

**PE1372/J**

Justice Directorate  
Legal System Division



Anne Peat  
Clerk to the Public Petitions Committee  
TG.01  
The Scottish Parliament  
Edinburgh  
EH99 1SP

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Dear Anne

### **PETITION 1372 – ACCESS TO JUSTICE IN ENVIRONMENTAL CASES**

Thank you for your letter of 18 July 2011 in which you asked for the Scottish Government response to the petitioner's written submission PE1372/H of 22 February 2011.

You will find a response to each of the petitioner's points below. Firstly, however, I would like to inform the Committee that the Scottish Government intends to issue a consultation paper later this year on the codification of the court rules on protective expenses orders. We are currently giving consideration to the terms of the consultation, and the matters raised in Petition PE1372 will be taken into account in developing the proposals for consultation.

- **The costs of litigation in judicial review of environmental decisions.**

As indicated in the Scottish Government's previous responses to the Committee, the Scottish Government intends to take forward a number of initiatives in relation to public interest litigation, of which environmental litigation forms part.

In addition to consulting on protective expenses orders, Sheriff Principal Taylor's independent Review of Expenses and Funding of Civil Litigation in Scotland will consider the costs and funding of public interest actions as part of its remit. This will include environmental actions. In terms of how it will consider these matters, the review will be looking to draw on the experience and expertise of those involved in public interest actions.

The review will be carrying out a consultation exercise later in the year, where those with an interest will be able to contribute. The consultation paper will be made available on the review's website [www.taylorreview.org](http://www.taylorreview.org), together with details of how to respond.

- **What progress is the Scottish Government making in ensuring access to justice in the Sheriff Courts?**

The petitioner has expressed concern that the Scottish Government's previous correspondence has focussed on proceedings in the Court of Session and not the sheriff court. The access to justice obligations under the Aarhus Convention are met by the availability of judicial review by the courts. Judicial review proceedings may only be brought in the Court of Session.

- **Deferring to the Court of Session Rules Council means that the question of inexpensive access to justice in environmental cases will remain subject to judicial discretion**

As noted above, since I last wrote to the Committee, the Scottish Government has decided to undertake a consultation exercise later this year on the codification of the rules regarding protective expenses orders. These would set limits to judicial discretion. It is intended to present the outcomes of that consultation to the Court of Session Rules Council in early 2012 to assist with the development of the rules.

- **Examples of how Scotland complies with Article 9(3) of the Aarhus Convention?**

Article 9(3) of the Convention provides that members of the public should 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."

In Scotland, this obligation is met by judicial review. Moreover, for individuals civil legal aid is available in relation to environmental issues, provided that the statutory eligibility criteria are met: applicants must qualify financially, must have a legal basis for their case and it must be reasonable in the particular circumstances of the case that legal aid is provided.

The Scottish Government is satisfied it complies with the Aarhus Convention. As stated in my response to the Committee of 11 January 2011, no legal challenge made on the grounds of non-compliance has been successful.

I hope the Committee finds the information in this letter, the terms of which have been cleared by the Cabinet Secretary for Justice, of assistance in its further consideration of the petition.

**ROBERT SANDEMAN**

Head of Courts and Legal Services Reform