff Court.

4. Feedback is sought from a wide range of individuals, organisations and public bodies, including members of the public, academics, businesses and business representative groups, community groups, non-governmental organisations, public bodies, the judiciary, the legal profession, court officials and the Scottish Legal Aid Board.

5. This consultation will be open for twelve weeks. Written responses are invited by **Friday XX XXX 2026**.

6. To respond please email scjc@scotcourts.gov.uk with your response, along with a completed **Respondent Information Form.**

How will your response be handled?

7. Your response will be handled in line with the information you provide within your Respondent Information Form. If you are content for your response to be published it will be uploaded to our website. If you ask for your response not to be published the Council will regard it as confidential and treat it accordingly.

8. All respondents should note that the Council is subject to the provisions of the Freedom of Information (Scotland) Act 2002. If a Freedom of Information (FOI) request is received about the responses to this consultation, any response (including those not published) may need to be made available when responding.

Why run a Public Consultation?

9. It is recognised that there is increased concern and interest in environmental issues and decisions, including as to the impact of climate change. It is also recognised that increased numbers of court challenges to environmental decisions may cause delays to projects or policies being implemented. Hence it is important for the Council to have a wide range of feedback on the draft rules from a broad range of society.

Who are we consulting with?

10. The Council would welcome responses from any interested party. In addition, the consultation papers will be emailed to those listed below who have responded to previous consultations or may have a more direct interest in this consultation:

    General Public:
    Litigants and potential litigants who may have sought or may seek cost protection against an adverse award of expenses being made against them and the public more generally

    Academics
    Professor Tom Mullen, Glasgow University
    Professor Colin Reid, Dundee University
    Academics from any Law School

    Advice and Assistance:
    Citizens Advice Scotland
    Consumer Scotland
    Those organisations that provide advice or assistance to any person that may be considering whether to seek a PEO when initiating a civil action.

    Business Groups
    CBI Scotland – Infrastructure Working Group
    Federation of Small Businesses
    Scottish Building Federation
    Scottish Creel Fisherman
    Scottish Renewables
    Scottish Whisky Association
    Those developers that have been involved in litigation where a motion for a PEO was considered.

    Law Centres
    Environmental Rights Centre for Scotland (ERCS)
    Scottish Association of Law Centres (SALC)

    Environmental groups:
    Friends of the Earth Scotland
    Greenpeace UK
    John Muir Trust

Marine Conservation Society
Open Seas Trust
RSPB Scotland
Scottish Environment LINK
Sustainable Shetland
Trees for Life
Wildcat Haven Community Interest Company
Any other Non-Government Organisation (NGO) that has an interest in the protection of the environment.

Public Bodies:
Coalition of Scottish Local Authorities (COSLA)
Equalities and Human Rights Commission (EHRC) Scotland
Environmental Standards Scotland (ESS)
NatureScot
Scottish Information Commissioner
Scottish Environmental Protection Agency (SEPA)
Scottish Human Rights Commission (SHRC)
Scottish Public Services Ombudsman
Scottish Water

Judiciary:
Senators of the College of Justice
Sheriffs Principal
Sheriffs and Summary Sheriffs Association

Practitioners:
Faculty of Advocates
Society of Local Authority Solicitors
Society of Solicitor Advocates
Law Society of Scotland
Any law firms

Officials:
Scottish Courts and Tribunals Service
Scottish Legal Aid Board

11. To support the policy interests of Scottish Ministers, the Council has forwarded a copy of these consultation papers on to Scottish Government officials.

12. To support the policy interests of the Equalities, Human Rights and Civil Justice Committee (EHGRCJC) of the Scottish Parliament, the Council has forwarded a copy of these consultation papers on to the Convenor, and to SPICe.

Comments and complaints

13. If you wish to provide any feedback to the Council on this consultation, or how it is being conducted, then please email scjc@scotcourts.gov.uk.

SECTION 2: GENERAL BACKGROUND

Purpose

14. This consultation seeks views on amendments to existing rules on PEOs in the Court of Session, a proposed amendment to widen the types of cases where an application can be made for a PEO in the Court of Session, and the introduction of rules in the Sheriff Appeal Court and the Sheriff Court. Together, these would amount to a considerable extension of the PEO regime.

Background

15. The UK is a signatory to the Aarhus Convention which provides procedural rights to participate in, obtain information on and challenge certain environmental proposals and decisions. These three aspects are often referred to as the three pillars of the Aarhus Convention.

16. In terms of the third pillar (that is access to justice) the Aarhus Convention provides rights to challenge environmental decision making, which should be available in a way that is not prohibitively expensive. As part of the compliance mechanism to the Aarhus Convention, the Aarhus Convention Compliance Committee has made a series of observations as to whether the court rules in Scotland fully implement Article 9 of the Aarhus Convention. In December 2025, the SCJC considered a new approach to Aarhus compliance, and agreed a further consultation should take place in 2026 to propose new rules with the aim of resolving all outstanding issues.

17. Court rules providing for an applicant to obtain a Protective Expenses Order (PEO) have been present since 2013. A PEO limits a litigant's liability to an adverse award of expenses being made against them in the event of losing the case, with a reciprocal cap (known as the cross cap) as to the extent to which, in the event of success, the party benefitting from the PEO can recover expenses. However, those rules are presently limited to certain types of action in the Court of Session.

18. The UK is a signatory to the Aarhus Convention. Under the Convention, members of the public (including NGOs) are given procedural rights to (1) obtain access to certain environmental information; (2) to participate in certain decisions regarding the environment and environmental decision-making and (3) to challenge certain environmental decisions. If the environmental decision is caught within Article 9 of the Aarhus Convention, and other provisions of Article 9 are satisfied, the procedures must be "not prohibitively expensive".

19. In Scotland, like many court systems, the general rule is that the unsuccessful party is normally found liable for the expenses or costs of the winning party. As expenses normally follow success they are determined at the end of a court action, and difficulties will arise with environmental cases falling within the terms

of Article 9. Rules allowing for an application to limit a party's liability for costs in the form of a PEO were enacted some time ago. Since then, the Aarhus Convention Compliance Committee has considered and reported issues with those rules.

20. Any members of the public, community groups or national environmental bodies considering whether (or not) to initiate a legal action need to ensure they have enough financial resources in place to meet the costs of securing their own legal representation, and in addition have the ability to meet the reasonable costs of their opponent should they lose.

21. In practice, situations frequently arise where a litigant may only have limited resources available whereas their opponent may be a large well-funded organisation or public body with ready access to both significant funds and legal expertise. As such imbalances of power create a David versus Goliath situation that can act as a brake on those trying to pursue access to justice.

22. When issues do exist, natural justice may require the court to consider making an order for *cost protection* i.e. protection from expenses.

Protective Expensive Orders (PEOs)

23. In Scotland the method used for seeking *costs protection* is to lodge a motion for a Protective Expenses Order (PEO).

24. If that motion is granted the applicant gains protection against the financial risk of an adverse award of expenses being made against them. In practice that then means their liability to pay an award of expenses to their opponent is normally capped at £5,000 if they lose; and if they win the expenses they could recover from their opponent would be limited to a cross cap of £30,000.

25. There are 2 options currently available to potential litigants seeking a PEO in Scotland:

- *A COMMON LAW PEO* – for this type of PEO a motion can be lodged under the common law 'in any civil proceedings' that may be 'initiated in any court.

- *AN ENVIRONMENTAL PEO* – for this type of PEO a motion for an *environmental PEO* is restricted to environmental actions proceeding under the rules stated within RCS Chapter 58A.

The volume of cases:

26. To date the transaction volumes have been very low. On average motions for either a common Law PEO or an Environmental PEO have been lodged in around 1 to 2 cases per annum. If the extension proposed in this consultation is supported, the working assumption is that the annual volume of applications would remain in single digits for some time.

The limited scope of the existing rules

27. At present the scope of the existing costs protection procedure is limited to litigants seeking an environmental PEO within a judicial review or a statutory appeal to the Court of Session under:

    - *RCS Chapter 58A (Protective Expenses Orders in Environmental Appeals and Judicial Reviews).*

28. *Annex 1* – sets out a brief history for those rules which first took effect from March 2013 and were subsequently amended in 2015, 2018 and 2024.

The Policy Objectives

29. The policy objectives of proposing to extend PEOs to other actions in the Court of Session, and actions in the Sheriff Appeal court and Sheriff Court are:

    - *To improve Aarhus compliance* – by addressing the concerns that fall within the remit of the SCJC, from the reports of the Aarhus Convention Compliance Committee, enabling the SCJC to comply with its international obligations.

    - *To improve access to justice* – as widening the ability to apply for a PEO is likely to improve access to justice for those bringing an environmental dispute before the courts.

    - *To provide comparable rules* – as developing a fully Aarhus compliant set of rules in the Court of Session and then replicating that approach across the Sheriff Courts and the Sheriff Appeal Court aligns with the SCJC guiding principle of having similar rules, where appropriate, in all courts.

The Aarhus Convention

30. Article 9 of the Aarhus Convention deals with Access to Justice and, in particular, the circumstances in which challenges can be made regarding access to environmental information, to decisions concerning Article 6 of the Convention (regarding public participation on specific activities) and on challenging contraventions of environmental law more generally. In particular, the ability to challenge decisions must be fair, equitable, timely and not prohibitively expensive.

31. Article 9(5) requires member states to consider what appropriate assistance mechanisms can be provided to "remove or reduce financial and other barriers to access to justice". The Council is aware that the "assistance mechanisms' provided in Scotland include:
    - The ability to access '*civil legal aid'*;
    - The ability to access '*exemptions from court fees'*; and
    - The ability to seek '*costs protection'* (that is a PEO) in environmental cases.

32. In relation to exemptions from court fees, fee exemptions for Aarhus related cases were introduced with effect from July 2022. If court rules allowing environmental PEOs were extended to the Sheriff Appeal Court and the Sheriff Court, the Council anticipates that the Scottish Ministers would consider extending the same fee exemption regime to the Sheriff Appeal Court and the Sheriff Court.

33. The original PEO rules were introduced in the Court of Sesson in March 2013. If the extension proposed in this consultation were supported, there would be comparable cost protection procedures available to all potential litigants within the Sheriff Appeal Court and the Sheriff Courts, where the litigation falls within Article 9 of the Aarhus Convention.

34. Article 8 of the Aarhus Convention requires, in some circumstances, there to be an opportunity for the public to participate in the preparation of rules that may have a significant effect on the environment. This consultation provides such an opportunity for the public to participate.

The proposed changes

35. The remainder of this paper is structured as follows:
- *Section 3* – proposes amendments to the existing Rules of the Court of Session so that they are fully Aarhus complaint.
- *Section 4* – proposes a new procedure for use in the Sheriff Appeal Court.
- *Section 5* – proposes a new procedure for use in the sheriff courts.

36. The narrative for each proposal should be read in conjunction with the “draft rules” instrument that accompanies this consultation.

SECTION 3: AMENDING THE COURT OF SESSION RULES

37. This section summarises our proposed changes within the Court of Session and should be read in conjunction with the accompanying draft rules.

What happens at present?

38. The existing rules providing the ability to seek an environmental PEO within the Court of Session are found in:

    RCS - Chapter 58A - Protective Expenses Orders in Environmental Appeals and Judicial Reviews:
    - *58A.1 - Application and interpretation*
    - *58A.2 – Applications relating to requests for environmental information*
    - *58A.3 - Public participation in decisions on specific environmental activities*
    - *58A.4 – Contravention of the law relating to the environment*

- *58A.5 - Applications for protective expenses orders*
- *58A.6 - Determination of applications*
- *58A.7 - Terms of protective expenses orders*
- *58A.8 - Expenses of protection in reclaiming motions*
- *58A.9 - Expenses of applications*
- *58A.10 – Expenses of interveners*

39. The rules allow for a PEO to be sought in "relevant proceedings", which is defined within the interpretation clause at RCS rule 58A.1.

What is being proposed?

Concern A - The type of claims covered:

40. It is recognised that funding arrangements for Group Procedure have complexities. Group proceedings under RCS Chapter 26A will generally involve a financial remedy, and the funding of such proceedings usually relies on the ability to recover judicial expenses in the usual way. Those considerations alter the way that any PEO rule might interact with actions taken forward as group proceedings. The Council's Group Procedure Working Group will separately consider that interaction between group procedure and the cost protection provided by a PEO.

41. The proposal in these draft rules is to extend the availability of the rules allowing application for a PEO to be made in all proceedings within the Court of Session, except for those arising under group procedure, where those proceedings fall within Article 9 of the Aarhus Convention.

Question 1 – Do you agree that, other than in group proceedings, a party should be able to apply for an Environmental PEO in any relevant proceedings that fall within Article 9 of the Aarhus Convention within the Court of Session? If not, why not?

Question 2 - Do you agree that the amendments proposed to be made to RCS rule 58A.1 will achieve the purpose of extending the potential to apply for a PEO in all civil proceedings in the Court of Session within the scope of Article 9 of the Aarhus Convention, other than group proceedings?

Concern B - The levels of the cost caps:

42. Historically RCS rule 58A.7 referenced the ability, on cause shown, for the court to change the cap that had been set within a PEO either up or down. The existing Court of Session rule reads:

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.

(2) Where the applicant is the respondent in proceedings mentioned in rule 58A.1(1)(a)—

(a) paragraph (1)(a) applies as if the reference to the applicant's liability in expenses to the respondent was a reference to the applicant's liability in expenses to the appellant; and

(b) paragraph (1)(b) applies as if the reference to the respondent's liability in expenses to the applicant was a reference to the appellant's liability in expenses to the applicant.

(3) In paragraph (1), "the respondent" means—

(a) all parties that lodge answers in an application to the supervisory jurisdiction of the court;

(b) all respondents in an appeal under statute.

43. The Council has considered that wording and the option to use a term other than "on cause shown" to provide for the judicial discretion to determine where that fixed £5,000 cap can be lowered, if the court considers it reasonable to do so. The proposal made is that:

- If a PEO is granted, that cap should be set at a fixed maximum of £5,000 with the ability for the court to lower that figure through judicial discretion.

44. To implement the proposed change rule 58A.7 is amended to the effect that a fixed £5,000 cap would be applied, with that sum able to be lowered by the court (but not increased).

Question 3 – Do you agree with the cost cap for the applicant being a fixed maximum sum of £5,000 which the court may decrease but not increase? If not, why not?

Question 4 – Do you agree that the proposed draft wording of Rule 58A.5 achieves the purpose of providing judicial discretion to lower the cap, where it is reasonable to do so?

Concern C (i) - The application procedure – terms of representation:

45. RCS rule 58A.5 (3)-(a)-(ii) currently provides that in an application for a PEO the terms of which the applicant is represented should be provided. The current rule reads:

58A.5 (3) - The applicant must lodge with the motion—

(a) a statement setting out—

(i)the grounds for seeking the order;

(ii)the terms on which the applicant is represented;

(iii)an estimate of the expenses that the applicant will incur in relation to the proceedings;

(iv)an estimate of the expenses of each other party for which the applicant may be liable in relation to the proceedings; and
(v)in the case of an application for liability in expenses to be limited to an amount lower or, as the case may be, higher than a sum mentioned in rule 58A.7(1), the grounds on which the lower or higher amount is applied for; and

(b) any documents or other materials on which the applicant seeks to rely.

46. The Council has considered the need for such information. It is not clear that such information is necessary for the court to know to be able to determine the application for a PEO. Further, as an estimate of the expenses that the applicant will incur in the proceedings is already required (which is arguably needed to understand the overall costs the applicant faces), it may, in some cases, be duplication. As such, the Council favours withdrawing the requirement to provide information on the terms on which the applicant is represented.

47. The proposed amendment to rule 58A.5 (3)-(a) would omit subparagraph(ii).

Question 5 – Do you agree that the requirement to provide terms of representation should be deleted? If not, why not?

Question 6 – Do you agree that the proposed deletions to Rule 58A.5 (3) achieves the purpose of no longer requiring the applicant to provide terms of representation, or do you have any other comment on that Rule?

Concern C (ii) - The application procedure – confidentiality of information:

48. In 2024, RCS rules 58A.5 and 58A.6 were amended to allow an applicant to request that any information provided is kept confidential. If the court makes such an order, then any breach constitutes a contempt of court and the court holds inherent common law powers to impose punishment, which can include imprisonment.

49. In its 2025 Compliance Report[1] the Compliance Committee welcomed those changes and then sought a clarification as to how that rule operates in practice.

50. The Council have considered the Compliance Committee's report to the Meeting of the Parties in November 2025. Whilst the Council notes that the consideration of this report has been deferred to a future Meeting of the Parties, it is unclear to the Council whether the Compliance Committee were seeking further information in reassurance as to the confidentiality of private information, or if the Compliance Committee were suggesting that such information should not be provided to the defender/respondent or interested parties. The Council considered this issue. It noted an application for a PEO is made and considered in the context of an adversarial system. It noted that a PEO can be a significant order to grant, given

[1] https://unece.org/sites/default/files/2025-11/ECE.MP_.PP_.2025.66.E.pdf. Note that the Meeting of the Parties deferred consideration of this report at its November 2025 meeting.

it limits the ability of a party to recover judicial expenses, even if that party is ultimately successful in the action. In those circumstances, the Council noted it was axiomatic to the fairness of the process in an adversarial system to allow both parties access to the information upon which the court will make its decision.

51. The Council noted that the rule was amended in 2024 as set out above. Accordingly, whilst the applicant's financial information is available to the other parties, the existing rules provide the applicant can seek to have that information kept private. The Council is not aware of any issues with that rule in practice.

Question 7 – are you aware of any difficulties with the handling or provision of financial information provided as part of an application for a PEO? If so, was this after the 2024 amendments to the rules?

Concern C (iii) - The application procedure – estimating expenses:

52. As part of the current Court of Session rule, an application for a PEO should include an estimate of the expenses for other parties for which the applicant may be liable in relation to the proceedings. The current rule reads:

> *58A.5 (3) - The applicant must lodge with the motion—*
>
> > *(a) a statement setting out—*
> > *(i)the grounds for seeking the order;*
> > *(ii)the terms on which the applicant is represented;*
> > *(iii)an estimate of the expenses that the applicant will incur in relation to the proceedings;*
> > ***(iv)an estimate of the expenses of each other party for which the applicant may be liable in relation to the proceedings; and***
> > *(v)in the case of an application for liability in expenses to be limited to an amount lower or, as the case may be, higher than a sum mentioned in rule 58A.7(1), the grounds on which the lower or higher amount is applied for; and any documents or other materials on which the applicant seeks to rely.*

53. The Council have considered the requirement for this to be lodged as part of an application for a PEO. Whilst it noted concerns raised by the Aarhus Convention Compliance Committee may not in fact arise[2], it considered the necessity of providing this information. It was noted that judges would be reasonably familiar with approximate costs for different types of procedure. It was also noted that generic information on likely expenses arising in different types of cases could be provided to judges. It was also noted that estimates could be fraught with difficulties, as the natural tendency of parties was to overestimate rather than underestimate potential costs and liabilities.

54. The Council considered the application should have sufficient information in it to allow the court to determine whether the action would be prohibitively expensive without a PEO. It concluded that applicants should still provide an estimate of their own expenses but should not provide an estimate of their opponent's

[2] See Aarhus Strategy paper, considered by the Scottish Civil Justice Council on 8 December 2025, available here at paragraphs 59 to 67 and in particular at paragraph 65.

expenses. Accordingly, it concluded that in rule 58A.5 (3)-(a) subparagraph (iv) should be deleted.

55. The proposed amendment to rule 58A.5 (3)-(a) omits all of subparagraph (iv).

Question 8 – Do you agree that the requirement for an applicant to estimate their opponents' expenses should be deleted? If not, why not?

Question 9 – Do you agree that the draft wording proposed re Rule 58A.5 (3) achieves that purpose, or do you have any other comment on that Rule?

Concern D – Interveners:

56. In terms of the Court of Session rule 58.17, in a judicial review case a third party can seek to participate in a court action to the extent of lodging a public interest intervention. That is a written submission to the court only (and is different from where a third party, such as a developer, seeks to enter a court process as an interested party to defend a particular interest). The current rule reads:

> *RCS 58A.10 - Expenses of interveners*
> *(1) Expenses are not to be awarded in favour of or against a relevant party,* ***except on cause shown****.*
> *(****2) If the court decides expenses are to be awarded under paragraph (1), it may impose conditions on the payment of expenses****.*
> *(3) In paragraph (1), "a relevant party" means a party who has—*
> *(a) been granted leave to intervene under rule 58.19(1)(b) or;*
> *(b) been refused or granted leave after a hearing under rule 58.19(1)(c)."*

57. The existing RCS rule 58A.10 has a default position that expenses will not be awarded in favour of or against such an intervener. However, it also allows the court to grant expenses in favour of, or against a public interest intervener "on cause shown". In practice it is likely that such expenses would only be granted if there had been unreasonable conduct by the public interest intervener.

58. The Council has considered the concerns raised by the Aarhus Convention Compliance Committee. It notes that the Compliance Committee is concerned as to the discretion given to the court, but also a concern that a party raising the action may become liable for an intervener's costs. The Council noted that once a PEO is granted, the PEO regulates the liability relative to all expenses in the court action, whether that is intervener's expenses, court fees or liability for judicial expenses. However, it also considered the utility of retaining such a discretion. It noted that in practice the court will have made its own assessment of the purpose and utility of the intervention before granting the application to intervene. If the intervention is unlikely to be of assistance to the court, or if there is some indication that the proposed intervention is otherwise not reasonable, the court is likely to refuse permission to the intervener. Accordingly, the wider issues around the intervention are likely to have been considered before permission to intervene is granted.

59. Accordingly, removing that discretion will allow for increased predictability in relation to public interest interventions.

60. The proposal is to delete "on cause shown" where it appears in Rule 58.10 (1) above and delete Rule 58A.10(2) in its entirety.

Question 10 – do you agree that where a public interest intervention is allowed that it should be on a "no expenses due to or by" basis? If not, why not?

Question 11 – Do you agree that the draft wording proposed re Rule 58A.10 achieves that purpose, or do you have any other comment on that Rule?

Concern E - Court Fees:

61. Where a party to a court action is awarded expenses, that party must lodge an account of judicial expenses within a certain period. It is well understood that the account of judicial expenses can include any court fees incurred by that party. Where there is a PEO, court fees are not paid in addition to the figure at which the PEO was set. Rather, any claim for court fees is part of the PEO cap and cannot be in addition to it.

62. The Compliance Committee has queried whether court fees would be payable in addition. To avoid any confusion, the Council proposes that the Court of Session Rule 58A.7 (1)-(a) is amended to add a reference that the £5,000 cap is "inclusive of court fees".

> *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…*

63. The proposed amendment to rule 58A.7 reads:

> *In rule 58A.7 (terms of protective expenses orders), in paragraph (1)—*
> *(a) in sub-paragraph (a), for "£5,000, or such other", substitute **"£5000 (inclusive of court fees)**, or such lower";*
> *(b)in sub-paragraph (b), **after "£30,000", insert "(inclusive of court fees)"**.*

Question 12 – do you agree that rule 58A.7 of the Court of Session should be amended to make it clear that the cap granted by the court is inclusive of court fees? If not, why not?

