



Scottish
Civil Justice
Council

RESPONDENT INFORMATION FORM

For the PUBLIC CONSULTATION on extending the availability of PEOS

Please note **this form must be completed** and returned with your response.

Are you responding as an individual or an organisation?

☐ INDIVIDUAL

☒ ORGANISATION

Your details:

Your full name or your organisation's name:

Our Seas Coalition

Phone number:

Address:

51 Atholl Road, Pitlochry

Postcode:

PH16 5BU

Email Address:

info@ourseas.scot

Your views on the publication of your response

Please indicate your preferences with regard to the publication of your response:

☒ Publish response with name

☐ Publish response only (without name)

☐ Do not publish response

Providing your response

If you have chosen to provide a separate written response, then please complete the first page of this Respondent Information Form and attach it to your response.

If you wish to include your responses within this Respondent Information Form, please insert your responses to each consultation question in the (expandable) boxes below:

Section 4 - Extending PEOs to the Sheriff Courts:

Question 1 – Do you agree that the ability to seek a PEO should now be extended to the sheriff court for the summary applications that can arise under the Environmental Protection Act 1990? If not why not?

Yes, we agree.

Question 2 – Do you have any concerns or suggested changes to the wording of the proposed cost protection rules as set out in the new Part LV of the Summary Application Rules?

3.55.3 Applications for protective expenses orders

We recommend that:

- the draft rule 3.55.3(3)(a)(ii) (the requirement to disclose the terms of representation for a PEO applicant is deleted.

- The draft rule 3.55.3.(3)(a)(iv) (the requirement for a PEO applicant to estimate their liability for adverse expenses) is deleted

3.55.5 Terms of protective expenses orders

Draft rule 3.55.5 (1)(a) should be changed to the effect that the £5000 cap can only be decreased

Draft rule 3.55.5(1)(b) should be deleted so that PEOs do not impose a limit on the ability of a PEO applicant to recover their expenses from their opponent.

3.55.6 Expenses of application

We recommend that draft rule 3.55.6 be changed so that a PEO application has no liability for any expenses relating to their PEO application.

3.55.7 Expenses of interveners

We recommend that that the wording “except on cause shown” is deleted from the draft rule 3.55.7.(1) and that draft rule 3.55.7(2) is deleted.

Question 3 – Other than summary applications; are there other types of actions raised within the sheriff court where you think lodging a motion for an *Environmental PEO* should be an option? If so please provide examples?

To achieve compliance with the Aarhus Convention, we recommend that the ability to apply for a PEO is extended to private nuisance litigation and any other litigation which falls within the remit of Article 9.

Section 5 - Extending PEOs to the Sheriff Appeal Court:

Question 4 – Do you agree that the ability to seek a PEO afresh, or to have one carried forward, should be extended to the Sheriff Appeal Court? If not why not?

We agree that the ability to seek a PEO afresh, or to have one carried forward, should be extended to the Sheriff Appeal Court.

Question 5 – Do you have any concerns or suggested changes to the wording of the proposed rules as set out in the new SAC Chapter 28A?

Our answers mirror those set out in response to question 2

28A.3 Applications for protective expenses orders

We recommend that:

- the rule 28A.3.(3)(a)(ii) (the requirement to disclose the terms of representation for a PEO applicant is deleted.

- The rule 28A.3.(3)(a)(iv) (the requirement for a PEO applicant to estimate their liability for adverse expenses) is deleted

3.55.5 Terms of protective expenses orders

Rule 28A.5 (1)(a) should be changed to the effect that the £5000 cap can only be decreased

Rule 28A.5(1)(b) should be deleted so that PEOs do not impose a limit on the ability of a PEO applicant to recover their expenses from their opponent.

3.55.6 Expenses of application

We recommend that rule 28A.6 be changed so that a PEO application has no liability for any expenses relating to their PEO application.

3.55.7 Expenses of interveners

We recommend that that the wording “except on cause shown” is deleted from rule 28A.7.(1) and that rule 28A 7(2) is deleted

Section 6 - Amending PEOs in the Court of Session:

Question 6 – do you agree that the current ability to seek a PEO within the Court of Session should also be available to a multiparty action initiated under Group Procedure? If not why not?

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We agree that the current ability to seek a PEO within the Court of Session should also be available within a multiparty action initiated under Group Procedure.

Section 7 – The potential future rule changes:

Question 7 – do you have a view on whether rule 58A.7 should continue to support the court increasing the caps upwards by exception, or whether that reference to “on cause shown” should be deleted so that this rule reverts to using “fixed maximum sums”?

Rule 58.A.7.(1)(a) should be amended so that the £5000 cap is a fixed maximum sum which can be reduced on cause shown

Rule 58.A.7.(1)(b) should be deleted so that PEOs do not impose a limit on the ability of a PEO applicant to recover their expenses from their opponent.

Question 8 - do you have a view on whether rule 58A.5 should continue to require applicants to provide information on the terms on which they are legally represented, or whether section (3) (a) (ii) should be withdrawn?

Rule 58A.5(3)(a)(ii) should be deleted.

Question 9 - do you have a view on whether rule 58A.5 should continue to require applicants to provide an estimate of the likely expenses that could be awarded against them, or whether section (3) (a) (iv) should be withdrawn?

Rule 58A.5(3)(a)(iv) should be deleted.

Question 10 – Do you have any other suggested improvements regarding the PEO Rules, over and above those already raised directly with the Council or indirectly via the compliance committee?

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PEO rules should be amended to ensure that PEOs carry over to applications for permission to appeal to the UK Supreme Court by default.

A standardised PEO application form should be adopted.

Section 8 - Confirming the 3 amendments made in 2024:

Question 11 – do you agree with the rule change made that makes provision for confidentiality to be sought within a motion for a PEO?

Yes

Question 12 – do you agree with the rule change made that supports carrying a PEO over on appeal in the same manner regardless of who is appealing?

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Yes

Question 13 – do you agree that it is useful for rule 58A.10 to replicate the information from case precedent regarding intervener’s expenses?

Yes