



Law Society
of Scotland

Consultation response

Aarhus National Implementation Report 2021

November 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We welcome the opportunity to respond to the Department for Environment, Food & Rural Affairs' consultation on the *Aarhus National Implementation Report 2021*¹. We have the following comments to put forward for consideration.

General comments

The Aarhus National Implementation Report 2021 discusses aspects of Scotland's implementation of the Aarhus Convention.

Article 3(3) of the Aarhus Convention concerns the promotion of environmental education and environmental awareness among the public, particularly in relation to how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters. The Report (at paragraph 13) discusses the information available on Scotland's Environment website which is stated to "offer a single source of information on the state of the environment". However, we note that there does not seem to be information published by the Scottish Government in relation to the Aarhus rights.

Paragraph 25 of the Report discusses access rights to information under Article 3(8) of the Convention. We note that environmental information appeals against decisions of the Scottish Information Commissioner are made via judicial review in Scotland. In England, the equivalent appeals go to the Upper Tribunal. The appeal process could be altered in Scotland to provide for appeals to go to the Upper Tribunal for Scotland instead of requiring a judicial review. This would be more accessible for appellants and there would be limited threat of adverse expenses.

We note that there remain challenges in relation to ensuring access to justice under Article 9 of the Convention. The topic of protective expenses orders (PEOs) is addressed at paragraph 126 onwards.

¹ <https://consult.defra.gov.uk/eu/aarhus-national-implementation-report-2021/>

Following a consultation by the Scottish Civil Justice Council on PEOs in the Court of Session, a report was issued by the Council in 2017² and updated rules introduced to the Court of Session in December 2018³. These amendments represented the third iteration of the rules since their initial introduction to the Court in 2013.

With that consultation focussing only on the Court of Session, it should be noted that there are other courts, tribunals and indeed public inquiries in Scotland where matters concerning the environment are addressed, but where there are no such analogous rules relating to PEOs. Consideration may need to be given in any further review of the position as to how PEOs might be incorporated into these other courts, tribunals and inquiries to ensure fuller coverage.

For further information, please contact:

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² <https://www.scottishciviljusticecouncil.gov.uk/news/2017/10/31/consultation-report-published--protective-expenses-orders>

³ <https://www.scottishciviljusticecouncil.gov.uk/news/2018/11/27/new-rules-on-protective-expenses-orders-in-environmental-proceedings>