Question 13 – Do you agree that the draft wording proposed re Rule 58A.7 achieves that purpose, or do you have any other comment on that Rule?

Reclaiming Motions (appeals)

64. Rule 58A.8(2) currently reads "subject to any review of the protective expenses order by the Inner House, the limits on the parties' liability in expenses set by the order include liability for expenses occasioned by the reclaiming motion." The Council is not aware of any cases where the Inner House has exercised this power, which is separate to the ability of the Inner House to determine a PEO which arises as a specific appeal (that is an appeal as to how the Outer House determined a PEO). A similar rule is proposed in relation to appeals from the Sheriff Court or Sheriff Appeal Court (RCS 58A.8A (3)).

Question 14 - Do you consider the existing ability of the Inner House to review the cap should be maintained within the rules or do you consider that the words "Subject to any review of the protective expenses order by the Inner House" should be omitted from draft RCS 58A.8 (2A)?

Question 15 - If you consider the power of review should remain, do you consider the circumstances in which the Inner House would exercise its power of review should be stated within the rule, and if so, in what circumstances would you consider it appropriate for the Inner House to review an existing PEO?

Question 16 - Do you consider draft rule 58A.8A(3) should be enacted, and if so, do you consider the circumstances in which the Inner House would exercise its power of review should be stated within the rule, and if so, in what circumstances would you consider it appropriate for the Inner House to review an existing PEO?

Onward appeals to the UK Supreme Court

65. In Wildcat Community Interest Co Ltd v Scottish Ministers [2025] CSIH 10 the Inner House was asked to consider an application for leave to appeal to the UK Supreme Court (UKSC). The Inner House observed that a PEO granted at an earlier stage in the proceedings would not extend to an application for leave to appeal to the UKSC. The Council considers a rule should be introduced to provide that where a PEO has already been granted, it would include any liability for judicial expenses in an application to the Court of Session: for leave to appeal to the UK Supreme Court.

66. The proposed change is to insert a new rule 58A.8B which reads:

> *58A.8B Expenses protection: appeals to the Supreme Court*
> *(1) Paragraph (2) applies where—*
> *(a) the court has made a protective expenses order; or*
> *(b) a protective expenses order has been made in the lower courts and that order remains in effect by virtue of rule 58A.8A(2).*
>
> *(2) Subject to any review of the protective expenses order by the Inner House, the limits on the parties' liability in expenses set by the order include liability for expenses occasioned by the application for permission to appeal under Chapter 41A.*

(3) A party who would have been entitled to apply for a protective expenses order in the proceedings which are the subject of the application for permission to appeal (but did not make a successful application) may apply for a protective expenses order in relation to the application for permission to appeal.

(4) The application is to be made no later than is reasonably practicable after the application for permission to appeal has been made.".

Question 17 - Do you agree that a PEO should include any liability for expenses in terms of an application to the Court of Session for leave to appeal to the UKSC? If not, why not?

Question 18 - Do you agree that the draft wording proposed re Rule 58A.8B achieves that purpose, or do you have any other comment on that proposed rule?

General Observations

Question 19 - in addition to the proposals already covered within questions 1 to 18 above, do you have any other concerns or suggested changes to the wording of the rules provided within RCS Chapter 58A as amended?

SECTION 4: ESTABLISHING SHERIFF APPEAL COURT RULES

67. The Council proposes that rules are introduced in the Sheriff Appeal Court to allow an application for a PEO to be made in that court, or to allow an existing PEO to continue to apply, in cases within Article 9 of the Aarhus Convention where that litigation relates to an alleged act or omission contravening the law relating to the environment.

Question 20 - Do you agree that the ability to seek a PEO, or to have it carried forward, should be extended to the Sheriff Appeal Court? If not, why not?

68. To put that proposed change into effect the following new chapter is to be inserted into the Sheriff Appeal Court rules:

Procedural Code	New Chapter
Sheriff Appeal Court Rules 2021	CH 28A – Applications for Protective Expenses Orders

Question 21 - Do you agree that the draft wording of Chapter 28A achieves the purpose of extending an existing PEO to an appeal before the Sheriff Appeal Court, or allowing the Sheriff Appeal Court to make such an order?

Question 22 - Do you have a view on whether provision should be made allowing the Sheriff Appeal Court to review a protective expenses order, in terms of draft rule 28A.2 (3)?

Question 23 - If you consider draft rule 28A.2(3) should remain, do you consider the circumstances in which the Sheriff Appeal Court would exercise its power of review should be stated within the rule, and if so, in what circumstances would you consider it would be appropriate for the Sheriff Appeal Court to review an existing PEO?

Question 24 - Do you have any other comment on the proposed new Chapter 28A for the Sheriff Appeal Court?

SECTION 5: ESTABLISHING SHERIFF COURT RULES

69. The Council proposes that rules are introduced in the Sheriff Court to allow an application for a PEO to be made in cases that arise under Article 9 of the Aarhus Convention, that is in a civil litigation that relates to an alleged act or omission contravening the law relating to the environment. The proposed rules would provide a rule in each of ordinary cause, summary applications and statutory appeals, summary cause and simple procedure, allowing an application for a PEO to be made where there is civil litigation within Article 9 of the Aarhus Convention, that is in relation to an alleged act or omission contravening the law relating to the environment.

Question 25 - Do you agree that the ability to seek a PEO, should be extended to the Sheriff Court, where the litigation is within Article 9 of the Aarhus Convention? If not, why not?

70. It is proposed that new chapters and/or rules will be inserted into the Sheriff Court rules for each type of procedure as follows:

Court rule	New Chapter
Ordinary Cause Rules 1993	CH 31B – Protective Expenses Orders
Summary Application Rules 1999	Part LV – Protective Expenses Orders
Summary Cause Rules 2002	CH 23B – Protective Expenses Orders
Simple Procedure Rules 2016	Rule 17.18 – When is a Protective Expenses Order available? Rule 17.19 – How do I apply for a Protective Expenses Order? Rule 17.20 – When must the sheriff make a Protective Expenses Order?

Question 26 - Do you agree that the draft wording of each of the new rules/chapters achieves the purpose of extending the ability to apply for a PEO in proceedings under Article 9 of the Aarhus Convention?

71. The Council considered whether PEO rules were required in Simple Procedure, having noted that expenses are not capped in all types of case within Simple Procedure.

Question 27 - Do you consider that a rule in relation to PEOs should be introduced in Simple Procedure?

Question 28 - Do you have a view on whether the default cap of £5,000 should apply in an application for a PEO within Simple Procedure?

Question 29 - Do you have a view on whether a cross cap of £5,000 should apply within Simple Procedure? Or alternatively do you have a view on the whether the default cross cap of £30,000 should apply?

Other questions

Question 30 - Do you have any other comment on each of the proposed new Chapters, Part or rules for the sheriff court?

72. As proposed, draft rules RCS58A.4, OCR rule 31B.2 and 31B.3, summary application rule 3.55.1 and summary cause rule 23.B.3 assume a PEO application would be made by a pursuer, petitioner or an appellant (in a statutory appeal). The Council wishes to canvas views as to whether such rules should make provision for a PEO to be made by any other parties, such as defenders, third parties or respondents, bearing in mind that the obligations under Article 9 of the Aarhus Convention only arise towards the "public" or the "public concerned" in terms of the meaning of those terms within the Convention.[3]

Question 31 - In each of the draft rules referred to above, do you consider that that rule should allow a PEO application to be made by a party other than a pursuer, petitioner or statutory appellant?

73. As currently drafted, these draft rules propose that for public interest interveners in judicial review and statutory appeals the discretion to award expenses is removed (see proposed changes to RCS 58A.10). The draft rules propose a broadly similar position as to expenses for interveners in draft rules for the Sheriff Appeal Court 28A.7, OCR 31B.8, summary application rule 3.55.8, summary cause rule 23B.8 and simple procedure rule 17.18(8).

Question 32 - Do you consider this is the correct approach to the expenses of interveners in the Sheriff Appeal Court and the rules listed above in the Sheriff Court? Do you have any other comment on those draft rules?

74. The Council is conscious that a PEO is a change to the usual rules regarding the consideration of expenses in Scotland and can have a significant effect on the conduct of litigation, on parties (both applicants and respondents) and on access to the courts. It is aware of comment concerned with how the courts might approach a situation where a party acts unreasonably, or in a way that has caused additional expense where there is a PEO in place. The existence of a PEO is likely to limit the ability of a court to make an award of expenses as a

[3] Article 9(4) of the Convention defines "The public" as meaning "one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups" and Article 9(5) defines "The public concerned" as meaning "the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest."

sanction against that party. The Council wishes to ingather any relevant information to understand any issues that may arise in this respect.

Question 33 - Have you experienced any situations where the court may have awarded expenses against a party, but was unable to do so because of a PEO?

Question 34 - Do you have any experience of concerns in the conduct of litigation where a PEO was granted?

SECTION 6: THE CONSULTATION QUESTIONS

75. Given the proposals made within this paper; the Council would appreciate your feedback on the following questions:

Amending the Court of Session procedure

Concern A - The type of claims covered

Question 1 – Do you agree that, other than in group proceedings, a party should be able to apply for an Environmental PEO in any relevant proceedings that fall within Article 9 of the Aarhus Convention within the Court of Session? If not, why not?

Question 2 - Do you agree that the amendments proposed to be made to RCS rule 58A.1 will achieve the purpose of extending the potential to apply for a PEO in all civil proceedings in the Court of Session within the scope of Article 9 of the Aarhus Convention, other than group proceedings?

Concern B - The levels of the cost caps

Question 3 – Do you agree with the cost cap for the applicant being a fixed maximum sum of £5,000 which the court may decrease but not increase? If not, why not?

Question 4 – Do you agree that the proposed draft wording of Rule 58A.7 achieves the purpose of providing judicial discretion to lower the cap, where it is reasonable to do so?

Concern C (i) - The application procedure – terms of representation

Question 5 – Do you agree that the requirement to provide terms of representation should be deleted? If not, why not?

Question 6 – Do you agree that the proposed deletions to Rule 58A.5 (3) achieves the purpose of no longer requiring the applicant to provide terms of representation, or do you have any other comment on that Rule?

Concern C (ii) - The application procedure – confidentiality of information

Question 7 – are you aware of any difficulties with the handling or provision of financial information provided as part of an application for a PEO? If so, was this after the 2024 amendments to the rules?

Concern C (iii) - The application procedure – estimating expenses

Question 8 – Do you agree that the requirement for an applicant to estimate their opponents' expenses should be deleted? If not, why not?

Question 9 – Do you agree that the draft wording proposed re Rule 58A.5 (3) achieves that purpose, or do you have any other comment on that Rule?

Concern D – Interveners

Question 10 – do you agree that where a public interest intervention is allowed that it should be on a "no expenses due to or by" basis? If not, why not?

Question 11 – Do you agree that the draft wording proposed re Rule 58A.10 achieves that purpose, or do you have any other comment on that Rule?

Concern E - Court Fees

Question 12 – do you agree that rule 58A.7 of the Court of Session should be amended to make it clear that the cap granted by the court is inclusive of court fees? If not, why not?

Question 13 – Do you agree that the draft wording proposed re Rule 58A.7 achieves that purpose, or do you have any other comment on that Rule?

Reclaiming Motions

Question 14 - Do you consider the existing ability of the Inner House to review the cap should be maintained within the rules or do you consider that the words "Subject to any review of the protective expenses order by the Inner House" should be omitted from draft RCS 58A.8 (2A)?

Question 15 - If you consider the power of review should remain, do you consider the circumstances in which the Inner House would exercise its power of review should be stated within the rule, and if so, in what circumstances would you consider it appropriate for the Inner House to review an existing PEO?

Question 16 - Do you consider draft rule 58A.8A(3) should be enacted, and if so, do you consider the circumstances in which the Inner House would exercise its power of review should be stated within the rule, and if so, in what circumstances would you consider it appropriate for the Inner House to review an existing PEO?

Onwards appeals to the UK Supreme Court

Question 17 – Do you agree that a PEO should include any liability for expenses in terms of an application to the Court of Session for leave to appeal to the UKSC? If not, why not?

Question 18 – Do you agree that the draft wording proposed re Rule 58A.8B achieves that purpose, or do you have any other comment on that proposed rule?

General Observations

Question 19 – in addition to the proposals already covered within questions 1 to 16 above, do you have any other concerns or suggested changes to the wording of the rules provided within RCS Chapter 58A as amended?

Establishing a Sheriff Appeal Court procedure

Question 20 – Do you agree that the ability to seek a PEO, or to have it carried forward, should be extended to the Sheriff Appeal Court? If not, why not?

Question 21 – Do you agree that the draft wording of Chapter 28 achieves the purpose of extending an existing PEO to an appeal before the Sheriff Appeal Court, or allowing the Sheriff Appeal Court to make such an order?

Question 22 - Do you have a view on whether provision should be made allowing the Sheriff Appeal Court to review a protective expenses order, in terms of draft rule 28A.2 (3)?

Question 23 - If you consider draft rule 28A.2(3) should remain, do you consider the circumstances in which the Sheriff Appeal Court would exercise its power of review should be stated within the rule, and if so, in what circumstances would you consider it would be appropriate for the Sheriff Appeal Court to review an existing PEO?

Question 24 - Do you have any other comment on the proposed new chapter for the Sheriff Appeal Court?

Establishing a sheriff court procedure

Question 25 - Do you agree that the ability to seek a PEO, should be extended to the Sheriff Court, where the litigation is within Article 9 of the Aarhus Convention? If not, why not?

Question 26 – Do you agree that the draft wording of each of the new rules/chapters achieves the purpose of extending the ability to apply for a PEO in proceedings under Article 9 of the Aarhus Convention?

Simple Procedure

Question 27 - Do you consider that a rule in relation to PEOs should be introduced in Simple Procedure?

Question 28 - Do you have a view on whether the default cap of £5,000 should apply in an application for a PEO within Simple Procedure?

Question 29 - Do you have a view on whether a cross cap of £5,000 should apply within Simple Procedure? Or alternatively do you have a view on the whether the default cross cap of £30,000 should apply?

Other questions

Question 30 - Do you have any other comment on each of the proposed new Chapters, Part or rules for the sheriff court?

Question 31 - In each of the draft rules referred to above, do you consider that that rule should allow a PEO application to be made by a party other than a pursuer, petitioner or statutory appellant?

Question 32- Do you consider this is the correct approach to the expenses of interveners in the Sheriff Appeal Court and the rules listed above in the Sheriff Court? Do you have any other comment on those draft rules?

Question 33 - Have you experienced any situations where the court may have awarded expenses against a party, but was unable to do so because of a PEO?

Question 34 - Do you have any experience of concerns in the conduct of litigation where a PEO was granted?

Impact Assessments

Question 35 - Are you aware of any business impacts the Council should take into consideration, over and above those we have listed in the draft Business

and Regulatory Impact Assessment (BRIA) that accompanies this consultation?

Question 36 - Are you aware of any equality impacts on those with protected characteristics that the Council should take into consideration, over and above those we have listed in the draft Equality Impact Assessment (EQIA) that accompanies this consultation?

SECTION 7: THE NEXT STEPS

76. Following the closing date for this consultation the next steps will be:

Responses - the individual responses will be uploaded to the consultation page of the Councils website (where respondents gave permission).

Analysis of Responses – the secretariat will prepare an Analysis of Responses report to summarise the feedback received and clarify any suggested amendments or changes to be considered by the Council.

Consultation Response – once that analysis has been published, the secretariat will propose finalised rules for consideration by the Council.

Finalising the draft rules - the draft rules as consulted on will be finalised for consideration by the Council

Approval of the amendments –once those draft rules are approved by Council, they are then passed to the Court of Session for its consideration.

77. After a short period of consideration by the Court of Session, the Act of Sederunt will be signed by the Lord President on behalf of the Court. The next steps that arise on signing are:

Advance Publication – all Acts of Sederunt are statutory instruments, laid in the Scottish Parliament and automatically published online via legislation.gov.uk.

Scrutiny and Familiarisation - a time period is fixed between the date an instrument is laid and the date it comes into force to provide:

- Time for scrutiny by the Delegated Powers and Law Reform Committee (DPLRC) of the Scottish Parliament; and
- Time for practitioners, court officials, and the judiciary etc. to familiarise themselves with the changes made and update their systems of work.

Commencement – all Acts of Sederunt come into effect on the date stated within the statutory instrument.

What is the likely timescale for implementation?

78. The following bullet points suggest an indicative timeline for implementation of at least 12 months from the date this consultation is opened for responses:
    - *3 months - to provide respondents sufficient time to provide informed responses.*
    - *1 month - to review the responses received & publish the Consultation Analysis.*
    - *1 month - to consider the policy positions & publish the Consultation Response.*
    - *2 months - to update & finalise the draft rules to reflect the Consultation Response.*
    - *1 month - to seek final approval of those draft rules from the Council.*
    - *1 month - for the Court of Session to check, approve & enact the Act of Sederunt*
    - *3 months - for familiarisation by users & parliamentary scrutiny by the DPLRC.*

79. It should be noted that the actual timeline will vary depending on the volume of responses to be analysed and the complexity of any legal points that might arise.

Secretariat to the Scottish Civil Justice Council
June 2026

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GLOSSARY

The relevant terms used within this paper are:

Term	*Meaning*
Aarhus related case	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. *Under the current rules that term covers:* • *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* • *Appeals under statute to the Court of Session.*
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 seeking *costs protection* in any civil proceedings.
Environmental PEO	An application under the *costs protection procedure* established by the PEO Rules. These PEO applications are applicable in civil proceedings taken in the public interest that impact on the environment.
Intervener	A term in Scots Law that means – a person or organisation, that is not a party to proceedings, that makes an application seeking *leave to intervene* in proceedings by way of a written submission to assist the court.
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" *(which equates to "loser pays")*. In circumstances that result in a significant imbalance of power between the parties to a civil action, the court may consider making a PEO if it is in the "interests of justice" to do so.
PEO Rules	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* Those PEO rules have been amended 3 times (in 2015, 2018 and 2024).
SCTS	Acronym for – Scottish Courts and Tribunal Service.
UKSC	Acronym for – UK Supreme Court (UKSC).
UNECE	Acronym for – United Nations Economic Commission for Europe (UNECE).

ANNEX 1 – HISTORY OF THE EXISTING RULES

The Scottish Government ran a Public Consultation on PEOs in 2011 and then lodged a 'rules request' with the Council in 2012. The initial rules implementing *Environmental PEOs* in Scotland then came into force from 25 March 2013:

Statutory Instrument	*SSI*	*W.E.F*	*Commentary*
Act of Sederunt (Rules of the Court of Session Amendment) (Protective Expenses Orders in Environmental Appeals and Judicial Reviews) 2013	2013/81	25.03.2013	New rules established a *costs protection procedure* within the Court of Session *(RCS: Chapter 58 A).*

In response to user experience, those 2013 rules have since been amended 3 times:

Statutory Instrument	*SSI*	*W.E.F*	*Commentary*
Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No. 4) (Protective Expenses Orders) 2015	2015/408	11.01.2016	Extended the type of proceedings where a PEO could be sought.
Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Protective Expenses Orders) 2018	2018/348	10.12.2018	Amended Chapter 38 (Reclaiming). Chapter 58 A (PEOs) was completely rewritten with additions for: - Defining prohibitively expensive; - Simplifying the procedure by a shift away from mandatory hearings to making decisions on the papers; - Limiting expenses to £500 *(for the application stage);* and - Providing the flexibility for the £5k and £30k thresholds to be lifted or lowered on cause shown.
Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Protective Expenses Orders) 2018	2024/196	01.10.2024	Amended Chapter 58 A (PEOs): - Provided the ability to request confidentiality; - Removed a procedural unfairness on appeal; and - Reinforced the case precedent whereby no expenses are due to or by an intervener.

NOTE – there are 2 options available when applying for a PEO in Scotland – using this procedure for Environmental PEOs or alternatively using the common law to apply for a Common law PEO.

ANNEX 2 – ARTICLE 9 OF THE AARHUS CONVENTION

The text of Article 9 (Access to Justice) reads as follows:

Paragraph 1 - Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law. In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law. Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

Paragraph 2 - Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

(a) Having a sufficient interest or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Paragraph 3 - In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

Paragraph 4 - In addition, and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

Paragraph 5 - In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.

SCOTTISH STATUTORY INSTRUMENTS

2026 No.

COURT OF SESSION

SHERIFF APPEAL COURT

SHERIFF COURT

Act of Sederunt (Rules of the Court of Session 1994, Sheriff Appeal Court Rules 2021 and Sheriff Court Rules Amendment) (Protective Expenses Orders) 2026

Made - - - -	***
Laid before the Scottish Parliament	***
Coming into force	***

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(**a**), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council [with such modifications as it thinks appropriate].

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(**b**) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994, Sheriff Appeal Court Rules 2021 and Sheriff Court Rules Amendment) (Protective Expenses Orders) 2026.

(2) It comes into force on [DATE].

(3) A certified copy is to be inserted into the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994

2.—(1) Chapter 58A (protective expenses orders in environmental appeals and judicial reviews) of the Rules of the Court of Session 1994(**c**) is amended in accordance with this paragraph.

(**a**) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(**b**) 2014 asp 18.

(**c**) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2026/xx. Chapter 58A was inserted by S.S.I. 2013/81, substituted by S.S.I. 2018/348 and last amended by S.S.I. 2024/xxx.

(2) For the Chapter heading substitute "PROTECTIVE EXPENSES ORDERS IN ENVIRONMENTAL PROCEEDINGS".

(3) In rule 58A.1 (application and interpretation of this Chapter)—

(a) in paragraph (1)—

(i) omit "relevant" in both places where it occurs;

(ii) after "proceedings" in both places where it occurs, insert ", other than those to which Chapter 26A (group procedure) applies,";

(b) in paragraph (2), omit the definition of "relevant proceedings".

(4) In rule 58A.3 (public participation in decisions on specific environmental activities)—

(a) for the heading, substitute "**Proceedings pursuant to Article 6 of the Aarhus Convention**";

(b) in paragraph (2), for "petitioner or the appellant", substitute "pursuer (or petitioner, or appellant in an appeal under statute, as the case may be)";

(c) in paragraph (3), for "petition or appeal is", substitute "proceedings are".

(5) In rule 58A.4 (contravention of the law relating to the environment)—

(a) in paragraph (2), for "petitioner or the appellant", substitute "pursuer (or petitioner, or appellant in an appeal under statute, as the case may be)";

(b) in paragraph (3), for "petition or appeal is", substitute "proceedings are".

(6) In rule 58A.5 (applications for protective expenses orders), in paragraph (3)(a)—

(a) omit sub-paragraph (ii);

(b) in sub-paragraph (iii), after "proceedings;", insert "and";

(c) omit sub-paragraph (iv).

(7) In rule 58A.7 (terms of protective expenses orders), in paragraph (1)—

(a) in sub-paragraph (a), for "£5,000, or such other", substitute "£5000 (inclusive of court fees), or such lower";

(b) in sub-paragraph (b), after "£30,000", insert "(inclusive of court fees)".

