

Scottish Courts and Tribunals Service



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Dear Sir/ Madam,

Protective Expenses Orders – Consultation Response

Dear Sirs,

I refer to the above consultation to which I respond on behalf of the Scottish Courts and Tribunals Service (SCTS). The response is submitted by the SCTS acting in its role to provide efficient and effective administration to the courts and tribunals and does not include the views of the Judiciary.

As indicated in our previous response of 7 November 2025, the SCTS supports improving Aarhus compliance through the extension of PEOs to the Sheriff Appeal Court (SAC) and sheriff courts. We have set out some observations below on the operational impacts which may arise from the proposed rule changes.

Amendment of Court of Session Rule 58A.7 – Concern E (Court Fees)

We understand that the intention of the proposed amendment is to reduce confusion where a party is required to submit an account of judicial expenses. However, we consider that the amendment may have the opposite effect, particularly in light of the court fee exemptions that apply in these types of proceedings.

We consider the Auditor of the Court of Session is already well accustomed to considering issues relating to court fees and fee exemptions when auditing accounts of expenses. Introducing additional provision within Rule 58A.7 risks creating unnecessary complexity and potential confusion, without providing any clear practical benefit. In our view, the existing processes are sufficient to ensure that fee exemptions are appropriately considered when expenses are assessed.

The proposed expenses caps

As we understand the proposal, the introduction of an expenses cap would not affect the operational conduct of court proceedings. Cases would continue to progress through the court in the normal manner unaffected by the proposed cap. The cap would only become relevant at the point when a decision on expenses falls to be considered. Accordingly, we do not envisage any impact on the management or progression of proceedings, nor do we anticipate situations where an appellant would seek to halt or alter their participation in proceedings on the basis that they had exhausted the monetary limit part-way through a case. In our view, the proposal concerns the allocation and recovery of expenses at the conclusion of proceedings.

We would appreciate some clarity of how any proposed cap would operate with Simple Procedure and whether any statutory caps applying to Simple Procedure claims would not apply to environmental/ Aarhus Convention-related cases.

Fees Orders

We consider the Court of Session Fees Order 2026 may benefit from clarity. In relation to exemptions for certain proceedings relating to the environment, the fees order sets out:

“The fees provided for by this Order are not payable by a person in...”.

It remains unclear to the SCTS whether both the appellant and the respondent(s) are eligible to claim exemption.

We consider if the proposed rule changes will exclude group proceedings then further wording with the relevant Court of Session Fees Order may also require amendment. Other Fees Orders may also require attention in relation to Aarhus exemptions.

Determining Fee Exemption

Fee exemptions for Aarhus Convention-related cases were introduced in July 2022. From an operational perspective, responsibility for determining whether an exemption applies currently rests with SCTS administrative staff at the point an action is lodged with the court. This is an administrative process undertaken without judicial input. As SCTS staff are not legally qualified, it may not always be immediately apparent from the initiating documents whether a case falls within the scope of the Aarhus Convention and therefore qualifies for the relevant fee exemption.

We therefore wonder whether there would be merit in introducing a procedural requirement similar to that contained in [Court of Session Rule 47.3](#). In Aarhus Convention-related cases, the pursuer could be required to include a statement immediately below the words "IN THE COURT OF SESSION" where they appear above the instance, and on the backing of the summons and any copy of it, confirming that the proceedings are Aarhus Convention-related. Such an approach would assist court staff in identifying cases to which the fee exemption may apply, promote consistency of practice, and reduce the risk of exemptions being overlooked. A similar requirement could also be considered in relation to the Sheriff Appeal Court and Sheriff Court rules discussed elsewhere in the consultation paper.

A similar approach might be helpful for initiating documents in the appeal courts for those documents to include an averment that a PEO has been made in the lower court.

Amendment of the Sheriff Appeal Court Rules 2021

We note within the proposed rule changes there are various references to hearings taking place “in chambers”. There are further references to determinations being made “in chambers without appearance”. From a practical perspective Appeal Sheriffs do not have access to chambers. If a hearing was to be convened it would require to call in a courtroom which would seem to go against the requirements within

proposed rule 28A.4(3). We feel it would provide operational clarity if the rules simply set out when hearings may call in private.

In our previous response we were supportive of relying on existing motion procedure within the Sheriff Appeal Court with existing rule Chapters 12 to 14 applying. It is not clear how what is proposed in draft rule 28A.4 interacts with those chapters.

Given the supreme court estate it may be beneficial to avoid the use of 'chambers' at all, including in the Court of Session Rules. We wonder if 'in private' or 'on the papers' would suffice.

Amendment of the Sheriff Court Rules

Amendment of the Summary Application Rules – we do not consider rule 3.55.4 to be necessary if standard motion rules are to apply. This approach risks creating inconsistency and confusion and would require additional changes to SCTS case management systems, with associated costs.

Amendment of the Simple Procedure Rules – it is not clear why the approach for Simple Procedure is substantially different to other rules of court in that an application for a PEO is made within the initiating document rather than later in the proceedings. If an application for a PEO is made in the claim form this will require additional IT changes to both our civil case management system and the Civil Online platform. We consider once a claim was disputed the claimant could seek a PEO by way of an Additional Orders Application at that point.

The SCTS is content for this response to be published. We would be grateful to be kept informed of the progress of this work and welcome the opportunity to contribute to any future impact assessment, financial memorandum or legislative proposals should the policy be taken forward.

Yours faithfully

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