

**Case Update – 26 September 2024**

**Consideration of Scotland’s implementation of the requirements of the Aarhus Convention in respect of access to justice in environmental matters**

**Case ID: IESS.22.017**

The Aarhus Convention (the convention) requires that access to justice in environmental matters should not be prohibitively expensive. The convention has a Compliance Committee (‘the Compliance Committee’) which has, on multiple occasions, found that the United Kingdom has not achieved full compliance with this requirement with respect to Scotland. Decision VII/8s<sup>1</sup> established a deadline of 1 October 2024 to address the identified deficiencies in access to justice.

Environmental Standards Scotland (ESS) previously considered a representation regarding this continued non-compliance with the convention and published its case summary report in December 2022.<sup>2</sup> ESS decided to close the case and monitor the ongoing work of the Scottish Government (SG) and the Scottish Civil Justice Council (SCJC). Based on discussions with SG and SCJC, ESS anticipated that, by autumn 2023, there would be greater clarity on proposed improvements to access to justice, as it was expected that the following would be completed by this time:

- SG’s environmental governance review
- the consultation for a Human Rights Bill which proposed a human right to a healthy environment

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<sup>1</sup> [Economic Commission for Europe – ECE/MP.PP/2021/42 \(unece.org\)](https://www.unece.org/economic/commission/ece/mp/pp/2021/42)

<sup>2</sup> [ESS Case Summary Report: Access to Environmental Justice - IESS.21.017.pdf \(environmentalstandards.scot\)](#)

- a progress report to the Compliance Committee by 1 October 2023 on measures taken towards addressing the outstanding recommendations
- SCJC’s review of the Protective Expense Order (PEO) regime and the changes of court rules

On that basis, ESS indicated that it would re-visit the issue in autumn 2023. This review of progress led ESS to re-engage with SCJC, with particular focus on the proposed changes to the PEO regime in the Court of Session. ESS also monitored developments in relation to SG’s review of environmental governance and the Human Rights Bill. It responded to SG’s consultations on both topics.

In its previous Case Summary Report, ESS undertook to communicate its position on progress ahead of the Compliance Committee’s October 2024 deadline.

ESS notes the following factors:

- 1) SG has not yet completed its review of environmental governance. It consulted on its ‘Report into the Effectiveness of Governance Arrangements’ in June 2023<sup>3</sup>. It has not yet published the results of the consultation, a summary of views expressed or any recommendations in response to those views.
- 2) SG’s 2024-2025 Programme for Government<sup>4</sup> does not include a Human Rights Bill. Correspondence between the Cabinet Secretary for Social Justice and the Scottish Parliament’s Equalities, Human Rights and Civil Justice Committee suggests that a Human Rights Bill will not be introduced during the current parliamentary session.<sup>5</sup>

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<sup>3</sup> [Report into the Effectiveness of Governance Arrangements, as required by section 41 of the UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021 \(www.gov.scot\)](#)

<sup>4</sup> [Programme for Government 2024-25: Serving Scotland - gov.scot \(www.gov.scot\)](#)

<sup>5</sup> [Letter from the Cabinet Secretary for Social Justice, 4 September 2024 \(parliament.scot\)](#)

- 3) In its review of environmental governance, SG stated its intention to bring forward legislative reform in legal aid during this parliamentary session (which would consider extending legal aid availability to ‘legal persons’ such as non-governmental organisations). SG’s 2024-2025 Programme for Government does not include any legislative proposals for legal aid reform.
- 4) Following ESS’ scrutiny of the changes to the PEO regime in the Court of Session, the associated Scottish Statutory Instrument<sup>6</sup> (SSI) and other documents provided by SCJC, ESS observes that the SSI delivers some improvements in access to justice. However, ESS remains concerned that these changes to the PEO regime will not resolve all the outstanding issues identified by the Compliance Committee.

In its October 2023 progress report to the Compliance Committee<sup>7</sup>, the UK Government indicated that measures such as SG’s review of environmental governance, the Human Rights Bill and legal aid reform would all improve access to justice in Scotland. However, given the factors noted above, the only tangible progress – the SSI with changes to the PEO regime – while welcome, does not appear sufficient to resolve all the outstanding issues identified by the Compliance Committee.

The United Kingdom’s second progress report to the Compliance Committee will be published in the near future. Following this, the Compliance Committee will likely publish a further review of progress.

ESS will await the outcome of SG’s review of environmental governance and will consider the United Kingdom’s next progress report and, potentially, any subsequent

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<sup>6</sup> The new rules are contained within [the Act of Sederunt \(Rules of the Court of Session 1994 Amendment\) \(Protective Expenses Orders\) 2024](#), which come into effect on 1 October 2024

<sup>7</sup> Department for Environment Food & Rural Affairs United Kingdom Progress Report to Aarhus Compliance Committee – July 2023 to September 2023 (unece.org)

communication from the Compliance Committee. ESS will report on these in detail when appropriate.