(8) In rule 58A.8 (expenses protection in reclaiming motions), for paragraph (2), substitute—

"(2) The limits on the parties' liability in expenses set by the order include liability for expenses occasioned by the appeal.

(2A) The order may be reviewed by the court either on its own motion or on the motion of a party to the reclaiming motion.".

(9) After rule 58A.8 (expenses protection in reclaiming motions), insert—

" Expenses protection in appeals from lower courts

58A.8A.—(1) Paragraph (2) applies where—

(a) a sheriff or the Sheriff Appeal Court, as the case may be, has made a protective expenses order in relation to proceedings before them; and

(b) a decision in those proceedings is appealed.

(2) The limits on the parties' liability in expenses set by the order include liability for expenses occasioned by the appeal.

(3) The order may be reviewed by the court either on its own motion or on the motion of a party to the appeal.

(4) A party who would have been entitled to apply for a protective expenses order in proceedings in the lower courts which are appealed to the court (but did not make a successful application) may apply for a protective expenses order in relation to the appeal.

(5) The application is to be made no later than is reasonably practicable after the appeal has been marked.

Expenses protection: appeals to the Supreme Court

58A.8B.—(1) Paragraph (2) applies where—

(a) the court has made a protective expenses order; or

(b) a protective expenses order has been made in the lower courts and that order remains in effect by virtue of rule 58A.8A(2).

(2) Subject to any review of the protective expenses order by the Inner House, the limits on the parties' liability in expenses set by the order include liability for expenses occasioned by the application for permission to appeal under Chapter 41A.

(3) A party who would have been entitled to apply for a protective expenses order in the proceedings which are the subject of the application for permission to appeal (but did not make a successful application) may apply for a protective expenses order in relation to the application for permission to appeal.

(4) The application is to be made no later than is reasonably practicable after the application for permission to appeal has been made.".

(10) In rule 58A.9 (Expenses of application), in paragraph (2), omit ", other than on exceptional cause shown,".

(11) In rule 58A.10 (Expenses of interveners)—

(a) in paragraph (1), omit ", except on cause shown".

(b) omit paragraph (2).

Amendment of the Sheriff Appeal Court Rules 2021

3.—(1) The Act of Sederunt (Sheriff Appeal Court Rules) 2021(**a**) is amended in accordance with this paragraph.

(2) In Part 6 (incidental procedure: special procedures) after Chapter 28 (reporting restrictions)(**b**), insert—

"CHAPTER 28A

APPLICATIONS FOR PROTECTIVE EXPENSES ORDERS

Application and interpretation of this Chapter

28A.1.—(1) This Chapter applies to applications for protective expenses orders in—

(a) proceedings which include a challenge to a decision, act or omission which is subject to, or said to be subject to, the provisions of Article 6 of the Aarhus Convention;

(b) proceedings which include a challenge to an act or omission on the grounds that it contravenes the law relating to the environment.

(2) In this Chapter—

"the Aarhus Convention" means the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25th June 1998;

"protective expenses order" means an order which regulates the liability for expenses in the proceedings, including as to the future, of all or any of the parties to them;

(**a**) S.S.I. 2021/468, last amended by S.S.I. 2024/353.
(**b**) Chapter 28 was amended by S.S.I. 2023/196.

"the public" and "the public concerned" have the meanings given by Article 2 of the Aarhus Convention.

(3) Proceedings are to be considered prohibitively expensive for the purpose of this Chapter if the costs and expenses likely to be incurred by the applicant for a protective expenses order—

(a) exceed the financial means of the applicant; or

(b) are objectively unreasonable having regard to—

(i) the situation of the parties;

(ii) whether the applicant has reasonable prospects of success;

(iii) the importance of what is at stake for the applicant;

(iv) the importance of what is at stake for the environment;

(v) the complexity of the relevant law and procedure; and

(vi) whether the case is frivolous.

(4) The costs and expenses mentioned in paragraph (3) are—

(a) the costs incurred by the applicant in conducting the proceedings; and

(b) the expenses for which the applicant would be liable if the applicant was found liable for the taxed expenses of process, without modification.

Expenses protection in appeals from the sheriff court

28A.2.—(1) Paragraph (2) applies where—

(a) a sheriff has made a protective expenses order in relation to proceedings in the sheriff court; and

(b) a decision within those proceedings is appealed.

(2) The limits on the parties' liability in expenses set by the order include liability for expenses occasioned by the appeal.

(3) The order may be reviewed by the court either on its own motion or on the motion of a party to the appeal.

(4) A party who would have been entitled to apply for a protective expenses order in sheriff court proceedings which are appealed to the Court (but did not make a successful application) may apply for a protective expenses order in relation to the appeal.

(5) The application is to be made no later than is reasonably practicable after the note of appeal has been lodged.

Applications for protective expenses orders

28A.3.—(1) A protective expenses order is applied for by motion.

(2) The applicant must lodge with the motion—

(a) a statement setting out—

(i) the grounds for seeking the order;

(ii) an estimate of the expenses that the applicant will incur in relation to the proceedings; and

(iii) in the case of an application for liability in expenses to be limited to an amount lower or, as the case may be, higher than a sum mentioned in rule 28A.5(1), the grounds on which the lower or higher amount is applied for; and

(b) any documents or other materials on which the applicant seeks to rely.

(3) A party opposing an application for a protective expenses order must lodge with the notice of opposition—

(a) a statement setting out the grounds for opposing the application; and

(b) any documents or other materials on which the party seeks to rely.

(4) The motion may request that the Court grant an order treating any of the information listed in paragraph (3) as confidential and open only to the Court and the parties to the proceedings.

Determination of applications

28A.4.—(1) Applications under this Chapter are to be disposed of by the procedural Appeal Sheriff.

(2) The procedural Appeal Sheriff must make a protective expenses order where the procedural Appeal Sheriff is satisfied that—

(a) the applicant is a member of the public or, as the case may be, the public concerned;

(b) in relation to proceedings mentioned in rule 28A.1(1)(a), the applicant has a sufficient interest in the subject matter of the proceedings; and

(c) the proceedings are prohibitively expensive.

(3) Unless the procedural Appeal Sheriff otherwise directs, an application for a protective expenses order is to be determined in chambers without appearance.

(4) Unless granting an unopposed application, the procedural Appeal Sheriff must give brief reasons in writing.

(5) Where a motion to grant an order under rule 28A.3(4) is opposed, the hearing must take place in chambers.

Terms of protective expenses orders

28A.5.—(1) A protective expenses order must—

(a) limit the applicant's liability in expenses to the respondent to the sum of £5,000 (inclusive of court fees), or such lower 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 (inclusive of court fees), or such other sum as may be justified on cause shown.

(2) In paragraph (1), "the respondent" means all parties that lodge answers in the proceedings.

Expenses of application

28A.6.—(1) Paragraph (2) applies where, in proceedings in which an application for a protective expenses order has been refused—

(a) the applicant is found liable for payment of expenses; and

(b) the expenses for which the applicant has been found liable comprise or include the expenses occasioned by the application.

(2) On the motion of the applicant the Court must, other than on cause shown, limit the applicant's total liability in expenses, in so far as occasioned by the application, to the sum of £500.

Expenses of interveners

28A.7.—(1) Expenses are not to be awarded in favour of or against a relevant party.

(2) In paragraph (1), "a relevant party" means a party who has—

(a) been granted leave to intervene under rule 24.3(1); or

(b) been refused or granted leave after a hearing fixed under rule 24.2(5) or (6).".

Amendment of the Ordinary Cause Rules 1993

4.—(1) The Ordinary Cause Rules 1993(**a**) are amended in accordance with this paragraph.

(2) After Chapter 31A (Qualified One-Way Costs Shifting)(**b**), insert—

"CHAPTER 31B

PROTECTIVE EXPENSES ORDERS

Application and interpretation of this Chapter

31B.1.—(1) This Chapter applies to applications for protective expenses orders in—

(a) proceedings which include a challenge to a decision, act or omission which is subject to, or said to be subject to, the provisions of Article 6 of the Aarhus Convention;

(b) proceedings which include a challenge to an act or omission on the grounds that it contravenes the law relating to the environment.

(2) In this Chapter—

"the Aarhus Convention" means the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25th June 1998;

"protective expenses order" means an order which regulates the liability for expenses in the proceedings, including as to the future, of all or any of the parties to them;

"the public" and "the public concerned" have the meanings given by Article 2 of the Aarhus Convention.

(3) Proceedings are to be considered prohibitively expensive for the purpose of this Chapter if the costs and expenses likely to be incurred by the applicant for a protective expenses order—

(a) exceed the financial means of the applicant; or

(b) are objectively unreasonable having regard to—

(i) the situation of the parties;

(ii) whether the applicant has reasonable prospects of success;

(iii) the importance of what is at stake for the applicant;

(iv) the importance of what is at stake for the environment;

(v) the complexity of the relevant law and procedure; and

(vi) whether the case is frivolous.

(4) The costs and expenses mentioned in paragraph (3) are—

(a) the costs incurred by the applicant in conducting the proceedings; and

(b) the expenses for which the applicant would be liable if the applicant was found liable for the taxed expenses of process, without modification.

(**a**) The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Court (Scotland) Act 1907 (c. 51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2025/xx.

(**b**) Chapter 31A was inserted by S.S.I. 2021/226.

Proceedings pursuant to Article 6 of the Aarhus Convention

31B.2.—(1) This rule applies to an application for a protective expenses order in proceedings mentioned in rule 31B.1(1)(a).

(2) An application for a protective expenses order may be made by the pursuer.

(3) The application is to be made no later than is reasonably practicable after the pursuer becomes aware that the proceedings are defended.

(4) The sheriff must make a protective expenses order where the sheriff is satisfied that—

(a) the pursuer is a member of the public concerned;

(b) the pursuer has a sufficient interest in the subject matter of the proceedings; and

(c) the proceedings are prohibitively expensive.

Contravention of the law relating to the environment

31B.3.—(1) This rule applies to an application for a protective expenses order in proceedings mentioned in rule 31B.1(1)(b).

(2) An application for a protective expenses order may be made by the pursuer.

(3) The application is to be made no later than is reasonably practicable after the pursuer becomes aware that the proceedings are defended.

(4) The sheriff must make a protective expenses order where the sheriff is satisfied that—

(a) the applicant is a member of the public; and

(b) the proceedings are prohibitively expensive.

Applications for protective expenses orders

31B.4.—(1) A protective expenses order is applied for by motion.

(2) The applicant must lodge with the motion—

(a) a statement setting out—

(i) the grounds for seeking the order;

(ii) an estimate of the expenses that the applicant will incur in relation to the proceedings; and

(iii) in the case of an application for liability in expenses to be limited to an amount lower or, as the case may be, higher than a sum mentioned in rule 31B.6(1), the grounds on which the lower or higher amount is applied for; and

(b) any documents or other materials on which the applicant seeks to rely.

(3) A party opposing an application for a protective expenses order must lodge with the notice of opposition—

(a) a statement setting out the grounds for opposing the application; and

(b) any documents or other materials on which the party seeks to rely.

(4) The motion may request that the sheriff grant an order treating any of the information listed in paragraph (3) as confidential and open only to the court and the parties to the proceedings.

Determination of applications

31B.5.—(1) Unless the sheriff otherwise directs, an application for a protective expenses order is to be determined in chambers without appearance.

(2) Unless granting an unopposed application, the sheriff must give brief reasons in writing.

(3) Where a motion to grant an order under rule 31B.4(4) is opposed, the hearing must take place in chambers.

Terms of protective expenses orders

31B.6.—(1) A protective expenses order must—

(a) limit the applicant's liability in expenses to the respondent to the sum of £5,000 (inclusive of court fees), or such lower 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 (inclusive of court fees), or such other sum as may be justified on cause shown.

(2) In paragraph (1), "the respondent" means all parties that lodge answers in the proceedings.

Expenses of application

31B.7.—(1) Paragraph (2) applies where, in proceedings in which an application for a protective expenses order has been refused—

(a) the applicant is found liable for payment of expenses; and

(b) the expenses for which the applicant has been found liable comprise or include the expenses occasioned by the application.

(2) On the motion of the applicant the sheriff must, other than on cause shown, limit the applicant's total liability in expenses, so far as occasioned by the application, to the sum of [£500].

Expenses of interveners

31B.8. Expenses are not to be awarded in favour of or against a party who has been granted or refused leave to intervene after lodging a minute of intervention under rule 13A.2(2).".

Amendment of the Summary Application Rules 1999

5.—(1) The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999(**a**) is amended in accordance with this paragraph.

(2) In Chapter 3 (rules on applications under specific statutes) after Part LIV (Sexual Harm Prevention Orders and Sexual Risk Orders)(**b**) insert—

"PART LV

PROTECTIVE EXPENSES ORDERS

Application and interpretation of this Part

3.55.1.—(1) This Part applies to applications for protective expenses orders in—

(a) proceedings which include a challenge to a decision, act or omission which is subject to, or said to be subject to, the provisions of the Aarhus Convention;

(b) proceedings which include a challenge to an act or omission on the grounds that it contravenes the law relating to the environment.

(**a**) S.I. 1999/929, last amended by S.S.I. 2024/xxx.
(**b**) Part LIV was inserted by S.S.I. 2023/62 and amended by S.S.I. 2023/196.

(2) In this Part—

"the Aarhus Convention" means the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25th June 1998;

"protective expenses order" means an order which regulates the liability for expenses in the proceedings, including as to the future, of all or any of the parties to them;

"the public" and "the public concerned" have the meanings given by Article 2 of the Aarhus Convention.

(3) Proceedings are to be considered prohibitively expensive for the purpose of this Part if the costs and expenses likely to be incurred by the applicant for a protective expenses order—

(a) exceed the financial means of the applicant; or

(b) are objectively unreasonable having regard to—

(i) the situation of the parties;

(ii) whether the applicant has reasonable prospects of success;

(iii) the importance of what is at stake for the applicant;

(iv) the importance of what is at stake for the environment;

(v) the complexity of the relevant law and procedure; and

(vi) whether the case is frivolous.

(4) The costs and expenses mentioned in paragraph (3) are—

(a) the costs incurred by the applicant in conducting the proceedings; and

(b) the expenses for which the applicant would be liable if the applicant was found liable for the taxed expenses of process, without modification.

Proceedings pursuant to Article 6 of the Aarhus Convention

3.55.2.—(1) This rule applies to an application for a protective expenses order in proceedings mentioned in rule 3.55.1(1)(a).

(2) An application for a protective expenses order may be made by the pursuer.

(3) The application is to be made no later than is reasonably practicable after the pursuer becomes aware that the proceedings are defended.

(4) The sheriff must make a protective expenses order where the sheriff is satisfied that—

(a) the pursuer is a member of the public concerned;

(b) the pursuer has a sufficient interest in the subject matter of the proceedings; and

(c) the proceedings are prohibitively expensive.

Contravention of the law relating to the environment

3.55.3.—(1) This rule applies to an application for a protective expenses order in proceedings mentioned in rule 3.55.1(1)(b).

(2) An application for a protective expenses order may be made by the pursuer.

(3) The application is to be made no later than is reasonably practicable after the pursuer becomes aware that the proceedings are defended.

(4) The sheriff must make a protective expenses order where the sheriff is satisfied that—

(a) the applicant is a member of the public; and

(b) the proceedings are prohibitively expensive.

Applications for protective expenses orders

3.55.4.—(1) A protective expenses order is applied for by motion.

(2) Intimation of the motion and of the documents mentioned in paragraph (4) must be given to every other party not less than 14 days before the date of lodging.

(3) The applicant must lodge with the motion—

(a) a statement setting out—

(i) the grounds for seeking the order;

(ii) an estimate of the expenses that the applicant will incur in relation to the proceedings; and

(iii) in the case of an application for liability in expenses to be limited to an amount lower or, as the case may be, higher than a sum mentioned in rule 3.55.6(1), the grounds on which the lower or higher amount is applied for; and

(b) any documents or other materials on which the applicant seeks to rely.

(4) A party opposing an application for a protective expenses order must lodge with the notice of opposition—

(a) a statement setting out the grounds for opposing the application; and

(b) any documents or other materials on which the party seeks to rely.

(5) The motion may request that the sheriff grant an order treating any of the information listed in paragraph (4) as confidential and open only to the court and the parties to the proceedings.

Determination of applications

3.55.5.—(1) Unless the sheriff otherwise directs, an application for a protective expenses order is to be determined in chambers without appearance.

(2) Unless granting an unopposed application, the sheriff must give brief reasons in writing.

(3) Where a motion to grant an order under rule 3.55.4(5) is opposed, the hearing must take place in chambers.

Terms of protective expenses orders

3.55.6.—(1) A protective expenses order must—

(a) limit the applicant's liability in expenses to the respondent to the sum of £5,000 (inclusive of court fees), or such lower 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 (inclusive of court fees), or such other sum as may be justified on cause shown.

(2) In paragraph (1), "the respondent" means all parties that lodge answers in the proceedings.

Expenses of application

3.55.7.—(1) Paragraph (2) applies where, in proceedings in which an application for a protective expenses order has been refused—

(a) the applicant is found liable for payment of expenses; and

(b) the expenses for which the applicant has been found liable comprise or include the expenses occasioned by the application.

(2) On the motion of the applicant the sheriff must, other than on cause shown, limit the applicant's total liability in expenses, so far as occasioned by the application, to the sum of £500.

Expenses of interveners

3.55.8. Expenses are not to be awarded in favour of or against a party who has been granted or refused leave to intervene after lodging a minute of intervention under rule 2.38(2).".

Amendment of the Summary Cause Rules 2002

6.—(1) The Summary Cause Rules 2002(**a**) are amended in accordance with this paragraph.

(2) After Chapter 23A (Qualified One-Way Costs Shifting)(**b**) insert—

"CHAPTER 23B

PROTECTIVE EXPENSES ORDERS

Application and interpretation of this Chapter

23B.1.—(1) This Chapter applies to applications for protective expenses orders in—

(a) proceedings which include a challenge to a decision, act or omission which is subject to, or said to be subject to, the provisions of Article 6 of the Aarhus Convention;

(b) proceedings which include a challenge to an act or omission on the grounds that it contravenes the law relating to the environment.

(2) In this Chapter—

"the Aarhus Convention" means the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25th June 1998;

"protective expenses order" means an order which regulates the liability for expenses in the proceedings, including as to the future, of all or any of the parties to them;

"the public" and "the public concerned" have the meanings given by Article 2 of the Aarhus Convention.

(3) Proceedings are to be considered prohibitively expensive for the purpose of this Chapter if the costs and expenses likely to be incurred by the applicant for a protective expenses order—

(a) exceed the financial means of the applicant; or

(b) are objectively unreasonable having regard to—

(i) the situation of the parties;

(ii) whether the applicant has reasonable prospects of success;

(iii) the importance of what is at stake for the applicant;

(iv) the importance of what is at stake for the environment;

(v) the complexity of the relevant law and procedure; and

(vi) whether the case is frivolous.

(**a**) The Summary Cause Rules 2002 are in schedule 1 of the Act of Sederunt (Summary Cause Rules) 2002 (S.S.I. 2002/132), last amended by S.S.I. 2024/353.

(**b**) Chapter 23A was inserted by S.S.I. 2021/226.

(4) The costs and expenses mentioned in paragraph (3) are—

(a) the costs incurred by the applicant in conducting the proceedings; and

(b) the expenses for which the applicant would be liable if the applicant was found liable for the taxed expenses of process without modification.

Proceedings pursuant to Article 6 of the Aarhus Convention

23B.2.—(1) This rule applies to an application for a protective expenses order in proceedings mentioned in rule 23B.1(1)(a).

(2) An application for a protective expenses order may be made by the pursuer.

(3) The application is to be made no later than is reasonably practicable after the pursuer becomes aware that the proceedings are defended.

(4) The sheriff must make a protective expenses order where the sheriff is satisfied that—

(a) the pursuer is a member of the public concerned;

(b) the pursuer has a sufficient interest in the subject matter of the proceedings; and

(c) the proceedings are prohibitively expensive.

Contravention of the law relating to the environment

23B.3.—(1) This rule applies to an application for a protective expenses order in proceedings mentioned in rule 23B.1(1)(b).

(2) An application for a protective expenses order may be made by the pursuer.

(3) The application is to be made no later than is reasonably practicable after the pursuer becomes aware that the proceedings are defended.

(4) The sheriff must make a protective expenses order where the sheriff is satisfied that—

(a) the applicant is a member of the public; and

(b) the proceedings are prohibitively expensive.

Applications for protective expenses orders

23B.4.—(1) A protective expenses order is made by incidental application under rule 9.1.(1)(b).

(2) The application is to be made no later than is reasonably practicable after the applicant becomes aware that the proceedings are defended.

(3) The applicant must lodge with the incidental application—

(a) a statement setting out—

(i) the grounds for seeking the order;

(ii) an estimate of the expenses that the applicant will incur in relation to the proceedings; and

(iii) in the case of an application for liability in expenses to be limited to an amount lower or, as the case may be, higher than a sum mentioned in rule 23B.(1), the grounds on which the lower or higher amount is applied for; and

(b) any documents or other materials on which the applicant seeks to rely.

(4) A party opposing an application for a protective expenses order must lodge with the notice of opposition—

(a) a statement setting out the grounds for opposing the application; and

(b) any documents or other materials on which the party seeks to rely.

(5) The motion may request that the sheriff grant an order treating any of the information listed in paragraph (3) as confidential and open only to the court and the parties to the proceedings.

Determination of applications

23B.5.—(1) Unless the sheriff otherwise directs, an application for a protective expenses order is to be determined in chambers without appearance.

(2) Unless granting an unopposed application, the sheriff must give brief reasons in writing.

(3) Where a motion to grant an order under rule 23B.4(5) is opposed, the hearing must take place in chambers.

Terms of protective expenses orders

23B.6.—(1) A protective expenses order must—

(a) limit the applicant's liability in expenses to the respondent to the sum of £5,000 (inclusive of court fees), or such lower 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 (inclusive of court fees), or such other sum as may be justified on cause shown.

(2) In paragraph (1), "the respondent" means all parties that lodge answers in the proceedings.

Expenses of application

23B.7.—(1) Paragraph (2) applies where, in proceedings in which an application for a protective expenses order has been refused—

(a) the applicant is found liable for payment of expenses; and

(b) the expenses for which has been found liable comprise or include the expenses occasioned by the application.

(2) The sheriff must, other than on cause shown, limit the applicant's total liability in expenses, so far as occasioned by the application, to the sum of [£500].

Expenses of interveners

23B.8. Expenses are not to be awarded in favour of or against a party who has been granted or refused leave to intervene after making an application for leave to intervene under rule 14A.2(2).".

Amendment of the Simple Procedure Rules

7.—(1) The Act of Sederunt (Simple Procedure) 2016(**a**) is amended in accordance with this paragraph.

(2) In paragraph 3 (interpretation of the Simple Procedure Rules)(**b**), after the definition "postal service which records delivery", insert—

> ""protective expenses order" means an order which regulates the liability for expenses in the proceedings, including as to the future, of all or any of the parties to them.".

(3) In schedule 1 (the Simple Procedure Rules)(**c**), after rule 17.17 (what if a question of national security arises in an Equality Act 2010 claim?), insert—

(**a**) S.S.I. 2016/200, last amended by S.S.I. 2024/xx.
(**b**) Paragraph 3 was amended by S.S.I. 2016/315.

"*Protective Expenses Orders*

17.18 When is a protective expenses order available?

(1) Protective expenses orders are available where a claimant challenges a decision, act or omission on the grounds that it contravenes the law relating to the environment.

(2) A protective expenses order is only available in a case where the expenses of a claim are not otherwise capped.

(3) A protective expenses order caps the expenses in the case. The caps apply to the expenses which the claimant may have to pay to the respondent, and also the expenses which the respondent may have to pay to the claimant.

(4) The expenses which the claimant may have to pay to the respondent are capped at £5000.

(5) The expenses which the respondent may have to pay to the claimant are capped at £30,000[OR £5000] .

(6) Where the application for a protective expenses order is unsuccessful, the sheriff will also place a cap of £500 on the [recovery of expenses][cost] of making the application.

(7) The sheriff may vary any of the amounts set out in this rule if the sheriff considers that there is a good reason to do so.

(8) A statutory intervener cannot claim expenses, or be made to pay expenses, and so a protective expenses order cannot be made in relation to a statutory intervener.

17.19 How do I apply for a protective expenses order?

(1) Protective expenses orders are applied for in the Claim Form.

17.20 When must the sheriff make a protective expenses order?

(1) The sheriff must make a protective expenses order if the sheriff considers that bringing the case would otherwise be prohibitively expensive.

(2) In deciding whether bringing the case would be prohibitively expensive, the sheriff will consider—

(a) your situation and the situation of the other parties;

(b) whether your application has reasonable prospects of success;

(c) the importance of the case to you;

(d) the importance of the case to the environment;

(e) how complex the relevant law and procedure is; and

(c) Schedule 1 was last amended by S.S.I. XXX.

(f) whether your application is frivolous.".

(4) In schedule 2 (forms)(**a**), in Form 3A (the simple procedure claim form)(**b**), at the end of section A1 insert a new entry of "(In environmental cases only) I want expenses to be capped in this case".

Saving

8. Paragraphs 2 to 7 do not apply in respect of proceedings commenced before [DATE].

PAUL CULLEN
Lord President
I.P.D.

Edinburgh
[Date]

(**a**) Schedule 2 was last amended by S.S.I. 2024/353.
(**b**) Form 3A was substituted by S.S.I. 2022/211.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends the Rules of the Court of Session 1994, the Sheriff Appeal Court Rules 2021, the Ordinary Cause Rules 1993, the Summary Applications Rules 1999, the Summary Cause Rules 2002 and the Simple Procedure Rules, in respect of protective expenses orders.

The amendments provide that protective expenses orders may be applied for by the person who initiates any court proceedings other than group proceedings which are subject to, or said to be subject to, the provisions of Article 6 of the Aarhus Convention, or which include a challenge to an act or omission on the grounds that it contravenes the law relating to the environment.

Paper 4.3C

Scottish Civil Justice Council

BUSINESS & REGULATORY IMPACT ASSESSMENT *(BRIA)*

The general purpose in preparing any BRIA is to assist the Council in:

- Assessing the costs, benefits and risks of a proposed procedural change that will be implemented within an enactment, practice note, direction or guidance etc.
- Clarifying the potential impact that a proposed procedural change may have on the public, private or third sector or regulators.

This is a draft BRIA.

It has been prepared to support our consultation on the proposed draft rules on:

Extending access to Protective Expenses Orders (PEOs)

Following this consultation, it will be refreshed to reflect the feedback from respondents.

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

REGARDING: the proposal to provide amended rules of court to introduce a scheme of protective expenses orders (PEOs) in most civil actions in Scotland, to implement part of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention for short).

LAST UPDATED: **2 Jun 2026**

Step 1 – POLICY BACKGROUND

Purpose and intended effect.

The UK is a signatory to the Aarhus Convention which provides procedural rights to participate in, obtain information on and challenge certain environmental proposals and decisions. These three aspects are often referred to as the three pillars of the Aarhus Convention.

In terms of the third pillar (that is access to justice) the Aarhus Convention provides rights to challenge environmental decision making, which should be a way that is not prohibitively expensive. As part of the compliance mechanism to the Aarhus Convention, the Aarhus

Convention Compliance Committee has made a series of observations as to whether the court rules in Scotland fully implement Article 9 of the Aarhus Convention. In December 2025, the SCJC considered a new approach to Aarhus compliance, and agreed a further consultation should take place in 2026 to propose new rules with the aim of resolving all outstanding issues.

Court rules providing that an applicant can obtain a Protective Expenses Order (PEO) have been available since 2013. A PEO limits a litigant's liability of an adverse award of expenses against them in the event of losing the case, with a reciprocal cap as to the extent to which, in the event of success, the party benefitting from the PEO is able to recover expenses. However, those rules are limited to certain types of action in the Court of Session.

There is no equivalent rule for applicants seeking a PEO if proceedings are brought on an environmental case in the Court of Session in actions other than judicial review or certain statutory appeals, nor in actions in the Sheriff Appeal Court or the Sheriff Court.

These draft rules will improve access to justice by extending the type of actions, and the courts, where a PEO can be applied for.

Policy Objectives

The policy objectives of proposing to extend PEOs to other actions in the Court of Session, and actions in the Sheriff Appeal court and Sheriff Court are:

- *To improve Aarhus compliance* – by addressing the concerns that fall within the remit of the SCJC, from the reports of the Aarhus Convention Compliance Committee, enabling the SCJC to comply with its international obligations.

- *To improve access to justice* – as widening the ability to apply for a PEO is likely to improve access to justice for those bringing an environmental dispute before the courts.

- *To provide comparable rules* – as developing a fully Aarhus compliant set of rules in the Court of Session and then replicating that approach across the Sheriff Courts and the Sheriff Appeal Court aligns with the SCJC guiding principle for having similar rules, where appropriate, in all courts.

The rationale for this intervention

The SCJC has carefully considered reports from the Aarhus Convention Compliance Committee. It is mindful of its statutory functions under section 2 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, and the guiding principles found in section 2(3) when exercising those statutory functions.

In that regard:
- The extension of PEOs to other courts and other types of action within the Court of Session promotes the civil justice system as being fair and accessible (section 2 (3)(a)).
- Having similar rules in the Court of Session, Sheriff Appeal Court and Sheriff Court allows for similar rules in all civil courts (section 2 (3) (c)).

Consultation

Climate change and the protection of the environment are of increasing concern across civil society. The decision to seek further information by running a full Public Consultation will help to capture the widest possible range of public feedback, to support the SCJC taking evidence-based policy decisions.

Sectors and groups affected.

Consumers

- *Potential litigants* – any person or body that may be contemplating initiating a civil action concerning an environmental matter, covered by Article 9 of the Aarhus Convention. The outcome sought where the court does grant a PEO is to limit the applicant's financial exposure to an adverse award of expenses to a maximum of £5,000 *(*if the court applies the standard cost cap*).*

Businesses

- *Potential defendants* - any person or body that may the subject of a legal challenge in a civil action concerning an environmental matter covered by Article 9 of the Aarhus Convention. A legal challenge is likely to add cost and delay to the delivery of a proposed project or policy change. Further, if a PEO is granted, it will significantly limit the level of legal expenses which would have otherwise been recoverable in the event of the defender being successful.

Judiciary and staff

- *Judicial Office Holders* – will need to be provided with an awareness of the broadened scope, the procedural changes made, and the potential for an increase in the volume of environmental cases.

- *Court Officials* - will need to be provided with an awareness of the broadened scope, the procedural changes made, and the potential for an increase in the volume of environmental cases.

Options

Option 1 - do nothing

Under the do-nothing option - the ability to seek an environmental PEO would remain restricted to judicial review and statutory appeals in the Court of Session where the action engages Article 9 of the Aarhus Convention.

Option 2 – new rules

The proposed amendments to the terms of the rules, and extension of the types of action and courts covered by the rules, would achieve compliance with the Aarhus Convention (insofar as the remit of the SCJC is concerned). That is by extending the option to seek an environmental PEO to all proceedings within the scope of Article 9 of the Aarhus Convention

within the Sheriff Courts, and the Sheriff Appeal Court, and to other types of proceedings in the Court of Session (excluding group proceedings).

Benefits

Benefits - option 1 - do nothing

Nil

Benefits - option 2 – new rules

The benefits sought from extending the availability of environmental PEOs are:

- *Improved Aarhus compliance* – as extending cost protection procedures to other courts and changing the terms of those rules will resolve all issues highlighted by the Aarhus Convention Compliance Committee.

- *Improved access to justice* – as extending the availability of cost protection will improve access to the courts in matters covered by Article 9 of the Aarhus Convention.

- *Improved comparability of rules* – as in general the same rule to obtain a PEO is proposed across the Court of Session, Sheriff Appeal Court and Sheriff Court.

Costs

Costs - option 1 - do nothing

NIL

Costs - option 2 – new rules

For consumers / court users:
- The procedure for obtaining a PEO has been designed to be cost effective.
- There is a limit on expenses that can be awarded if the PEO application is refused (limited to £500).
- Parties are encouraged to provide the court with sufficient information to allow applications to be determined on the papers, avoiding the associated costs of a hearing.

For businesses:
- Normally a defendant that successfully defends a claim made against them is entitled to recover their judicial expenses, subject to the usual rules regarding taxation and reasonableness. If a PEO is granted the ability to recover expenses is limited to the capped amount expressed within that PEO. That means that despite being successful in the action, a business may need to absorb a significant gap between the normal level of judicial expenses otherwise recovered and the cap set within the PEO.
- The numbers of PEOs granted to date in terms of the rules have been low, at 1-2 per annum. It is not anticipated these new rules would result in a significant rise in the numbers of PEOs granted each year. That said, any one court challenge to an environmental decision or policy (falling within the terms of Article 9 of the Aarhus

Convention) could be potentially significant. It may include a challenge to a nationally significant infrastructure policy. Whilst such a challenge may not ultimately be successful, the commencement of court proceedings is likely to have delayed that project. On the other hand, the UK is a signatory to an international convention providing procedural rights to challenge certain environmental decisions and, as such, the SCJC is mindful of the UK's international obligations. The SCJC intends to consider research on how such environmental challenges might be best dealt with by the court system.

Step 2 – ASSESSMENT OF LIKELY IMPACTS – ON BUSINESS

The perspective will differ depending on whether a business is the party seeking cost protection to be able to progress environmental proceedings, or the party looking to defend against the challenge made in those proceedings.

For a business in the latter situation any motion lodged for a PEO has the potential to be contentious, given it will limit the expenses otherwise payable if they were to win:

- If an environmental PEO is not granted - the losing party remains fully liable to pay the recoverable judicial expenses incurred by their opponent.
- If an environmental PEO is granted - the losing party is only liable to pay up to a maximum of £5,000 (or the cap determined by the court) towards the judicial expenses incurred by their opponent.

It is understood that in some environmental actions falling within Article 9 of the Convention, the terms of the PEO have in some cases been agreed directly between the parties.

What feedback has arisen from business engagement?

Our 2025 Public Consultation provided a recent opportunity for businesses to engage with these proposed changes. This 2026 Public Consultation now provides a second opportunity, and we would value having further feedback from the business community.

In the absence of strong views to the contrary, the effect of these proposed rule changes is to extend the availability of cost protection to include any civil action concerning an environmental matter that is covered by Article 9 of the Aarhus Convention.

Step 3 – ASSESSMENT OF LIKELY IMPACTS – ON COMPETITION

To support initial screening for competition impacts, the Council uses the checklist of four questions recommended by the Competition and Markets Authority (CMA):

Will the measure directly or indirectly limit the number or range of suppliers?

NOT APPLICABLE

Will the measure limit the ability of suppliers to compete?

NOT APPLICABLE

Will the measure limit suppliers' incentives to compete vigorously?

NOT APPLICABLE

Will the measure limit the choices and information available to consumers?

NO – the proposed change does the opposite. It allows for a PEO to be applied for in a wider range of types of court actions and courts.

Step 4 – ASSESSMENT OF LIKELY IMPACTS – ON CONSUMERS

To support initial screening for consumer impacts, the Council mirrors the best practice[1] guidance from Scottish Government which uses the following six questions:

Does the policy affect the quality, availability or price of any goods or services in a market?

NO

Does the policy affect the essential services market, such as energy or water?

NOT APPLICABLE

Does the policy involve storage or increased use of consumer data?

NO – the same data is held on the case file.

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

NO – the grant or refusal of a PEO is a matter for judicial discretion.

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

YES - the proposed new rules increase the ability to apply for a PEO in a wider range of types of court action, and a wider range of courts.

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

NO – this proposed change supplements the existing routes for taking legal action.

What feedback has arisen from consumers?

Environmental NGOs and members of the public have made calls to extend the type of actions where a PEO can be sought in terms of the rules.

[1] *https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/*

How has that feedback fed into the development of this proposal?

Extending the scope to allow for environmental PEOs in the Sheriff Courts and the Sheriff Appeal Court can be progressed by these proposed amendments to the rules.

Previous consultation responses to the issue of PEOs have been carefully considered, as has the Aarhus Convention Compliance Committee's assessment of previous and existing rules of court on PEOs.

Test run of business forms.

Does this proposal introduce new legal Forms that are materially different in style and content to the existing legal forms in general use?

NO – In most types of civil actions, a PEO would be applied for by lodging a motion, although in some types of action (such as Simple Procedure) a form would be used.

Step 5 – ASSESSMENT OF LIKELY IMPACTS – DIGITAL

Digital Impact Test

Public services are increasingly being delivered online. To test for relevant opportunities the Council mirrors the best practice[2] guidance from Scottish Government and uses the following five questions:

Does the measure take account of changing digital technologies and markets?

YES – the ability for an applicant to lodge a motion, and for all parties to view that motion online, is already covered within the functionality provided within the Civil Online system hosted by the SCTS. That portal allows the parties to a case to view an electronic case file that contains all of the documents lodged within a given civil action.

Will the measure be applicable in a digital/online context?

NO – given the low transaction volumes requests for a PEO will continue to be made by lodging a motion within existing proceedings. Changing to the provision and use of an online application form is not considered to be the most efficient procedure, although it is recognised that a form is appropriate where applicants are likely to be representing themselves (such as in Simple Procedure).

Is there a possibility the measures could be circumvented by digital / online transactions?

NO

[2] https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/

Alternatively, will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

NO

If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?

NO

Step 6 – ASSESSMENT OF LIKELY IMPACTS – ON REGULATIONS

Court Fees

Will the proposal require changes in court fee regulations?

YES – the fee exemption regime for cases covered by Article 9 of the Aarhus Convention is provided for within section 7[3] of the Court of Session etc. Fees Order 2026. If these proposed rule changes are supported there is an expectation the Scottish Ministers will wish to consider replicating that regime for fees within the Sheriff Appeal Court and Sheriff Court.

Legal Aid

Will the proposal require changes in legal aid regulations?

NO. Any issues relative to legal aid and the Aarhus Convention are matters for the Scottish Ministers.

Recovery of Costs Awarded

Will the proposal require changes in judicial taxation regulations?

NOT APPLICABLE – the cap and cross caps within the cost protection regime (the PEO Rules) run in parallel with the separate approach taken to the determination of judicial expenses under the Taxation of Judicial Expenses Rules 2019[4]. Where a paying party has had cost protection provided by way of a PEO, they are only liable to pay whichever of those two amounts is the lower.

Enforcement and/or sanctions

Will compliance be enforced and, if so, how?

NOT APPLICABLE – granting or refusing a PEO is a matter of judicial discretion.

[3] https://www.legislation.gov.uk/ssi/2026/80/article/7/made
[4] https://www.legislation.gov.uk/ssi/2019/75/contents

Are there sanctions for non-compliance?

NOT APPLICABLE – granting or refusing a PEO is a matter of judicial discretion.

Step 7 – ASSESSMENT OF LIKELY IMPACTS – ENVIRONMENTAL PRINCIPLES

Following Brexit, the 5 statutory principles for protecting the environment were enshrined in section 15 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.[5]

In August 2023, the Scottish Government expanded on those principles by adding the statutory guidance headed "Guiding Principles on the Environment".

Has "protection of the environment" been integrated into this policy?

For those with cases that fall to be covered by Article 9 of the Aarhus Convention, extending this option to secure cost protection to other courts will assist some in commencing litigation regarding the environment.

Will this proposal have significant effects on the environment?

POTENTIALLY – in circumstances where the option to access cost protection was a determinative factor in a person determining whether to continue with court proceedings, and the decision then reached by the court had a practical impact on the environment.

Can any negative effects of this policy be avoided or reduced?

YES - The SCJC is mindful of the negative effect that any court challenge may have given it can cause a delay in the implementation of a policy or project. Hence it is considering wider research into whether environmental cases are being dealt with as efficiently as possible.

Can the positive effects of the policy be enhanced?

Yes - Having clear, consistent, and understandable procedures in place for PEO applications, will provide improved certainty for potential litigants across all court fora.

Step 8 – ASSESSMENT OF LIKELY IMPACTS – PUBLIC PARTICIPATION

Article 8 of the Aarhus Convention includes a duty to "strive" to promote public participation when making decisions on rule changes.

Will this proposal have significant effects on the environment?

POTENTIALLY – in circumstances where the option to access cost protection was a determinative factor in a person determining whether to continue with court proceedings, and the decision then reached by the court had a practical impact on the environment.

Has effective public participation been promoted?

[5] *https://www.legislation.gov.uk/asp/2021/4/contents*

YES – the draft rules are being fully consulted on.

Is public participation being sought at an appropriate stage?

YES

- Policy Formation – the SCJC is aware of both the views of wider civic society (particularly environmental organisations) regarding the PEO rules and the reports from the Aarhus Convention Compliance Committee highlighting issues with existing rules.
- Policy Implementation – a set of draft rules is available, forming part of this consultation.

Step 9 – ASSESSMENT OF LIKELY IMPACTS – WITH IMPLEMENTATION

Implementation Plan

What is the likely timescale for implementation?

Subject to the availability of specialist drafting lawyers, the following bullet points suggest an indicative timeline of at least 12 months from the date the 2026 consultation opens:

- 3 months - to provide respondents sufficient time to provide informed responses.
- 1 month - to review the responses received & publish the Consultation Analysis.
- 1 month - to consider the policy positions & publish the Consultation Response.
- 2 months - to update & finalise the draft rules to reflect the Consultation Response.
- 1 month - to seek final approval of those draft rules from the Council.
- 1 month - for the Court of Session to check, approve & enact the Act of Sederunt
- 3 months - for familiarisation by users & parliamentary scrutiny by the DPLRC[6].

It should be noted that the actual timeline will vary depending on the volume of responses to be analysed and the complexity of any legal points arising within those responses.

How will this proposal be implemented?

The change will come into force from the commencement date set in the Act of Sederunt.

Monitoring

Will the resultant changes be monitored and, if so, how?

YES - Qualitative Monitoring – for feedback received via the open invitation to email the SCJC on any civil issue, any published court decisions on the rules in use, and any other academic or other comment on the rules.

YES - Quantitative Monitoring – the ICMS software changes[7] made in 2024 facilitate reporting volumes on all motions for a PEO lodged in the Court of Session. The expectation if that same approach to reporting within ICMS can be extended to the Sheriff Appeal Court, and the sheriff courts.

[6] The Delegated Powers and Law Reform Committee (of the Scottish Parliament)

[7] The working assumption is that the drop-down menus used to record the nature of the motions lodged in the Court of Session will be replicated within the data entry screens used by sheriff courts and SAC staff.

Post Implementation Review

Will a post implementation review (PIR) need to be undertaken?

NO – providing the qualitative monitoring confirms the rules are operating as intended.

A PIR would only be initiated if there was unmistakable evidence of user dissatisfaction or judicial criticism of the rules once the rules were implemented.

Scottish Civil Justice Council

EQUALITY IMPACT ASSESSMENT:

This is a draft EQIA.

It has been prepared to support our consultation on the proposed draft rules on:

Extending access to Protective Expenses Orders (PEOs)

Following this consultation, it will be refreshed to reflect the feedback from respondents.

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

REGARDING: proposed amendments to the existing rules of court to introduce a scheme of protective expenses orders (PEOs) in most civil actions in Scotland, to implement part of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention for short).

LAST UPDATED: **2 June 2026**

Step 1 – POLICY BACKGROUND

How does this policy support the public sector equality duty?

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

> *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.*

Purpose and intended effect (of these proposed changes)

The UK is a signatory to the Aarhus Convention which provides procedural rights to participate in, obtain information on and challenge certain environmental proposals and decisions. These three aspects are often referred to as the three pillars of the Aarhus Convention.

In terms of the third pillar (that is access to justice), the Aarhus Convention provides rights to challenge environmental decision making, which should be made available in a way that is not prohibitively expensive. As part of the compliance mechanism to the Aarhus Convention, the Aarhus Convention Compliance Committee has made a series of observations as to whether the court rules in Scotland fully implement Article 9 of the Aarhus Convention. In December 2025, the SCJC considered a new approach to Aarhus compliance, and agreed a further consultation should take place in 2026 to propose new rules with the aim of resolving all outstanding issues.

Court rules providing that an applicant can obtain a Protective Expenses Order (PEO) in an environmental action have been available since March 2013. A PEO limits a litigant's liability to an adverse award of expenses being made against them, in the event of losing the case, with a reciprocal cap as to the extent to which, in the event of success, the party benefitting from the PEO is able to recover expenses. However, those rules are limited to certain types of action in the Court of Session.

There is no equivalent rule for applicants seeking a PEO if proceedings are brought on an environmental case in the Court of Session in actions other than judicial review or certain statutory appeals, nor in actions in the Sheriff Appeal Court or in the Sheriff Court.

These draft rules will improve access to justice by extending the type of actions, and the courts, where a PEO can be applied for in future.

<u>Policy Objectives</u>

The policy objectives of proposing to extend PEOs to other actions in the Court of Session, and actions in the Sheriff Appeal court and Sheriff Court are:

- *To improve Aarhus compliance* – as addressing the concerns that fall within the remit of the SCJC, from the reports of the Aarhus Convention Compliance Committee, will enable the SCJC to comply with its international obligations.

- *To improve access to justice* – as widening the ability to apply for a PEO is likely to improve access to justice for those bringing an environmental dispute before the courts.

- *To provide comparable rules* – as developing a fully Aarhus compliant set of rules in the Court of Session and then replicating that approach across the

Sheriff Courts and the Sheriff Appeal Court aligns with the SCJC guiding principle for having similar rules, where appropriate, in all courts.

The rationale for this intervention

The SCJC has carefully considered reports from the Aarhus Convention Compliance Committee. It is mindful of its statutory functions under section 2 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, and the guiding principles found in section 2(3) when exercising those statutory functions. The extension of PEOs to other courts and other types of action within the Court of Session promotes the civil justice system as being fair and accessible (under section 2 (3)(a)). Having similar rules in the Court of Session, Sheriff Appeal Court and Sheriff Court allows for similar rules in all civil courts (under section 2 (3) (c)).

Consultation

Climate change and the protection of the environment are of increasing concern across civil society. The decision to seek further information by running a full Public Consultation will help to capture the widest possible range of public feedback, to support the SCJC taking evidence-based policy decisions.

Sectors and groups affected

Consumers

- *Potential litigants* – any person or body that may be contemplating initiating a civil action concerning an environmental matter, covered by Article 9 of the Aarhus Convention. The outcome sought where the court does grant a PEO is to limit the applicant's financial exposure to an adverse award of expenses to a maximum of £5,000 *(if the court applies the standard cost cap).*

Businesses

- *Potential defendants* - any person or body that may be the subject of a legal challenge in a civil action concerning an environmental matter that is covered by Article 9 of the Aarhus Convention. A legal challenge is likely to add cost and delay to the delivery of a proposed project or a policy change. Further if a PEO is granted, it will significantly limit the level of legal expenses which would have otherwise been recoverable in the event of the defender being successful.

Judiciary and staff

- *Judicial Office Holders* – will need to be provided with an awareness of the broadened scope, the procedural changes made, and the potential for an increase in the volume of environmental cases.

- *Court Officials* - will need to be provided with an awareness of the broadened scope, the procedural changes made, and the potential for an increase in the volume of environmental cases.

What research has influenced the development of this policy?

Judicial Decision Making

To date the courts have published judgments in over 30 civil actions where there had been one or more motions for a PEO considered. The decisions taken in those cases has been summarised in the following 3 research reports issued by the Council:

- Research on the type of cases seeking a Protective Expenses Order[1].
- Research on the cost caps used in practice: within Protective Expenses Orders[2].
- Research on the incidence of interveners[3].

Business Levels

The transaction volumes are very low. On average motions for either a common law PEO or an environmental PEO have been granted in around 1 to 2 cases per annum[4]. Even with the scope extended the yearly volumes are likely to remain in single figures for some time.

Technology

The ability for an applicant to lodge a motion, and for all parties to view that motion and its supporting documents online, is provided for within the existing functionality of the Civil Online system provided by the SCTS.

Applications can be readily made by lodging a motion within existing proceedings.

Deprivation

The Council is aware of some past academic research from 2005[5] which indicated that environmental harms may disproportionately affect some Scottish communities affected by poverty, particularly those in former industrial areas. Further research is required to better understand how those issues might impact on access to justice.

---

[1] https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/publications/scjc-publications/20240930---research-on-the-type-of-cases-seeking-a-peo.pdf?sfvrsn=f459d1da_1

[2] https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/publications/scjc-publications/research-on-the-cost-caps-used-in-practice.pdf?sfvrsn=ef272688_1

[3] https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/publications/scjc-publications/scjc---research-on-the-incidence-of-interveners.pdf?sfvrsn=a34ad15a_1

[4] *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.)*

[5] Investigating environmental justice in Scotland: links between measures of environmental quality and social deprivation *(Mar 2005, SNIFFER)*

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

The SCJC has consulted generally in the past on the broad issue of PEOs and the Aarhus Convention. No specific feedback was received on the impacts of the PEO Rules on those with protected characteristics.

This latest consultation again seeks views from those with experience of, or information on, protected characteristics within the meaning of the Equalities Act 2010 so that the SCJC can best understand any impacts specific to those who have protected characteristics when seeking, or responding to, an application for a PEO.

Step 2 – ASSESSMENT OF LIKELY EQUALITY IMPACTS

When considering equality impacts, it is important to note the differing roles of the organisations that support the judiciary:

- *The "rule making" function* – sits with the Scottish Civil Justice Council (SCJC). The SCJC is responsible for making reasonable adjustments within the draft rules, so that those court procedures anticipate the needs of those with protected characteristics.

- *The "service delivery" function* - sits with the Scottish Courts and Tribunal Service (SCTS). It delivers the frontline services, including digital services *(websites, video platform, telephone platform, helpdesks etc.)* to support the rules in use. They make the reasonable adjustments required within the front-line services provided by the courts.

To reflect that difference, this EQIA is narrated from the Council's perspective so that it is focused on those impacts that arise directly from the draft rules.

IMPACTS APPLICABLE TO ALL COURT USERS & AS WELL AS ALL THOSE WITH PROTECTED CHARACTERISTICS	**DEPRIVATION** There is some limited past academic research[6] that did suggest environmental harms may disproportionately affect Scottish communities affected by poverty, particularly those in former industrial areas. Those communities may wish to utilise these cost protection rules to challenge environmental decision making within their area but there is no evidence to suggest that within such communities those with protected characteristics face an added barrier. Further research would assist. **DIGITISATION** In practice, the existing motions procedure within each existing court procedure is used with the application uploaded to an

[6] Investigating environmental justice in Scotland: links between measures of environmental quality and social deprivation *(Mar 2005, SNIFFER)*

	electronic case file. Using the Civil Online portal provided by the SCTS the parties already have access to the option of viewing all of the content within that case file online. As these rules do not generate any system changes, this policy intervention does not have digital impacts. **LEGAL TERMINOLOGY** Providing legal certainty often dictates the use of complicated legal terminology. That in turn can make court procedures difficult to understand for both party litigants and represented parties; and that gap can be problematic for those with more complex communication needs. *Negative impacts – terminology:* • Those with communication difficulties will already have a sense of separation from other people involved in legal proceedings, which is then heightened where the use of complex legal language and legal processes hinders their understanding and ability to participate in a case. *Reasonable adjustments - in court rules:* • *Usability* – working within that constraint of providing for legal certainty, the *draft rules* have been written succinctly, to enable them to be as easy to use and understand as possible (relative to other court procedures). *Reasonable adjustments - in working practices:* • *Participation* – the way these rules are used in court is underpinned by the existing duty on the judiciary to ensure the effective participation of parties within court proceedings.
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 any hearing that was fixed. That act of translating can add time and cost to proceedings. However, courts are used to the use of interpreters where required.

	Positive Impacts – translation: As the court expects to consider most motions for a PEO on the papers it is expected there will be a minimal need for an interpreter to be required within a courtroom to determine a PEO application
RELIGION & BELIEF	No significant impacts identified.
SEX	No significant impacts identified.
SEXUAL ORIENTATION	No significant impacts identified.

FORMAT OF JUDGMENTS

Purpose

1. To introduce a style template for written judgments issued by sheriffs.

Timing

2. ***Routine*** – following approval a 3-month familiarisation period will be provided for when fixing a commencement date.

Vires

3. The Council holds a power - to propose 'court procedure rules' under section 2 (1) (c) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.

4. The Court of Session holds a power - to then enact sheriff court rules proposed by this Council under section 104 (1) (a) of the Courts Reform (Scotland) Act 2014, with section 104 (2) (e) specifically covering the designation of a Form.

Background

5. The existing Ordinary Cause Rules (OCR) are silent on the way in which a sheriff should prepare a written judgment, which does result in an inconsistent approach to the content of written judgments issued. That gap could be addressed by adopting the suggested 'format' provided within the Sheriff Appeal Court (SAC) rules request *(**Paper 5.1A**)*.

6. At its 16 June 2025 meeting the Council noted the SAC rules request and approved Drafting Instructions to amend OCR Chapter 12 (Interlocutors) to progress that change. The minutes read:

> *Item 4.5 Rules Request – Format of Judgments (paper 4.5)*
>
> *12 - The Chair invited members to consider the rules request which **proposes a style template be added to Chapter 12** of the Ordinary Cause Rules. The style template is intended to provide a consistent approach for how judgments should be set out.*
>
> *13 - Members noted:*
> - *In principle, all judgments should be published and not only those which are believed by the author to be of interest to the public; and*
> - *This change will be important in promoting open justice, where decisions of the court are accessible to the public, which increases transparency and reduces the risk of cases being misinterpreted.*
>
> ***Members approved the drafting instruction.***

The Drafting Instructions

7. The Drafting Instructions as issued in June 2025 were:

> *TO ADD A NEW FORM* – based on the format within the rules request *(**Paper 5.1A**)* which had suggested the following structure:
> - Introduction
> - Background
> - Summary of the Disputed Evidence
> - Submissions
> - Findings in fact
> - Findings in fact and law
> - Decision
> - Interlocutor (Order of the Court)
>
> *TO AMEND OCR RULE 12.4 (RESERVED JUDGMENTS)* – so that readers would be signposted to the existence of that new Form.

8. Having consulted further with SP Anwar the instruction added in March 2026 was:

> *TO AMEND OCR RULE 12.3 (EXTEMPORE JUDGMENTS)* – so that the same Form would be used if a party was to request a written note following an extempore judgement[1] being stated by a sheriff.

The statutory instrument

9. The attached Act of Sederunt *(**Paper 5.1B**)* delivers on those Drafting Instructions

- Form O7ZA - reflects the style template from the rules request *(**Paper 5.1A**)*
- Rule 12.3 (Extempore Judgements) - is amended at subsection (3) to include a reference to that new Form O7ZA *(refer annex 1).*
- Rule 12.4 (Reserved Judgements) - is amended at subsection (2) (b) to include a reference to that new Form O7ZA *(refer annex 2).*

The Policy Objective

10. In adopting this standard format, the policy objectives are:

- **To provide consistency** – by setting a clear standard for the way a written judgment should be structured by a sheriff, and by providing guidance on the expected content to be provided under those prescribed headings.

[1] Extempore - means “at the time”. In other words, the judgment is given there and then.

- **To promote open justice** – by supporting more sheriff court judgments being published online so that "all substantive decisions are available for scrutiny[2]".

- **To minimise risk** – given the risk of misinterpretation and the potential for legal challenges is higher when the public experience too much variability in the way that judgments have been written.

Compatibility with the Guiding Principles

11. The content of the draft rules supports the statutory guiding principles:

Guiding Principle	*Compatibility with that principle*
The civil justice system should be fair, accessible and efficient	*Accessibility* – access to justice will improve in line with an increase in quality of the judgments the public can view online. *Efficiency* - will increase as sheriffs do not have to start from scratch when deciding how to prepare a judgment.
Rules relating to practice and procedure should be as clear and easy to understand as possible	*Usability* – the clear format provided, and the inclusion of guidance, will make it easy to use the format provided.
Practice and procedure should, where appropriate, be similar in all civil courts	*Consistency* – working within that standard format will drive greater consistency in the comments made by sheriffs.
Methods of resolving disputes which do not involve the courts should, where appropriate, be promoted	*Not Applicable* –the scope to promote ADR has passed by the time a judgment is made

Recommendations:

12. It is recommended that the Council:

- **Considers and approves the content of the draft rules set out within the attached statutory instrument *(Paper 5.1B).***

- **Agrees to propose those draft rules for consideration and approval by the Court of Session, subject to any stylistic or typographical changes.**

Secretariat to the Scottish Civil Justice Council
June 2026

[2] Informing the Future of Open Justice in Scotland *(Jul 2024, JOS)*

BIBLIOGRAPHY

Existing Rules

Ordinary Cause Rules – Chapter 12 (interlocutors)
https://www.scotcourts.gov.uk/rules-and-practice/rules-of-court/sheriff-court-civil-procedure-rules/ordinary-cause-rules/

Publications

Informing the Future of Open Justice in Scotland (Jul 2024, JOS)
Media access to decisions – page 10, last sentence
https://judiciary.scot/docs/librariesprovider3/judiciarydocuments/open-justice/informing-the-future-of-open-justice-in-scotland.pdf?sfvrsn=6a738260_1

Relevant Judgments

M v M [2022] SAC (Civ) 19
Para 37 to 48 – include comment on the use of OCR 12.2 (4) & OCR 12.3
https://www.bailii.org/scot/cases/ScotSAC/Civ/2022/19.pdf

ANNEX 1 – OCR - RULE 12.3

Existing rule:

OCR 12.3 – Ex tempore judgments

(1) This rule applies where a sheriff pronounces an extempore judgment in accordance with rule 12.2(4)(a).

(2) The sheriff must state briefly the grounds of his or her decision, including the reasons for his or her decision on any questions of fact or law or of admissibility of evidence.

(3) The sheriff may, and must if requested to do so by a party, append to the interlocutor a note setting out the matters referred to in paragraph (2) and his or her findings in fact and law.

(4) A party must make a request under paragraph (3) in writing within 7 days of the date of the extempore judgment.

(5) Where a party requests a note of reasons other than in accordance with paragraph (4), the sheriff may provide such a note.

Amended Rule:

OCR 12.3 – Ex tempore judgments

(1) This rule applies where a sheriff pronounces an extempore judgment in accordance with rule 12.2(4)(a).

(2) The sheriff must state briefly the grounds of his or her decision, including the reasons for his or her decision on any questions of fact or law or of admissibility of evidence.

(3) The sheriff may, and must if requested to do so by a party, append to the interlocutor a note **[…in Form O7ZA (form of judgment)]** setting out the matters referred to in paragraph (2) and his or her findings in fact and law.

(4) A party must make a request under paragraph (3) in writing within 7 days of the date of the extempore judgment.

(5) Where a party requests a note of reasons other than in accordance with paragraph (4), the sheriff may provide such a note.

ANNEX 2 – OCR - RULE 12.4

Existing rule:

OCR 12.4 - Reserved judgments

(1) This rule applies where a sheriff reserves judgment in accordance with rule 12.2(4)(b).

(2) The sheriff must give to the sheriff clerk—
(a)an interlocutor giving effect to the sheriff's decision and incorporating findings in fact and law; and
(b)a note stating briefly the grounds of his or her decision, including the reasons for his or her decision on any questions of fact or law or of admissibility of evidence.

(3) The date of the interlocutor is the date on which it is received by the sheriff clerk.

(4) The sheriff clerk must forthwith send a copy of the documents mentioned in paragraph (2) to each party.

Amended rule:

OCR 12.4 - Reserved judgments

(1) This rule applies where a sheriff reserves judgment in accordance with rule 12.2(4)(b).

(2) The sheriff must give to the sheriff clerk—
(a)an interlocutor giving effect to the sheriff's decision and incorporating findings in fact and law; and
(b)a note **[…in Form O7ZA (form of judgment)]** stating briefly the grounds of his or her decision, including the reasons for his or her decision on any questions of fact or law or of admissibility of evidence.

(3) The date of the interlocutor is the date on which it is received by the sheriff clerk.

(4) The sheriff clerk must forthwith send a copy of the documents mentioned in paragraph (2) to each party.

SUBMISSION TO THE

THE SCOTTISH CIVIL JUSTICE COUNCIL

BY THE

PRESIDENT OF THE

SHERIFF APPEAL COURT

Introduction

[1] I invite the Scottish Civil Justice Council to recommend that the Court of Session issue an Act of Sederunt, under section 104(1)(a) and section 104(2)(e) of the Courts Reform (Scotland) Act 2014, to amend rule OCR 12.4 in Schedule 1 of the Sheriff Courts (Scotland) Act 1907. The purpose is to make written decisions in the sheriff court more readable and therefore accessible.

Issues in judgment formatting for public accessibility

[2] At present, OCR 12.4 states:

"Reserved judgments

12.4. (1) This rule applies where a sheriff reserves judgment in accordance with rule 12.2(4)(b).

(2) The sheriff must give to the sheriff clerk—

(a) an interlocutor giving effect to the sheriff's decision and incorporating findings in fact and law; and

(b) a note stating briefly the grounds of his or her decision, including the reasons for his or her decision on any questions of fact or law or of admissibility of evidence.

(3) The date of the interlocutor is the date on which it is received by the sheriff clerk.

(4) The sheriff clerk must forthwith send a copy of the documents mentioned in paragraph (2) to each party."

[3] Where it applies, OCR 12.4(2) requires the sheriff to give the sheriff clerk: (i) an interlocutor giving effect to his or her decision and incorporating findings in fact and

law; and (ii) a note stating the grounds for the decision. There is no prescribed format for the note. Standing the terms of OCR 12.4(2), some shrieval colleagues take the view that, when formatting and drafting any judgment they prepare, they may not go beyond the strict requirements of OCR 12.4(2). It is common for sheriffs to begin by stating at the outset of the judgment that they have "resumed consideration of the cause", then to narrate the terms of the interlocutor and proceed to immediately set out the findings-in-fact. Recent examples of this can be seen in: *Drumchapel Housing Co-operative Limited v Kelly* [2025] SC GLA 1; *Wheatley Homes Glasgow Limited v Sharif* [2025] SC GLA 2; and *AO v The Scottish Ministers* [2025] SC GLA 5.

[4] The problem with the above approach, however, is that it is unlikely to encourage interested members of the public to enquire further. At a time when the judiciary are being encouraged to publish more judgments in the interests of open justice, I consider there is merit in making sheriff's judgments more user-friendly and accessible to the general public by prescribing a form of judgment.

[5] Opinions issued by sheriffs are also wide-ranging in style and format. Some continue to use phrases such as "act" and "alt" to describe those appearing. Some are issued without paragraph numbers or headings to assist the reader. Consistency is likely to lead to accessibility and a greater understanding of sheriff court decisions.

[6] While training has been repeatedly made available over the years to sheriffs, experience shows that it has not effectively prevented a range of styles of judgments from different sheriffs. Notwithstanding the considerable efforts of the Judicial Institute, training is somewhat piecemeal, so that not all sheriffs are trained in the same way or at the same time, and training is not currently delivered to all part time sheriffs. The learning a sheriff takes from training and whether what they learn is put into practice is not audited or measured in any way. Training, while welcome and valuable, is therefore not an entirely effective means of rationalising the form of written decisions. Prescribing the form of an opinion will address the issue more effectively.

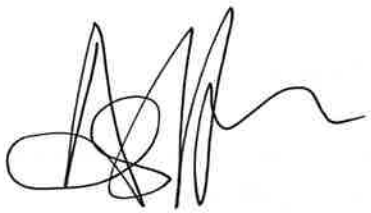
Proposal

[7] I propose that OCR 12.4 be amended. I envisage that OCR 12.4 should set out a template judgment to be used by sheriffs with the template being appended to Appendix 1 of Schedule 1 of the Sheriff Courts (Scotland) Act 1907.

[8] Such an approach would be consistent with the approach taken to determinations issued following Fatal Accident Inquiries: see section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016; rule 6.1 of the Act of Sederunt (Fatal Accident Inquiry Rules) 2017; and Schedule 3, Form 6.1 of the Act of Sederunt (Fatal Accident Inquiry Rules) 2017.

[9] In terms of the layout for a sheriff's judgment, I would propose the format in the schedule attached to this submission.

[10] I thank the Scottish Civil Justice Council for its consideration of this matter and would be happy to provide such further information as may be required.



Sheriff Principal Aisha Anwar

President of the Sheriff Appeal Court

17 April 2025

SHERIFFDOM OF [*name of sheriffdom*] AT [*name of sheriff court*]

[*Citation*]

[*Court Ref*]

JUDGMENT OF SHERIFF [*name*]

in the cause

[*PURSUER'S DESIGNATION*]

Pursuer

against

[*DEFENDER'S DESIGNATION*]

Defender

Pursuer: [*Counsel*]; [*Solicitors*]
Defender: [*Counsel*]; [*Solicitors*]

[*Date of Issue*]

Introduction

(*A brief introduction should include the following information:-*
The nature of the case;
The parties involved;
The issues or issues to be decided; and
Where appropriate, an overview of the route to be taken to decide the issues.)

Background

(*Set out briefly the background that has led to the dispute between the parties including any procedural history.*)

Summary of the Disputed Evidence

(*Set out a summary of relevant evidence led, to the extent it is necessary*)

Submissions

(*Set out briefly and concisely the submissions made to the sheriff by each of the parties*)

Findings in fact

Findings in fact and law

(*Set out the findings in fact and findings in fact and law as established by the evidence led from the parties.*)

Decision

(*Set out, to the extent required to resolve the dispute, the analysis of the evidence, assessment of credibility and reliability of witnesses and explanation of the application of the law to the facts found established.*)

Interlocutor (Order of the Court)

(*State the terms of the sheriff's interlocutor.*)

SCOTTISH STATUTORY INSTRUMENTS

2026 No.

SHERIFF COURT

Act of Sederunt (Ordinary Cause Rules 1993 Amendment) (Judgments) 2026

Made - - - -	****2026*
Laid before the Scottish Parliament	****2026*
Coming into force	****2026*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(**a**), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council [with such modifications as it thinks appropriate].

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 104(1) of the Courts Reform (Scotland) Act 2014(**b**) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Ordinary Cause Rules 1993 Amendment) (Judgments) 2026.

(2) It comes into force on [date].

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Ordinary Cause Rules 1993

2.—(1) Chapter 12 (interlocutors)(**c**) of the Ordinary Cause Rules 1993 is amended in accordance with this paragraph.

(2) In rules 12.3(3) (extempore judgments) and 12.4(2)(b) (reserved judgments), after "note" insert "in Form O7ZA (form of judgment)".

(**a**) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(**b**) 2014 asp 18.

(**c**) Chapter 12 was amended by S.S.I. 2012/188. The Ordinary Cause Rules 1993 are in schedule 1 of the Sheriff Courts (Scotland) Act 1907 (c. 51). Schedule 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2026/xxx.

(3) In Appendix 1 (forms)(**a**), after Form O7 (form of notice of intention to defend)(**b**) insert the form set out in the Schedule to this Act of Sederunt.

PAUL CULLEN
Lord President
I.P.D.

Edinburgh
[Date]

(**a**) Appendix 1 was substituted by S.I. 1993/1956 and last amended by S.S.I. 2026/xxx.
(**b**) Form O7 was amended by S.S.I. 2000/239.

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt amends Chapter 12 (interlocutors) of the Ordinary Cause Rules 1993 to make provision for the form of a note required under rules 12.3 or 12.4.

Paragraph 2(2) amends rules 12.3 and 12.4 to require the use of new Form O7ZA (form of judgment) when the sheriff issues an extempore or reserved judgment.

Paragraph 2(3) prescribes new Form O7ZA.

SCHEDULE

Paragraph 2(3)

Form O7ZA **Form of judgment**

Rules 12.3(3) and 12.4(2)(b)

NOTE

SHERIFFDOM OF [*name of sheriffdom*] AT [*name of sheriff court*]

[*Citation*]

[*Court Ref*]

JUDGMENT OF SHERIFF [*name*]

in the cause

[*PURSUER'S DESIGNATION*]

Pursuer

against

[*DEFENDER'S DESIGNATION*]

Defender

Pursuer: [*Counsel*]; [*Solicitors*]

Defender: [*Counsel*]; [*Solicitors*]

[*Date of Issue*]

Introduction

(*A brief introduction including the following information*:-

The nature of the case;

The parties involved;

The issue(s) to be decided;

Where appropriate, an overview of the route to be taken to decide the issues.)

Background

(*Set out briefly the background that has led to the dispute between the parties including any procedural history.*)

Summary of the Disputed Evidence

(*Set out a summary of relevant evidence led, to the extent it is necessary.*)

Findings in Fact

(*Set out findings in fact as established by the evidence led from the parties.*)

Findings in Fact and Law

(*Set out findings in fact and law as established by the evidence led from the parties.*)

Decision

(*Set out to the extent required to resolve the dispute:-*

The analysis of the evidence;

Assessment of credibility and reliability of witnesses;

Explanation of the application of the law to the facts found established.)

Interlocutor (Order of the Court)

(*State the terms of the sheriff's interlocutor.*)

SCJC Update - Group Procedure

Purpose

1. To update members on work regarding group procedure in Scotland

Introduction

2. The remit of the Group Procedure Joint Working Group is:

> "To consider the secondary legislation and other matters required to facilitate a full implementation of Part 4 (Group Proceedings) of the Civil Litigation (Expenses & Group Proceedings) (Scotland) Act 2018;
>
> To consider the learning from the existing rules in use; including whether to extend RCS Chapter 26A to cover the "opt out" option.
>
> To propose any necessary amendments to that existing Group Procedure"

The Call for Evidence

3. At its meeting on October 2025 the SCJC approved a call for evidence. The call for evidence has provided much useful information. A total of twenty-six responses were received, from a wide variety of stakeholders. The responses have been published on the SCJC website, unless the respondent withheld permission for publication.
https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations/consultation-on-group-procedure-(opt-out)---call-for-evidence

Developments

4. The working group has continued its work on technical issues relating the matters within its remit and considered the responses to the Call for Evidence. It has identified that certain issues relating to opt-out group proceedings are outwith the scope of Court Rules and will require legislation. This was anticipated by Parliament when the 2018 Act was passed, and the Act contains specific provision for such issues to be dealt with by secondary legislation (sec 22).

5. The Department for Business and Trade is conducting a review of the current opt-in and opt-out regime in competition cases in the Competition Appeal Tribunal.

6. The UK government has asked the Law Commission for England and Wales to consider the introduction of a consumer class actions regime in relation to opt in and opt out. The terms of reference are to consider the benefits and risks of

introducing such a regime, and make recommendations for the design of such a scheme, should it be introduced
https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2026/04/Consumer-Class-Actions-Project-Terms-of-Reference.pdf

Next Steps

7. The next steps are as follows:
    - Preparation of a discussion paper to be approved by the SCJC in due course;
    - A three-month consultation period on the discussion paper;
    - Preparation of a communication and engagement strategy for the consultation, for approval by the SCJC in due course; and
    - A final report from the SCJC containing the SCJCs decisions on court rules and recommendations to the Scottish Government in respect of any issues requiring legislation.

Recommendation

8. **The Council is asked to note this paper.**

Group Procedure Joint Working Group

INTERIM AWARDS OF EXPENSES

Purpose

1. To consider making provision for the court to make an interim award of expenses, whilst the parties await the Auditors final figure for the “expenses as taxed”.

Background

2. The attached rules request (Paper 5.3A) was submitted by the Dean of the Faculty of Advocates on 28 May 2026. It reflects that the potential time taken between the court remitting an account for taxation until the court makes an award of expenses is problematic for practitioners, particularly those progressing a significant case volume on a “no win, no fee” basis.

3. In his view paying parties are now “weaponising” that delay period as a tactic to simply defer payment. Hence the Dean has asked the Council to urgently consider introducing a new rule that would provide the court with the ability to require a paying party to pay an interim award of expenses to the party successful in expenses, with the court being able to decree that interim payment within say 28 days of receiving the lodged Account of Expenses.

4. The amount fixed would be a matter for judicial discretion in each case. It would be based on paying what the court considered to be a reasonable % amount (say 50% of the amount claimed within the account of expenses as lodged) to cover the delay whilst the parties await the final taxed account of expenses being issued by the Auditor of the Court of Session. The paying party would retain the right to object to any such request for an interim payment, if appropriate.

The proposed rule

5. By way of example, the Dean has proposed inserting a new paragraph 4 into RCS rule 42.1 (remit to the auditor) that would read as follows:

> *4) Within 28 days of the lodging of an account of expenses under paragraph (2)(a) or (b)—*
>
> *(a) the party found entitled to expenses may apply by motion to the court for an interim award on account of those expenses;*
>
> *(b) where no opposition to such motion is made, the court shall grant an interim award of a sum equal to 50 per cent of the amount of the account of expenses lodged under paragraph (2)(a) or (b); and*
>
> *(c) the party found liable in expenses may oppose such motion and, on cause shown, seek that the court order payment of a different percentage of the amount of the account of expenses, and the court may order payment of such different percentage as it considers appropriate in all the circumstances.*

6. The Auditor of the Court of Session supports adding such an option, as providing the judiciary with the discretion to make such an interim award of expenses would help to strengthen the imperative for settlement.

7. The views of insurers in PI cases are likely to vary depending on whether they are involved as a defender or pursuer in any given proceedings. The Council may wish to consider seeking the views of the PI Users Group and then assessing whether (or not) to undertake a targeted consultation.

Recommendation

8. **The Council should consider the option raised and instruct the preparation of a draft Act of Sederunt for consideration by correspondence**.

Secretariat to the Scottish Civil Justice Council
June 2026

Interim Award of Expenses: The Need for Rule Change

Submission to the Scottish Civil Justice Council on behalf of the Faculty of Advocates

Introduction

1. This briefing note is submitted in support of the proposed insertion of a new paragraph (4) into Rule 42.1 of the Rules of the Court of Session, providing for interim awards on account of expenses within 28 days of lodging an account. The proposed amendment addresses a crisis in access to justice caused by systemic delays in the taxation of expenses, which are undermining the viability of speculative fee arrangements upon which access to the Scottish courts fundamentally depends.

2. In order to assist, a draft amendment (proceeding by way of Act of Sederunt) is appended here, along with a draft Explanatory Note.

The Access to Justice Problem

2. Speculative fee arrangements are the principal means by which pursuers in personal injury and clinical negligence cases access the courts with equality of arms against insurer-funded defenders. This was recognised by the Taylor Review and given legislative effect in the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018. Without counsel and solicitors willing to act speculatively, pursuers would be forced either to abandon meritorious claims or place unsustainable demands on the legal aid system.

3. The system depends on legal representatives being paid within a reasonable time following success. Counsel acting for pursuers must wait until completion of the substantive action even to begin the process of payment, carrying significant financial risk throughout. What now threatens the model's viability is the inordinate period from substantive resolution until payment.

4. Data from two of Scotland's leading stables demonstrates the severity of the problem. At Ampersand Advocates, aged debt in speculative cases increased by 42% in a single year, from £2.2 million to £3.85 million, despite fees rendered increasing by only 29%. Compass Chambers reports a disproportionate increase in aged debt against revenue growth.

5. The human consequences are stark. Senior counsel report waiting over five years for payment on work first undertaken in 2014. Others report having "effectively no income for significant periods" and questioning whether to remain in the profession. Members are increasingly declining speculative instructions. As one senior counsel stated: "the only people who will take on cases that are speculatively funded are those that cannot get work elsewhere."

6. Paying parties have identified that insisting on taxation and delaying agreement maximises their negotiating position, compelling counsel to accept abatements of 15–25% simply to receive payment at all. The current delays incentivise obstructive behaviour by paying parties and penalise success.

7. The foregoing comments relate to speculative cases, primarily in the field of personal injury. However, and as is discussed further below, the problems are not restricted to such cases. Even a fairly well-resourced commercial entity, having succeeded in litigation and yet left uncompensated in terms of

expenses incurred for months or years, may experience difficulties which could, with minimal change, be alleviated.

Why a Rule Change is Necessary

7. The existing law recognises that interim awards of expenses are competent. However, recent case law has restricted the court's willingness to make such orders. In *Harkin v McNeil* [2025] SC EDIN 84, an interim payment was refused because the delay disadvantaged agents and counsel rather than the pursuer personally. If that represents the court's policy, interim awards will be available only in the most exceptional cases, leaving the systemic problem unaddressed.

8. The existing discretionary framework, requiring "special reasons" (*Martin & Co (UK) Ltd, Petrs* [2013] CSOH 25) or "sufficient reason" (*Kidd v Paull & Williamson LLP* [2017] CSOH 124), creates uncertainty and discourages applications. A rule change establishing a presumptive entitlement, with the burden on the paying party to resist, is necessary to shift incentives and provide the certainty that the market requires.

The Proposed Rule is Principled and Proportionate

9. The proposal is founded on the principle articulated by Jacob J in *Mars UK Limited v Teknowledge Limited* [1999] 2 Costs LR 44, adopted across multiple jurisdictions: where a party has won and obtained an order for costs, the only reason payment is delayed is the need for detailed assessment. A payment of a lesser amount which the successful party will "almost certainly collect" is a closer approximation to justice.

10. In *Crociani v Crociani* [2014] JCA 095, the Jersey Court of Appeal endorsed this as a matter of principle: "the achievement of justice... would usually require that a party, who is, pursuant to a court order, entitled to its costs, should be paid on account a percentage of the amount he is likely to recover on taxation." Critically, the Court held that "Justice, not need, is the touchstone" — rejecting the argument that a receiving party must demonstrate particular urgency.

11. In England and Wales, CPR 44.2(8) now provides a presumption in favour of interim payment: the court "*will* order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so." In *International Game Technology v The Gambling Commission* [2024] Costs LR 125, Coulson LJ ordered an interim payment of approximately 50% of total costs, holding that "justice requires an amount to be identified and paid on account, rather than making the successful party wait for the completion of the potentially lengthy assessment process."

12. The proposed 50% default is consistent with the norm in these jurisdictions. It is conservative: a party entitled to expenses will ordinarily recover substantially more than half their account on taxation. Setting the default at 50% avoids any real risk of overpayment while providing meaningful relief.

The Rule Protects the Paying Party

13. The proposed rule is not one-sided. Sub-paragraph (c) expressly permits the paying party to oppose the motion and, on cause shown, argue for a different percentage. This preserves the court's discretion while placing the burden appropriately. There may be cases where an account is manifestly excessive, or where other circumstances justify a lower payment. The court retains full power to do justice in individual cases.

14. The requirement of "cause shown" prevents bare opposition from frustrating the rule's purpose. It also provides an incentive for paying parties to engage constructively with accounts rather than relying on delay as a tactical weapon. This is consistent with the Gill Review's recommendation that parties should be able to agree elements of an account and restrict taxation to disputed items.

The Change Complements Existing Provisions

15. The proposed paragraph operates within the existing architecture of Rule 42.1. It does not affect the Auditor's role, the right to lodge objections, or the final determination of expenses. The paying party already receives intimation of the account forthwith on lodging under paragraph (2A), providing adequate notice to prepare any opposition. The 28-day window ensures prompt but not precipitate action.

The Change Produces Other Benefits

16. Whilst the difficulties posed by the current situation are most keenly felt in speculative cases, it should not be thought that they are limited thereto. Scots law, and the Scottish Courts, promote themselves as accessible and efficient in terms of the administration of justice. The Scottish Courts are in competition with others across the UK and Channel Islands for commercial litigation. A situation in which even commercial entities require to wait lengthy periods of time before receipt of any aspect of an award of expenses is not attractive to potential litigants.

17. As has been noted, such other jurisdictions have provision, either by way of Rules or the development of the common law, allowing for recovery of interim awards which are consistent with those proposed herein. Failure to move to meet the requirements of the commercial market will drive people away from, rather than attracting them to, this jurisdiction.

Conclusion

16. The proposed rule change is urgently required. Without it, the current system permits paying parties to weaponise delay, erodes the financial viability of speculative practice, and progressively diminishes the pool of experienced counsel willing to act for pursuers. It is disincentivising the choice of Scotland as a *forum* for commercial disputes. The inevitable result is reduced access to justice for those who most need the protection of the courts, and lower levels of work for the Courts themselves. The rule is principled, proportionate, consistent with comparative practice, and fair to both parties. It should be adopted without delay.

Roddy Dunlop KC

Dean of the Faculty of Advocates

28 May 2026

Appendix:

Proposed Amendment to Rule 42.1 – Interim Award on Account of Expenses

Act of Sederunt (Interim Awards of Expenses in the Court of Session) 2026

Background

RCS 42.1 currently provides for the remit of accounts of expenses to the Auditor for taxation. Under the existing rule, a party found entitled to expenses must lodge an account of expenses in process not later than four months after the final interlocutor, or at any time with leave of the court. On lodging, the party must intimate a copy of the account forthwith to the party found liable to pay those expenses.

The existing law recognises that an order for payment of interim expenses before an account has been taxed is competent, though the circumstances in which such an order will be made have been the subject of judicial consideration.

Proposed New Paragraph (4) to Rule 42.1

The following new paragraph (4) shall be inserted after paragraph (3) of Rule 42.1:

> (4) Within 28 days of the lodging of an account of expenses under paragraph (2)(a) or (b)—
>
> (a) the party found entitled to expenses may apply by motion to the court for an interim award on account of those expenses;
>
> (b) where no opposition to such motion is made, the court shall grant an interim award of a sum equal to 50 per cent of the amount of the account of expenses lodged under paragraph (2)(a) or (b); and
>
> (c) the party found liable in expenses may oppose such motion and, on cause shown, seek that the court order payment of a different percentage of the amount of the account of expenses, and the court may order payment of such different percentage as it considers appropriate in all the circumstances.

Explanatory Note

Purpose of the Amendment

This amendment introduces a structured mechanism by which a party found entitled to expenses can obtain an interim payment on account of those expenses within a defined period following the lodging of the account. This addresses the practical difficulty that the taxation process can take considerable time, during which the receiving party bears the cost of the litigation without recovery. The existing case law confirms the competency of interim awards of expenses but provides limited procedural guidance. Moreover, recent caselaw has restricted the readiness of the Court to make such orders. Given that the funding of litigation, especially in speculative fee cases, raises difficulties for access to justice, a change in the rules is necessary.

Sub-paragraph (a) – Right to Apply by Motion

The amendment provides that the party found entitled to expenses may apply by motion within 28 days of lodging the account of expenses. The 28-day period runs from the date on which the account is lodged in process under paragraph (2)(a) or

(b). Since intimation of the account to the paying party is already required forthwith on lodging under paragraph (2A), the paying party will have notice of the account and can anticipate a possible motion for an interim award. The express ability to order payment on account is consistent with the provisions in England and Wales: see CPR44.2(8). It is also consistent with the approach followed in other related jurisdictions even where there is no express provision within the Rules – see e.g. for Jersey (and Guernsey follows the same approach) *Crociani v Crociani* [2014] JCA 095.

Sub-paragraph (b) – Default of 50% Where Unopposed

Where the motion is not opposed, the court shall grant an interim award of 50 per cent of the amount of the account lodged. This provides certainty and a proportionate default position, recognising that taxation may reduce the account but that a substantial proportion is ordinarily likely to be allowed. This removes the need for the receiving party to demonstrate "special reasons" or "sufficient reason" in unopposed cases, departing from the approach suggested in *Martin & Co (UK) Ltd, Petrs* [2013] CSOH 25 and *Kidd v. Paull & Williamson LLP* [2017] CSOH 124.

The 50% figure is consistent with the norm followed in other jurisdictions: see e.g. *Crociani, cit.sup*; *International Game Technology plc and Others v The Gambling Commission and Others* [2024] Costs L.R. 125.

Sub-paragraph (c) – Opposition on Cause Shown

The paying party may oppose the motion and argue for a different percentage. The burden is on the paying party to show cause why the default 50 per cent should not apply. This recognises that there may be cases in which the account is manifestly excessive or inflated, or where other circumstances justify a lower (or indeed higher) interim payment. The court retains a discretion to order such different percentage as it considers appropriate. The requirement of "cause shown" ensures that bare opposition without substantive justification will not succeed in displacing the default position.

Relationship with Existing Provisions

The amendment complements the existing structure of Rule 42.1, in which the court pronounces an interlocutor finding a party entitled to expenses and remitting to the Auditor for taxation, and further decerns against the party found liable in expenses as taxed. The interim award mechanism operates between the lodging of the account and the completion of taxation. It does not affect the rights of parties to object to the Auditor's report or the final determination of expenses following taxation.

FINALISING A SIMPLIFIED TABLE OF FEES

Purpose

1. To approve the finalised draft fees rules ***(Paper 5.4A)*** that will implement the change to a simplified table of fees for 'officers of court'.

2. Please note – members considered an earlier version of this statutory instrument as IBC 2026.02 during March 2026. The amendments made within this latest version ***(Paper 5.4A)*** reflects the feedback received. For completeness, copies of those previous papers are attached:
    - Copy of IBC 2026.02 – Approving a simplified table of fees ***(Paper 5.4B)***
    - Copy of IBC 2026.02 - Policy Note ***(Paper 5.4C)***
    - Copy of IBC 2026.02 - BRIA ***(Paper 5.4D)***

Timing

3. *PRIORITY* – the intention is to have this finalised instrument laid and made at the earliest date possible under negative parliamentary procedure.

Virie's

4. Under section 2 (1) (c) (ia) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 the SCJC (as the regulator) holds the statutory function for proposing draft fees rules for consideration and approval by the Court of Session.

5. Under subsection 105 (1) (b) (for Messengers at Arms) and subsection 106 (1) (b) (for Sheriff Officers) of the Courts Reform (Scotland) Act 2014 the Court of Session holds the statutory power to enact draft fees rules proposed by the SCJC.

Background

6. To simplify the procedure for the recovery of expenses on a '*party & party paying'* basis the Council adopted 'unit-based charging' as its preferred pricing methodology for use within the Taxation of Judicial Expenses Rules 2019.

7. As that change successfully delivered its intended aims, the subsequent policy decision in 2025 was to replicate unit-based charging for use when the Council is regulating the fees that an officer of court can charge for the services they provide on a *'provider & client paying'* basis.

<u>Amendment 1 – the commencement date</u>

8. The previous version of this instrument used a commencement date of 1 April 2026. As implementation was deferred pending the new government taking up

office post-election, this instrument uses a holding date of XX XXX 2026. Following approval by members, that will be amended to a commencement date that aligns with parliamentary procedure, and the dates for summer recess.

Amendment 2 – the content required within a Fee Note

9. Subsection 12 (1) (b) has been inserted to highlight the need for providers to detail any reductions made within the fee note issued. That amended rule reads:

> *12. Fee notes*
>
> *(1) Every fee note rendered by an officer of court must set out in detail—*
> *(a) the fees which are being charged by that officer;*
> ***(b) any reductions which apply to those fees under paragraph 8 (reductions on fees);***
> *(c) any surcharges which apply to those fees under paragraph 9 (surcharge on fees);*
> *(d) any additional fees agreed under paragraph 10 (additional fees);*
> *(e) any outlays which have been charged,*

Amendment 3 – the value thresholds for attachments

10. Within schedule 1, the previous pricing methodology had specified 5 static value thresholds within the fee narratives shown at line items 4 (c) for attachments, 5 (a) for attachment of vehicles etc. and 6 (b) for money attachments.

11. Retaining those multiple variable thresholds is inconsistent with the simplification sought through this change to a unit-based charging methodology. To make the rules easier to understand and use the policy intent was to reduce from 5 to 2 sub line items, with reworded fee narratives aligned to having just 2 units of work fixed at 22 units and 34 units. Within this instrument the revised thresholds *(rounded to the nearest £1,000)* are shown at line item 4 (c), 5 (a) and 6(c) with:
    - 22 units of work applicable for cases up to £1000
    - 34 units of work applicable for cases over £1,000.

Summary

12. This instrument was previously circulated to members for consideration on 8 March 2026 (as IBC 2026.02). As this latest version contains modifications it has been tabled for members to consider and approve the above changes

Recommendation

13. It is recommended that the Council:

- **Approves the attached draft Act of Sederunt *(Paper 5.4A)* for submission to the Court of Session for its consideration and approval, subject to any typographical or stylistic changes made.**

Secretariat to the Scottish Civil Justice Council
June 2026

SCOTTISH STATUTORY INSTRUMENTS

2026 No.

COURT OF SESSION

SHERIFF APPEAL COURT

SHERIFF COURT

Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) 2026

Made - - - -	****2026*
Laid before the Scottish Parliament	****2026*
Coming into force	****2026*

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(**a**), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council [with such modifications as it thinks appropriate].

The Court of Session therefore makes this Act of Sederunt under the powers conferred by sections 103(1), 104(1), 105(1) and 106(1) of the Courts Reform (Scotland) Act 2014(**b**) and all other powers enabling it to do so.

CHAPTER 1

CITATION, APPLICATION AND INTERPRETATION ETC.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) 2026.

(2) It comes into force on XX XX 2026.

(3) A certified copy is to be inserted in the Books of Sederunt.

Interpretation

2. In this Act of Sederunt—

(**a**) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(**b**) 2014 asp 18. Sections 105 and 106 were modified by S.S.I. 2018/158.

"the 1987 Act" means the Debtors (Scotland) Act 1987(**a**);

"the 1994 Act" means the Value Added Tax Act 1994(**b**);

"the 2002 Act" means the Debt Arrangement and Attachment (Scotland) Act 2002(**c**);

"the 2007 Act" means the Bankruptcy and Diligence etc. (Scotland) Act 2007(**d**);

"apprehension" means apprehending, detaining and taking to and from court or prison;

"arranging" means accepting instructions, checking for competency, reserving time, advising instructing agent, making all necessary arrangements, intimation and service (where necessary) prior to execution;

"first class recorded delivery post" means a postal service (within the meaning of section 27(1) of the Postal Services Act 2011(**e**)) which seeks to deliver documents or other things by post no later than the next working day in all or the majority of cases and which provides for the delivery of the document or other thing by post to be recorded;

"officer of court" means a messenger-at-arms or a sheriff officer;

"possession" means searching, taking possession and delivery;

"postal diligence" means service of any diligence, which may be served by post, by registered post or a first class recorded delivery service;

"postal service" means service or intimation by registered post or a first class recorded delivery service;

"registered post" means a registered post service within the meaning of section 125(1) of the Postal Services Act 2000(**f**);

"relevant fee" is the fee for chargeable work carried out by an officer of court that must be calculated in accordance with Chapter 2 and the Table of Charges;

"remote rural area" means an area classified as a remote rural area by the Scottish Government's Urban Rural Classification 2022(**g**);

"service" means service or intimation of any document under a rule of court or an order of the court and includes accepting instructions, preparation, postage and service or intimation of any ancillary form or other ancillary document;

"simple procedure case" has the meaning given by section 72(9) of the Courts Reform (Scotland) Act 2014(**h**);

"Table of Charges" means the Table of Charges set out in schedule 1 (table of charges for work carried out by officers of court);

"the relevant court" means the Court of Session, Sheriff Appeal Court or the sheriff court;

"unit" has the meaning given by paragraph 4 (the unit).

Fees of officers of court

3. Chapter 2 (fees for work carried out by officers of court) and schedule 1 (table of charges for work carried out by an officer of court) have effect in respect of work carried out by an officer of court in relation to causes or proceedings in, or work authorised by, the relevant court and the fees so calculated are the fees which are payable to that officer.

(**a**) 1987 c. 18.
(**b**) 1994 c. 23.
(**c**) 2002 asp 17.
(**d**) 2007 asp 3.
(**e**) 2011 c. 5.
(**f**) 2000 c. 26. Section 125(1) was last amended by S.I. 2018/1417.
(**g**) The Scottish Government Urban Rural Classification 2022 was published by the Office of the Chief Statistician on 16 December 2024 and was last updated on 27 February 2025; this Classification can be found at www.gov.scot/publications/scottish-government-urban-rural-classification-2022/.
(**h**) 2014 asp 18.

The unit

4.—(1) In this Act of Sederunt, references to a "unit" are to a measure of monetary charge with the relevant value.

(2) The "relevant value" is—

(a) from XX XX 2026, £6.10;

(b) from 1st April 2027, £6.22;

(c) from 1st April 2028, £6.35.

Application and revocation

5.—(1) This Act of Sederunt applies to work carried out by an officer of court on or after the date on which this Act of Sederunt comes into force.

(2) The Acts of Sederunt specified in schedule 2 (revocations) are revoked.

Saving and transitional provision

6.—(1) Notwithstanding paragraph 5(2) (revocations), this Act of Sederunt has no effect on the fees payable in respect of work carried out by an officer of court before XX XX 2026.

(2) When the relevant value of the unit increases by virtue of paragraph 4(2)(b) or (c) (relevant value of unit), this Act of Sederunt has no effect on the fees payable in respect of work carried out by an officer of court before 1st April 2027 or 1st April 2028 respectively.

CHAPTER 2

FEES FOR WORK CARRIED OUT BY OFFICERS OF COURT

Calculation of fees

7. Subject to this Chapter, unless otherwise provided for in this Act of Sederunt, the fees payable to an officer of court must be calculated in accordance with the Table of Charges and are payable in respect of—

(a) all forms of service or intimation of a document;

(b) citation of a person or execution of diligence;

(c) recovery of rates, charges or taxes by summary warrant;

(d) all other work authorised by the court,

executed by an officer of court during the normal business hours of 9.00 a.m. to 5.00 p.m.

Reductions on fees

8.—(1) In a case set out in sub-paragraph (2), the fee charged for any work carried out by a sheriff officer in respect of items 1(a) to 1(c), 2(a) and 2(b) in the Table of Charges must be reduced by 20%.

(2) Those cases are—

(a) a summary cause where the value of the claim is £1,500 or less (exclusive of interest and expenses) at the time when the cause is commenced;

(b) a summary cause falling within section 35(1)(c) of the Sheriff Courts (Scotland) Act 1971 (actions ad factum praestandum and actions for the recovery of possession of heritable or moveable property) where—

(i) it contains no additional or alternative crave for decree for payment of money; or

(ii) the value of such crave is £1,500 or less (exclusive of interest and expenses);

(c) a simple procedure case in which—

(i) the value of a claim for payment of a sum of money £1,500 or less (exclusive of interest and expenses) at the time when proceedings are commenced;

(ii) there is no claim for payment of a sum of money.

(3) The 20% reduction specified in sub-paragraph (1) does not apply to any work carried out by a sheriff officer in respect of recovery of rates, charges or taxes by summary warrant.

(4) Where personal service is required to be carried out by a sheriff officer for item 1(a)(i) in the Table of Charges and more than one visit is required, each additional visit must be charged at 50% of the relevant fee.

Surcharges on fees

9.—(1) The fee which a sheriff officer can charge for—

(a) the service or intimation of a document, citation of a person, or diligence which is necessary to execute outside of normal business hours must be surcharged by the levying of an additional charge of—

(i) 33% of the relevant fee, for any work which is carried out on a weekday between the hours of 5.00 p.m. and 10.00 p.m.;

(ii) 75% of the relevant fee, for any work which is carried out on a weekday after 10.00 p.m. and before 9.00 a.m. or on a Saturday, Sunday or a public holiday;

(b) the service or intimation of a document or inhibition in a remote rural area for items 1(a)(i), 2(a)(i) and 2(b)(i) in the Table of Charges must be surcharged by the levying of an additional charge of 33% of the relevant fee;

(c) work carried out for items 1(a), 2, 3(b) and 12 in the Table of Charges in respect of an action which has a value of over £100,000 must be surcharged by the levying of an additional fee of 0.01% of the value of the action.

(2) The fee which a messenger-at-arms can charge for the service, intimation or execution of a document in the Court of Session, must be surcharged by the levying of an additional charge of—

(a) for item 1(a)(i) in the Table of Charges, a 25% surcharge of the relevant fee;

(b) for item 1(a)(ii), 1(b) and 1(c) in that Table, a 10% surcharge of the relevant fee;

(c) for item 2(b) and (c) in that Table, a 2.5% surcharge of the relevant fee.

(3) For the purpose of this paragraph "public holiday" means—

(a) a bank holiday in Scotland, as set out in paragraph 2 of Schedule 1 of the Banking and Financial Dealings Act 1971(**a**);

(b) any other day which is designated as a public holiday by a local authority for the local authority area in which the officer of court's place of work is located.

Additional fees

10. An additional fee may be negotiated between an officer of court and the instructing agent by prior agreement in the following circumstances—

(a) where that officer is standing by awaiting the delivery or uplifting of a document for immediate service;

(b) where that officer has to instruct a huissier or other officer of court outside Scotland to serve a document;

(c) where there is no prescribed fee and the importance, urgency or value of the work involved necessitates an additional fee.

(**a**) 1971 c.80. Paragraph 2 of Schedule 1 was last amended by section 1 of the St Andrew's Day Bank Holiday (Scotland) Act 2007 (asp 2).

Outlays

11. All reasonable outlays, including postage, that were necessarily incurred by an officer of court in carrying out lawful instructions in respect of items 1(b) and (c) in the Table of Charges must be charged in addition to the relevant fee.

Fee notes

12.—(1) Every fee note rendered by an officer of court must set out in detail—

(a) the fees which are being charged by that officer;

(b) any reductions which apply to those fees under paragraph 8 (reductions on fees);

(c) any surcharges which apply to those fees under paragraph 9 (surcharge on fees);

(d) any additional fees agreed under paragraph 10 (additional fees);

(e) any outlays which have been charged,

so that fee note may be easily checked against the fees which an officer of court can charge in accordance with this Chapter and the Table of Charges.

(2) The fee note must be reviewed by another officer of court to ensure that it is fair and reasonable in the circumstances and must be adjusted by that officer if necessary.

Discounting

13. Discounting of fees is permitted between officers of court only.

Restrictions or modifications

14. Any restriction or modification made by an officer of court in respect of fees that are recoverable from a person must be passed on to that person only.

Charging by time

15.—(1) Work carried out by an officer of court that is to be charged on a time basis is to be calculated in intervals of 6 minutes.

(2) The units applicable to each 6 minute interval are set out in item 13(f) in the Table of Charges.

(3) For a sheriff officer, in respect of items 3, 6(b), 7(c), and (d), 8(b), 9(b), 10(b), 11(n) and 12(b) in the Table of Charges, charging on a time basis is to apply from the end of the first hour at the place of execution until completion.

(4) For messengers-at-arms, unless paragraphs 16 (use of ferry) to 18 (enquiries) apply, charging on a time basis is to apply from—

(a) the end of the first hour at the place of execution until completion; or

(b) after the messenger-at-arms has travelled a distance of 30 miles from the messenger's place of business until the messenger returns to a distance of 30 miles from that place.

Use of a ferry

16. Where an officer of court has to use a ferry, that officer, and any witness, must be allowed the necessary cost of the ferry, all reasonable subsistence and the time for boarding, crossing and returning, which must be charged on a time basis.

Notary public, commissioner or other person or attending as a witness

17. Where an officer of court is required to attend before a notary public, commissioner or other person or as a witness, a fee for such attendance by that officer and any other witness must be charged on a time basis.

Enquiries

18. Where an officer of court makes enquiries that are necessary to execute service, intimation, citation, diligence or any other work authorised by the relevant court, a fee for those enquiries must be charged on a time basis.

Realising of money attachment

19. Where, in respect of a money attachment, an officer of court is required to realise—

(a) the value of money attached and dispose of this under section 184 of the 2007 Act(**a**); and

(b) deposit cash and proceeds of foreign currency (including conversion of foreign currency),

the fee for such work must be charged on a time basis.

Value of attachment

20.—(1) Where, in respect of an attachment, the appraised value of an article exceeds the sum recoverable, the relevant fee payable to an officer of court must be calculated in accordance with the sum recoverable.

(2) Where, in respect of an attachment, a debtor or other occupier of the premises claims that goods are—

(a) subject to a hire purchase agreement or are the property of someone other than the debtor; and

(b) refuses or is unable to produce evidence to that effect,

an officer of court may attach the goods.

(3) Where sub-paragraph (2) applies, an officer of court must add a note on the schedule of the attachment stating that the debtor has claimed that goods are subject to a hire purchase agreement or are the property of someone other than the debtor.

(4) Where, in respect of a money attachment, the value of the money exceeds the sum recoverable, the relevant fee payable to an officer of court must be calculated in accordance with the sum recoverable.

(5) Where, in respect of a money attachment, a debtor or other occupier of the premises claim that money is—

(a) the property of someone other than the debtor; and

(b) refuses, or is unable to produce evidence to that effect,

an officer of court may attach the money.

(6) Where sub-paragraph (5) applies, an officer of court must add a note on the schedule of the attachment stating that the debtor claims that the money is the property of someone other than the debtor.

Value Added Tax

21.—(1) Where an officer of court is a taxable person and supplies a taxable service to any other person, subject to sub-paragraph (2), that officer must charge that person—

(a) the relevant fee for supplying that service; and

(b) an additional amount equal to any value added tax which that person must pay for the supply of that service.

(2) For the purpose of this paragraph—

(**a**) Section 184 was amended by the Public Services Reform (Scotland) Act 2010 (asp 8), schedule 4, paragraph 24.

(a) a "taxable person" has the same meaning as that given by section 3 (taxable persons and registration)(**a**) of the 1994 Act;

(b) a "taxable supply" has the same meaning as that given by section 4(2) (scope of VAT on taxable supplies) of the 1994 Act.

PAUL CULLEN
Lord President

Edinburgh
DD/MM/YYYY

I.P.D.

(**a**) Section 3 was last amended by the Taxation (Post-transition Period) Act 2020 (c. 26), Schedule 2, paragraph 3.

SCHEDULE 1

Paragraph 3

TABLE OF CHARGES FOR WORK CARRIED OUT BY OFFICERS OF COURT

Item	Units
1. Service or intimation of a document	
(a) Service	
(i) each person at a different address	18
(ii) each additional person at the same address or additional copy required to be served or intimated under the 1987 Act or 2002 Act	4
(b) Postal service	6
(c) Postal diligence	9
2. Inhibitions	
(a) Inhibitions only	
(i) each person at a different address	23
(ii) each additional person at the same address	7
(b) Inhibition and service	
(i) each person at a different address	27
(ii) each additional person at the same address	12
(c) Inhibition service and interdict	
(i) each person at a different address	44
(ii) each additional person at the same address	19
3. Interdicts (including non-harassment orders under the Protection from Harassment Act 1997(a) and antisocial behaviour orders under the Antisocial Behaviour etc. (Scotland) Act 2004)(b)	
(a) Interdict only	
(i) each person at a different address	33
(ii) each additional person at the same address	7
(b) Interdict and service	

(**a**) 1997 c. 40.
(**b**) 2004 asp 8.

Item	Units
(i) each person at a different address	37
(ii) each additional person at the same address	11
4. Attachments	
(a) Service notice of entry	3
(b) Arranging attachment and endeavouring but being unable to execute the same for whatever reason	19
(c) Arranging and executing attachment where appraised value is—	
(i) £1000 or under	22
(ii) over £1000	34
(d) Reporting attachment	2
5. Attachment of motor vehicles, heavy plant or machinery	
(a) Arranging and executing attachment where appraised value is—	
(i) £1000 or under	22
(ii) over £1000	34
(b) Reporting attachment	2
6. Money attachments under the 2007 Act	
(a) Arranging attachment and endeavouring but being unable to execute the same for whatever reason	19
(b) Arranging and executing attachment, including removal of attached money, where value of money is—	
(i) £1000 or under	22
(ii) over £1000	34
(c) Reporting attachment	2
7. Auctions	
(a) Arranging auction, preparing advertisement and giving public notice	5
(b) Serving copy of warrant of auction, intimating the place and date of auction and, if necessary, the date of removal of attached effects	As per items 1(a) or (b) above, as the case may be
(c) Officer and witness attending auction but auction not executed for whatever reason	18
(d) Officer and witness attending auction	33

Item	Units
8. Ejections	
(a) Arranging ejection	18
(b) Arranging and executing ejection	28
9. Taking possession of effects	
(a) Arranging possession	18
(b) Arranging and effecting possession	33
10. Apprehensions	
(a) Arranging apprehension	18
(b) Arranging and apprehending	33
11. Uplifting children	
(a) Arranging uplift	18
(b) Uplifting each child	33
12. Arresting vessels, aircraft and cargo	
(a) Arranging to arrest	18
(b) Arranging and effecting arrestment	55
13. Miscellaneous	
(a) Making any report or application under the 1987 Act, the 2002 Act or 2007 Act with the exception of reporting an attachment or a money attachment	4
(b) Granting any receipt required to be issued under the 1987 Act or 2002 Act	2
(c) Arranging a locksmith or tradesperson to be in attendance	3
(d) Granting certificate of displenishment or providing any other certificate or report, registering any document or making any application to a court or the creditor	4
(e) Executing warrant to open lockfast places	4
(f) Time	
(i) six minutes with witness attending	1.4
(ii) six minutes without witness attending	1
(g) Photocopies	
(i) first page document – £2.55	
(ii) subsequent pages – per page £1.40	

Item	Units
(h) Service of a document in Scotland under the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters concluded on 15th November 1965 (commonly referred to as the "Hague Service Convention")	
(i) personal service	31
(ii) postal service	10
(i) Service of a document on the same day as instructed	20

SCHEDULE 2

Paragraph 5(2)

REVOCATIONS

Act of Sederunt revoked	*References*
Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002	2002/566
Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002	2002/567
Act of Sederunt (Fees of Sheriff Officers) 2003	2003/538
Act of Sederunt (Fees of Messengers-at-Arms) 2003	2003/536
Act of Sederunt (Fees of Sheriff Officers) 2004	2004/513
Act of Sederunt (Fees of Messengers-at-Arms) 2004	2004/515
Act of Sederunt (Fees of Messengers-at-Arms) 2005	2005/582
Act of Sederunt (Fees of Sheriff Officers) 2005	2005/583
Act of Sederunt (Fees of Sheriff Officers) 2006	2006/539
Act of Sederunt (Fees of Messengers-at-Arms) 2006	2006/540
Act of Sederunt (Fees of Messengers-at-Arms) 2007	2007/532
Act of Sederunt (Fees of Sheriff Officers) 2007	2007/550
Act of Sederunt (Fees of Sheriff Officers) 2008	2008/430
Act of Sederunt (Fees of Messengers-at-Arms) 2008	2008/431
Act of Sederunt (Fees of Sheriff Officers) (Diligence) 2009	2009/379
Act of Sederunt (Fees of Messengers-at-Arms) (Diligence) 2009	2009/383
Act of Sederunt (Fees of Sheriff Officers) 2011	2011/47
Act of Sederunt (Fees of Messengers-at-Arms) 2011	2011/48
Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2011	2011/431
Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2011	2011/432
Act of Sederunt (Fees of Sheriff Officers) (Amendment) 2012	2012/7
Act of Sederunt (Fees of Messengers-at-Arms) (Amendment) 2012	2012/8
Act of Sederunt (Fees of Messengers-at-Arms) (Amendment) (No. 2) 2012	2012/340
Act of Sederunt (Fees of Sheriff Officers) (Amendment) (No. 2) 2012	2012/341
Act of Sederunt (Fees of Sheriff Officers) 2013	2013/345
Act of Sederunt (Fees of Messengers-at-Arms) 2013	2013/346
Act of Sederunt (Fees of Sheriff Officers) 2016	2016/100

Act of Sederunt revoked	*References*
Act of Sederunt (Fees of Messengers-at-Arms) 2016	2016/101
Act of Sederunt (Fees of Sheriff Officers) (Amendment) 2017	2017/153
Act of Sederunt (Fees of Messengers-at-Arms, Sheriff Officers and Shorthand Writers) (Amendment) 2018	2018/126
Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Hague Service Convention) (Amendment) 2020	2020/423
Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2021	2021/225
Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024	2024/41

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt consolidates and revokes the Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002, the Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002 and the Acts of Sederunt which have amended these instruments.

This Act of Sederunt also introduces a new charging model in which fees by officers of court (sheriff officers and messengers-at-arms) are charged in units. It establishes the value of a single unit. This value has been adjusted for inflation and will increase by 2% up to and including financial year 2028/29. This Act of Sederunt also changes how work carried out by officers of court, which is calculated on a time basis, will be charged. Fees for certain types of work which take an officer of court more than one hour to complete will be charged in 6 minute intervals. This charge only applies to the portion of that work which exceeds one hour until it is complete. It also makes changes to the reductions which can be made to the fees of sheriff officers and sets out what surcharges apply to fees for officers of court.

APPROVING A SIMPLIFIED TABLE OF FEES

Purpose

1. To seek approval of the attached *draft fees rules* ***(Flag A)*** that will implement the simplified table of fees as consulted on for *'officers of court'.*

Timing

2. The 2025-26 Work Programme – gave a priority to adopting *"unit-based charging"* as the pricing methodology for regulating the fees charged

3. A target implementation of 1 April 2026 was used during that consultation. That target date can no longer be achieved as the consolidation exercise raised more legal questions that expected. To comply with parliamentary procedure, implementation is deferred until the new government takes office following the Scottish Elections.

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4. Under section 2 (1) (c) (ia) of the *Scottish Civil Justice Council and Criminal Legal Assistance Act 2013* the SCJC (as regulator) holds the statutory function for proposing draft fees rules for consideration and approval by the Court of Session.

5. Under subsection 105 (1) (b) *(for Messengers at Arms)* and subsection 106 (1) (b) *(for Sheriff Officers)* of the Courts Reform (Scotland) Act 2014 the Court of Session holds the statutory power to enact these draft fees rules.

Background

6. To simply the procedure for the recovery of expenses on a *'party & party paying'* basis the Council, on the recommendation of the Cost and Funding Committee, adopted *unit-based charging* as its preferred pricing methodology for use within the Taxation of Judicial Expenses Rules 2019.

7. As that change has delivered its intended aims, this rules instrument replicates *unit-based charging* for use when regulating the fees an officer of court can charge on a *'provider & client paying'* basis. The policy decisions taken to date have included:
   - Approving the Public Consultation exercise being run on replicating *unit-based charging* for use when fixing the fees of officers of court.
   - Assessing the positive user feedback and agreeing the policy positions.
   - Approving publication of the Consultation Response document, with Annex I summarising the policy decisions already taken.

8. The content of the draft rules *(**Flag A**)* fully meets those drafting instructions, and its approval enables this change to be brought into effect.

Adopting "unit-based charging"

9. From a financial perspective this change in pricing methodology is cost neutral, as an instructing party or end user is charged the same inflation adjusted amount under the *unit-based charging* methodology as they would be previously.

Responding to inflation

10. The previous inflationary adjustment (SSI 2024/21) took effect from March 2024, to cover the evaluation period up to September 2022. This instrument covers the subsequent 35-month evaluation period to August 2025 and over that period the inflation indices were:

Year	Month	CPI INDEX	CPIH INDEX
2022	Sep	123.8	122.3
2025	Aug	139.3	138.9
Multiplier		*1.125*	*1.135*
% change		*12.5%*	*13.5%*

Public Participation

11. To provide the public with an opportunity to participate in these decisions the Costs and Funding Committee issued a Public Consultation *(May 2025, SCJC),* published the feedback received in the Consultation Analysis *(Sep 2025, SCJC)* and communicated the final policy decisions taken within the Consultation Response *(Nov 2025, SCJC).* The feedback from respondents was supportive of making the change to unit-based charging.

Impact Assessment

12. The attached *Business and Regulatory Impact Assessment (BRIA)* (***Paper 3.1C***) conveys the 'powers' held by this Council to regulate the fees a provider can charge within this small niche market. As regulator, the SCJC holds the relevant power to cap these fees on behalf of the state. The processes used fully comply with competition law, as the clear purpose in fixing these fees is to protect the interests of consumers *(rather than the interests of any service providers).*

Compatibility with the Guiding Principles

13. This table provides a check on how the attached *draft fees rules* align with the *'guiding principles'* of the Council:

GUIDING PRINCIPLE	*IMPROVEMENTS MADE WITHIN THESE 'FEE RULES'*
The civil justice system should be fair, accessible and efficient	*ACESSIBILITY* - is improved by removing duplicated information. The future volume of information a user may need to read is reduced to 1 x 13-page consolidated instrument *(in comparison to the current rules where some users may need to have read 266 pages of regulations and amending orders to find what they were looking for).* *EFFFICIENCY* – is improved as the information provided within this consolidated SSI will largely remain 'static' over time which: • Supports future inflation uplifts being made via a 1-page SSI using a single sentence to amend the "monetary charge" *(rather than needing to prepare the multi-page SSIs drafted previously).* • Reduces the legal resources required to draft future amending orders
Rules relating to practice and procedure should be as clear and easy to understand as possible	*TRANSPARENCY* – is improved as the absolute numbers fixed for the "units of work" for each line item makes it easier for consumers to: • Check what a provider can legally charge for. • Check whether similar charges are being made for directly comparable services.
Practice and procedure should, where appropriate, be similar in all civil courts	*CONSISTENCY* – is improved by consolidating the wording onto 'generic regulations' that are equally applicable to all 'officers of court' *(rather than duplicating those regulations to cover messengers at arms & sheriff officers separately).*
Methods of resolving disputes which do not involve the courts should, where appropriate, be promoted	*NOT APPLICABLE* – as the services provided are specific to enforcing the decisions already taken by the courts.

Recommendations

14. It is recommended that the Council

- **Notes the dates within this instrument will be fixed as the earliest practicable date following the new government being formed.**
- **Considers and agrees the content of the draft rules *(Flag A)*.**
- **Considers and agrees the content of the Policy Note *(Flag B).***
- **Considers and agrees the content of the BRIA *(Flag C).***
- **Agrees to propose these draft rules to the Court of Session for consideration and approval, subject to any stylistic or typographical changes.**

Secretariat to the Scottish Civil Justice Council
March 2026

BIBLIOGRAPHY

Legislation – for regulating the market:

Debtors (Scotland) Act 1987
PART VI– Messengers at arms and sheriff officers (s75 to s86A)
https://www.legislation.gov.uk/ukpga/1987/18/contents

Bankruptcy and Diligence etc. (Scotland) Act 2007
PART 3 – Officers of Court (s50–s78)
https://www.legislation.gov.uk/asp/2007/3/contents

Legislation – for regulating the profession

Public Services Reform (Scotland) Act 2010
Schedule 4 – Regulation of Officers of Court – Modification of enactments
https://www.legislation.gov.uk/asp/2010/8/contents

Existing rules regarding the profession:

Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991 *(23 pages)*
https://www.legislation.gov.uk/uksi/1991/1397/contents/made

The last "amending order" enacted reduced the training periods required for qualification:

- *Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) (Amendment) 2024* *(3 pages)*
  https://www.legislation.gov.uk/ssi/2024/157/contents/made

Officers of Court's Professional Association (Scotland) Regulations 2011 *(5 pages)*
https://www.legislation.gov.uk/ssi/2011/90/contents/made

Legislation – for regulating fees

Courts Reform (Scotland) Act 2014
Sections 105-106 – regulation of fees
https://www.legislation.gov.uk/asp/2014/18/contents

Existing Fees Rules:

Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002 *(13 pages)*
https://www.legislation.gov.uk/ssi/2002/566/contents/made

Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002 *(15 pages)*
https://www.legislation.gov.uk/ssi/2002/567/contents/made

The last "amending order" enacted was the:

- *Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024* *(10 pages)*
  https://www.legislation.gov.uk/ssi/2024/41/contents/made

BIBLIOGRAPHY…*continued*

Consultations – on regulating fees:

Public Consultation: on a simplified Table of Fees *(May 2025, SCJC)*
+ Business and Regulatory Impact Assessment (BRIA)
+ Equality Impact Assessment (EQIA
https://www.scottishciviljusticecouncil.gov.uk/consultations/scjc-consultations/simplified-table-of-fees

Consultation Analysis: regarding a simplified Table of Fees *(Sep 2025, SCJC)*
https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/simplified-table-of-fees/consultation-analysis---simplified-fees.pdf?sfvrsn=6126154a_1

Consultation Response: on implementing a simplified Table of Fees
(Nov 2025, SCJC)
https://www.scottishciviljusticecouncil.gov.uk/docs/librariesprovider4/consultations/scjc-consultations/extending-the-availability-of-peos/consultation-response---simplified-fees.pdf?sfvrsn=944f3f9b_1

ANNEX 1 – EXTRACT – OF THE DRAFTING INSTRUCTIONS ISSUED

The instructions given to the drafting lawyer for preparation of these draft rules mirrored the commentary provided at paragraph 9 of the Consultation Response report:

> *CONSOLIDATION* – the 1 new consolidating instrument headed *"Fees of Messengers at Arms and Sheriff Officers"* should revoke the 2 existing sets of regulations from 2002 along with the 32 subsequent amending orders made.
>
> *ESTABLISHING THE REGULATORY FRAMEWORK* – a generic set of *general regulations* should replace the 2 existing sets of *general regulations.* Each new *general regulation* should be worded so that:
> - The content is generic and equally applicable to both messengers at arms and sheriff officers *(where practicable).*
> - The regulations are reorganised and renumbered under logical headings.
> - Reference is made to the existing and new % *surcharges* & rates thereof as set out in the Consultation Response.
> - Reference is made to the existing and new % *reductions* & rates thereof as set out in the Consultation Response.
> - Regulation 9 - is amended to reflect time being charged in 6-minute *units* and the status quo remaining for the 1-hour threshold.
> - Regulation 15 - is amended to reaffirm the exclusion of local authority *summary warrants* from *reductions.*
> - Legal definitions[1] are inserted to cover the key elements of the new charging model.
>
> *ESTABLISHING THE CHARGING MODEL* – the consolidating instrument will reflect the use of *unit-based charging* within the sections used, the generic regulations and the schedule for the fee table. In that regard:
> - For comparability with taxation rules the definition of *a unit* is to read:
>   - *"References to a "unit" are to a measure of monetary charge with a value of £6.10[2]"*
> - The previous fee amounts for each existing line item within the 1 column that remains are to be replaced by the baseline values for the *units of work*.
> - The baseline for all *% reductions* are to be fixed in line with paragraphs 10 to 13 of the Consultation Response.
> - The baseline for all *% surcharges* are to be fixed in line with paragraph 14 of the Consultation Response.
>
> *INFLATION ADJUSTMENTS* – the consolidating instrument will include an inflation uplift of 13.0% to cover the evaluation period from September 2022 to August 2025 and in addition the inflation forecasts for the subsequent two years at the Bank of England's target rate of 2% per annum. To deliver that change the relevant paragraph within the *draft rules* will fix the following *monetary values* from these dates:
> - Year 1 - £6.10 with effect from 01 April 2026;
> - Year 2 - £6.22 with effect from 01 April 2027; and
> - Year 3 - £6.35 with effect from 01 April 2028.

[1] *In a manner comparable to the Taxation of Judicial Expenses Rules 2019.*

[2] *The September 2022 baseline 'monetary value' of £5.40 (as consulted on) with a 13.0% uplift for inflation (which reflects the CPI and CPIH indices as listed within annex 5 of this paper)*

ANNEX 2 – WORKING WITHIN THE WIDER "REGULATORY FRAMEWORK"

The regulation of fees by the SCJC provides one element of a wider "regulatory framework" that has evolved over several centuries:

REGULATING THE MARKET		
Deliverable	**Organisation**	**What is the scope of their role?**
MARKET OVERSIGHT	SCJC	Role is to: - regulate the fees charged *(Refer - s105 (1) & 106 (1) of the Courts Reform (S) Act 2014)*
Notes: *1 - SCJC - Acronym for the Scottish Civil Justice Council*		

REGULATING SERVICE DELIVERY		
Deliverable	**Organisation**	**What is the scope of their role?**
JUDICIAL OVERSIGHT	ACMASO	Role is to: - Regulate organisation - Regulate procedure - Regulate conduct & discipline - Regulate appointments, training & qualifications - Keep under review all matters relating to officers of court
	Sheriffs Principal	Role is to grant commissions – sufficient to cover the demand for civil enforcement across the sheriff courts *(Refer - s75 (1) (g) of the Debtors (S) Act 1987 & s8 of the 1991 Rules)*
	Lord Lyon	Role is to grant commissions – sufficient to cover the demand for civil enforcement in the Court of Session *(Refer - s77 of the Debtors (S) Act 1987 & s7 of the 1991 Rules)*
Complaints & Discipline	Sheriffs Principal	Role is to: - hear disciplinary appeals - withdraw a commission *(as the ultimate sanction)*
Official Statistics	AiB	Role is to: - receive data returns from commission holders - compile and publish the Scottish Diligence Statistics
Notes: *1 - ACMASO - Acronym for the Advisory Council of Messengers-at-Arms & Sheriff Officers* *2 - AiB - Acronym for the Accountant in Bankruptcy*		

REGULATING THE PROFESSION		
Deliverable	**Organisation**	**What is the scope of their role?**
OVERSIGHT *(of the profession)*	SMASO	Provide a representative professional body, with membership having been mandatory for all commission holders since 2011. It has responsibility for - Setting performance standards through a Code of Practice - Managing qualifications, training and CPD - Maintaining an 'online register' of all officers of court *(Refer - Officers of Court's Professional Association (S) Regulations 2011)*
PROCEDURES *(of the profession)*	SMASO	Role is to: - Provide procedures for the profession *(the 1991 rules)* *(Refer - Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991)*
Complaints & Discipline	SMASO	Role is to: - provide a complaints procedure - undertake the initial investigation of complaints - provide a disciplinary procedure - undertake disciplinary actions
Notes: *1 - SMASO - Acronym for the Society of Messengers-at-Arms & Sheriff Officers*		

Scottish Civil Justice Council

POLICY NOTE:

For the:
Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) 2026

The regulatory framework

The services covered within this charging instrument constitute a "coercive enforcement function" that is being delivered on behalf of the state by specialist providers who are required to operate within a regulated market. Within the regulatory framework established by the courts:

- Each specialist provider is licenced by a commission issued by the courts They are required to deliver their services under judicial supervision, and their duty of care is to the court (rather than the consumer).

- Under section 2 (1) (c) (ia) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013, this Council holds the power to regulate the level of fees charged by these specialist providers by proposing draft fees rules to the Court of Session for its consideration and approval.

The pricing methodology

Under the Councils previous pricing model, each charging instrument regulated pricing using multiple columns that listed fixed fee amounts, along with the partial use of reductions and surcharges, and a duplication of the two sets of general regulations carried forward from 2002. That approach resulted in those instruments being perceived as overly complex, far from easy to use, and difficult to update.

This consolidating instrument implements *unit-based charging* as the preferred pricing methodology, with the charges made underpinned by the baseline units of work (per 6-minutes or part thereof) established within this statutory instrument. That approach, combined with adhoc inflation adjustments, provides more transparent pricing for consumers and a more efficient method for use in regulating this market.

Secretariat to the Scottish Civil Justice Council
March 2026

Scottish Civil Justice Council

BUSINESS & REGULATORY IMPACT ASSESSMENT:

For the:
Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) 2026

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

REGARDING: the charges made by "officers of court", as fixed by the SCJC as the regulator of the fees that providers can charge in this small niche market.

LAST UPDATED: **6 March 2026**

Step 1 – POLICY BACKGROUND

The regulation of fees by the SCJC provides but one component of the wider *'regulatory framework'* established by the courts (refer Annex 1)

In doing so the objective is to provide the public with assurance that appropriate *consumer protection* is provided within this regulated market. That requirement arises because the end consumer is the unwilling recipient of a service they did not choose to receive, from a provider they did not select, and at a price they could not negotiate.

The power to regulate the profession

The statutory *'power to regulate'* the profession is held under Part V of the Debtors (Scotland) Act 1987:

> *PART V - MESSENGERS-AT-ARMS AND SHERIFF OFFICERS*
> *Sec 75 - Regulation of organisation, training, conduct and procedure.*
> *Sec 76 - Advisory Council.*
> *Sec 77 - Appointment of messenger-at-arms.*
> *Sec 78 -……*
> *Sec 79 - Investigation of alleged misconduct.*
> *Sec 80 - Courts' powers in relation to offences or misconduct.*
> *Sec 81 - Provisions supplementary to section 80.*
> *Sec 82 - Appeals from decisions under sections 77, 79 and 80.*
> *Sec 83 - ……..*
> *Sec 84 - Collection of statistics from officers of court.*
> *Sec 85 - Measure of damages payable by officer of court for negligence or other fault.*
> *Sec 86 - Official identity card.*
> *Sec 86A Electronic communications*

The power to regulate the fees charged by the profession

The power of the SCJC (as the regulator) to fix the fees charged is held under section 2 (1) (c) (ia) of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013.

The power for the Court of Session to then enact the *draft fees rules* proposed by the SCJC is held under s105 (1) and s106 (1) of the Courts Reform (Scotland) Act 2014.

The reasons to regulate *officers of court* are that:

- They have a statutory monopoly when providing services related to diligence (enforcement) in Scotland
- When providing those service's they are exercising a '*coercive enforcement function'* on behalf of the state.

Given that context the state requires that profession to operate within a regulated market as:

- There is a high potential for market failure given the small size and specialist nature of this market; and
- Each licensed provider is required to deliver their services under 'judicial supervision' and their primary *'duty of care'* is to the court (not the consumer).

The rationale for this intervention

The draft rules consolidate the 2 existing sets of regulations from 2002 and change the pricing methodology to *unit-based charging* to provide a more transparent method for regulating the fees charged. In doing so the policy objectives are:

- *To provide improved transparency* – as breaking the 'fee amount' into its two component parts *(units of work x monetary charge)* improves the ability for both consumers and providers to assess comparability between line items.

- *To better evidence the need for change* – as explicitly stating values as *units of work* can help to identify whether a particular service should be amended or withdrawn. In addition, it can provide fair and reasonable benchmarks for those pricing a new service, or those making comparisons to services provided in other markets.

- *To provide comparable rules* – as the *unit-based charging* methodology has been working as intended for the recovery of judicial expenses[1] since 2019.

- *To adjust for inflation* – by updating the monetary charge to align with the published inflation indices (in August 2025).

- *To facilitate more timely future updates* – as this change in methodology significantly reduces the level of legal and policy input previously required to generate an updated statutory instrument whenever a straightforward request for a fees uplift is made.

[1] *Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 (SSI 2019/75)*

The change in Pricing Methodology

In practice this change to *unit-based charging* means the amount charged for each line item is now narrated in 2 component parts:

- *Schedule 1* – records the baseline *'units'* of work *(in 6-minute periods)* that the Council considers to be reasonable to deliver each service*;* and
- *Section 2* – conveys the *'monetary charge'* considered to be reasonable per *'unit'*.

The formula for the fee amount to be charged is calculated as:

"Fee amount" = "units"" x "monetary charge".

To provide sufficient granularity for billing consumers, and to eliminate adverse effects from rounding, each 60-minute period does need to be divisible by the "unit" as a whole number. Hence the selection of a 6-minute unit. That approach enables the hourly rate to be easily calculated when multiplying that unit by 10 and additionally provides consistency with the approach taken to billing by most law firms.

Public Participation

In May 2025 the Cost and Funding Committee published a Public Consultation on its intention to use *unit-based charging*. The positive feedback received was set out in the Consultation Analysis *(Sep 2025, SCJC)* and the decision to proceed was published in the Consultation Response *(Nov 2025 SCJC)*. The content provided within this Act of Sederunt implements the policy decisions taken.

Sectors and groups affected

The instructing party – will find this change in pricing methodology cost neutral (as the same amount is charged under *unit-based charging* as under the previous pricing methodology).

The recipient of enforcement – will continue to carry the same risk that the amount charged may be added onto their total debt liability under either methodology *(where the law supports an instructing party passing on the costs incurred).*

The following groups do need to be informed of this change in methodology:

- *Messengers-at-Arms and Sheriff Officers.*
- *Judicial Office Holders & Court Officials*.
- *Solicitors & Advocates.*
- *Tax Accountants.*

Benefits

IMPROVED TRANSPARENCY – as specifying the "units" of work for a service better supports both consumers and providers in assessing comparability between line items

IMPROVED EFFICIENCY – as inflation uplifts can be proposed and enacted using a single sentence in a 1-page SSI to amend the "monetary charge" *(avoiding the need to draft a multi-page SSI to achieve the same result).*

Costs

FAMILIARISATION COSTS – as officers of court, legal practitioners, paralegals, and tax accountants etc. will need time to familiarise themselves with the consolidation of the rules within one generic set of general regulations and then update their own guidance materials.

Step 2 – ASSESSMENT OF LIKELY IMPACTS – ON BUSINESS

What feedback has arisen from business engagement?

Prior to making any proposals the secretariat held meetings with SMASO as the representative body for the profession. The subsequent policy decisions taken by the SCJC have been welcomed by SMASO.

Step 3 – ASSESSMENT OF LIKELY IMPACTS – ON COMPETITION

This is a small and specialist niche market with 23 firms employing an estimated 200+ staff.

The full range of services they provide includes *debt collection* and *private investigation* services for private clients, in parallel with the *enforcement* services provided to the courts. At the time of writing 134 of those 200+ employees were licensed to provide *enforcement services* under a commission issued by the judiciary.

Those low numbers represent a high potential for 'market failure' if any one of those 23 firms was to attempt to achieve market dominance by undercharging for its services in the short-term *(until it has driven the key competitors out of the market)* to get to a longer-term position of overcharging *(once they had gained market dominance)*. To counter such a high potential for market failure the state has recognised the need for a regulator.

To support wider screening for competition impacts - the Council uses the checklist of 4 questions recommended by the Competition and Markets Authority (CMA):

Will the measure directly or indirectly limit the number or range of suppliers?

YES – given the high potential for market failure the granting of *'commissions'* is a form of licensing that provides consumer protection, reinforces the requirement to work under judicial supervision, and reinforces that the providers duty of care is to the court.

Will the measure limit the ability of suppliers to compete?

NO – the issuing of *'commissions'* provides 1 element of the consumer protection expected within this market without restricting the ability to compete on other aspects.

Will the measure limit suppliers' incentives to compete vigorously?

NO – the fixing of *'regulated fees'* provides 1 element of the consumer protection expected within this market without restricting the ability to compete on other aspects.

W*ill the measure limit the choices and information available to consumers?*

NO – adopting '*unit-based charging'* will help to protect consumers as it provides an enhanced ability to challenge comparability between the services provided.

Step 4 – ASSESSMENT OF LIKELY IMPACTS – ON CONSUMERS

In practice there are 2 different consumer groups within this regulated market:
- the instructing party *(as the 'intermediate consumer' that pays the fee charged)*
- the unwilling recipient of enforcement *(as the 'end consumer' if that fee is passed on)*

To provide the required level of consumer protection the current *regulatory framework* (refer Annex 1) has evolved over several centuries and 1 element within that framework is the regulation of the fees a service provider (*officer of court)* can charge for:
- Serving a court document.
- Enforcing a court order *(apprehension, ejection, uplift etc).*
- Enforcing a diligence arising from civil proceedings *(attachment / arrestment)*.

To support wider screening for consumer impacts - the Council mirrors the best practice[2] guidance from Scottish Government via these 6 questions:

Does the policy affect the quality, availability or price of any goods or services in a market?

YES – This Act of Sederunt includes a 13% price increase to adjust for inflation and adopts a cost neutral change in pricing methodology *(as the same fee amount would be charged under either pricing methodology)*,

Does the policy affect the essential services market, such as energy or water?

NOT APPLICABLE

Does the policy involve storage or increased use of consumer data?

NO

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

NO – as this is a regulated service only those holding a commission from the judiciary can provide enforcement services.

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

YES – adopting *unit-based charging* provides consumers with an enhanced ability to challenge the comparability of fees (between each service provided).

[2] *https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/*

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

NO – the existing SMASO complaints procedure will continue to apply.

Test run of business forms

Does this proposal introduce new legal Forms that are materially different in style and content to the existing legal forms in general use?

NO

Step 5 – ASSESSMENT OF LIKELY IMPACTS – DIGITAL

Digital Impact Test

To test for relevant digital opportunities - the Council uses these 5 questions from the Scottish Governments best practice[3] guidance:

Does the measure take account of changing digital technologies and markets?

YES – using 6-minute units may facilitate some of the firms in this market reusing software developed for law firms *(for time recording / case management / billing).*

Will the measure be applicable in a digital/online context?

POSSIBLY – whilst some firms may use off the shelf financial software (like Quick Books or Sage) only the larger firms might invest in more complex billing software.

Is there a possibility the measures could be circumvented by digital / online transactions?

NO

Alternatively, will the measure only be applicable in a digital context and therefore may have an adverse impact on traditional or offline businesses?

NO

If the measure can be applied in an offline and online environment will this in itself have any adverse impact on incumbent operators?

NO

Step 6 – ASSESSMENT OF LIKELY IMPACTS – ON REGULATIONS

This Act of Sederunt provides a *"statutory charging instrument"*. In practice that means each of the 23 firms providing enforcement services on behalf of the court:

[3] https://www.gov.scot/publications/business-regulatory-impact-assessment-bria-toolkit/

- Can only charge for a line item if it has been specified within this Act of Sederunt.
- Has no discretion to vary or waive the charges to be made under schedule 1.
- Has no discretion to charge for something not yet listed under schedule 1.
- Must interpret any ambiguity in a charge made under schedule 1 in favour of the consumer *(rather than themselves as the provider).*

*Will the proposal require changes in the **court fee orders**?*

NO

*Will the proposal require changes in the **civil legal aid regulations**?*

NO

*Will the proposal require changes in the **taxation of judicial expenses rules**?*

NO

Enforcement and/or sanctions

Will compliance be enforced and, if so, how?

YES – the SMASO *complaints procedure* and *disciplinary procedure* continue to apply.

Are there sanctions for non-compliance?

YES – the Lord Lyon or a sheriff principal can remove the commission held.

Step 7 – ASSESSMENT OF LIKELY IMPACTS – WITH IMPLEMENTATION

Implementation Plan

These changes will come into effect after the Scottish Election, on the commencement date fixed within the Act of Sederunt when made.

Monitoring

Will the resultant changes be monitored and, if so, how?

YES – the secretariat will monitor for media coverage and requests for amendments.

Will a post implementation review need to be undertaken and, if so, when?

POSSIBLY - if monitoring was toevidence a material level of user dissatisfaction with the changes made, then the secretariat would initiate a Rules Review exercise.

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https://www.legislation.gov.uk/asp/2007/3/contents

Legislation – for regulating the profession

Public Services Reform (Scotland) Act 2010
Schedule 4 – Regulation of Officers of Court – Modification of enactments
https://www.legislation.gov.uk/asp/2010/8/contents

Existing rules for the profession:

Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991 *(23 pages)*
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The last "amending order" enacted reduced the training periods required for qualification:

- *Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) (Amendment) 2024* *(3 pages)*
  https://www.legislation.gov.uk/ssi/2024/157/contents/made

Officers of Court's Professional Association (Scotland) Regulations 2011 *(5 pages)*
https://www.legislation.gov.uk/ssi/2011/90/contents/made

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Courts Reform (Scotland) Act 2014
Sections 105-106 – regulation of fees
https://www.legislation.gov.uk/asp/2014/18/contents

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https://www.legislation.gov.uk/ssi/2002/566/contents/made

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- *Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2024* *(10 pages)*
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+ Business and Regulatory Impact Assessment (BRIA)
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ANNEX 1 – THE "REGULATORY FRAMEWORK"

The regulation of fees by the SCJC provides one element of a wider "regulatory framework" that has evolved over several centuries:

REGULATING THE MARKET		
Deliverable	**Organisation**	**What is the scope of their role?**
MARKET OVERSIGHT	SCJC	Role is to: - regulate the fees charged *(Refer - s105 (1) & 106 (1) of the Courts Reform (S) Act 2014)*
Notes: *1 - SCJC - Acronym for the Scottish Civil Justice Council*		

REGULATING SERVICE DELIVERY		
Deliverable	**Organisation**	**What is the scope of their role?**
JUDICIAL OVERSIGHT	ACMASO	Role is to: - Regulate organisation - Regulate procedure - Regulate conduct & discipline - Regulate appointments, training & qualifications - Keep under review all matters relating to officers of court
	Sheriffs Principal	Role is to grant commissions – sufficient to cover the demand for civil enforcement across the sheriff courts *(Refer - s75 (1) (g) of the Debtors (S) Act 1987 & s8 of the 1991 Rules)*
	Lord Lyon	Role is to grant commissions – sufficient to cover the demand for civil enforcement in the Court of Session *(Refer - s77 of the Debtors (S) Act 1987 & s7 of the 1991 Rules)*
Complaints & Discipline	Sheriffs Principal	Role is to: - hear disciplinary appeals - withdraw a commission *(as the ultimate sanction)*
Official Statistics	AiB	Role is to: - receive data returns from commission holders - compile and publish the Scottish Diligence Statistics
Notes: *1 - ACMASO - Acronym for the Advisory Council of Messengers-at-Arms & Sheriff Officers* *2 - AiB - Acronym for the Accountant in Bankruptcy*		

REGULATING THE PROFESSION		
Deliverable	**Organisation**	**What is the scope of their role?**
OVERSIGHT *(of the profession)*	SMASO	Provide a representative professional body, with membership having been mandatory for all commission holders since 2011. It has responsibility for - Setting performance standards through a Code of Practice - Managing qualifications, training and CPD - Maintaining an 'online register' of all officers of court *(Refer - Officers of Court's Professional Association (S) Regulations 2011)*
PROCEDURES *(of the profession)*	SMASO	Role is to: - Provide procedures for the profession *(the 1991 rules)* *(Refer - Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991)*
Complaints & Discipline	SMASO	Role is to: - provide a complaints procedure - undertake the initial investigation of complaints - provide a disciplinary procedure - undertake disciplinary actions
Notes: *1 - SMASO - Acronym for the Society of Messengers-at-Arms & Sheriff Officers*		