Environmental Law Centre Scotland

Friends of the Earth Scotland

Response to Defra's consultation on the UK's Implementation Report to the Meeting of Parties to the UNECE Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

25 October 2013

General Comments

Friends of the Earth Scotland (FoES) and the Environmental Law Centre Scotland (ELCS) are working together for improved access to justice in environmental in Scotland and it is with this in mind that our response is framed. We very much welcome the opportunity to respond to the consultation paper.

We wish to raise our concern with the brevity and UK bias of the consultee list. In fact, it appears from this list that not a single Scottish or Northern Irish organisation has been contacted by Defra regarding this consultation (other than FoES who specifically sought out such contact) which is both ironic and very worrying given the subject.

We note the inconsistent and unbalanced approach to presenting matters that are largely common across the three jurisdictions of the UK, and those that are specific to each whether under devolution settlements or as a result of historic differences in the separate legal systems. Given that environment and the justice system is devolved in Scotland, most of the information relating to Scotland will relate solely to Scotland. There is little acknowledgement of these differences, and considerably less detail on Scottish and Northern Irish specific issues in this draft report. Little of the information relates to the UK as a whole. Accordingly, we would suggest that the information on each of the separate states within the UK are in clearly marked paragraphs, so that it is clear what information to each state within the UK.

We consider that the Scottish Government is in fundamental breach of its access to justice obligations not only under the Public Participation Directive, but also under the third Pillar of the Aarhus Convention as a whole, and that this has a knock on effect on the performance of other Aarhus obligations, since there is little credible threat of legal action from citizens wishing to challenge decisions adversely impacting on the environment.

XXVIII. LEGISLATIVE, REGULATORY AND OTHER MEASURES IMPLEMENTING THE PROVISIONS ON ACCESS TO JUSTICE IN ARTICLE 9

86. We welcome the landmark 2011 ruling in *Axa v Lord Advocate and others*,[1] when the UK Supreme Court (UKSC) replaced the restrictive Scots' Law test of 'title and interest' to sue with the

[1] http://www.supremecourt.gov.uk/decided-cases/index.html

broader 'sufficient interest'. We note that the UKSC stated in this case that the development of public law in Scotland had been severely hindered by decades of judge-made law, strongly implying need for further reform.

87. The Scottish Courts have not been quick to apply the new test of sufficient interest, nor do they seem keen to apply it as fulsomely as is the practice in England and Wales. In *Walton v Scottish Ministers,*[2] the Court of Session's Inner House questioned not only his standing as a person aggrieved under statutory provisions in the Roads (Scotland) Act 1984, but expressed the view that he would not have had sufficient interest to take a judicial review on the same matter. On appeal the UKSC robustly criticised these comments. In doing so, the court made it clear that legal challenges to important decisions and acts by public authorities are a vital means of upholding the rule of law, and emphasised the importance of individuals and NGOs taking cases on behalf of the environment. [3]

In *McGinty vs Scottish Ministers*, the Inner House overturned a ruling from the Outer House which had found against the petitioner on standing. However, the Inner House indicated that it considered that petitioners ought to demonstrate sufficient interest on each individual argument in a case, rather than adopting the more expansive interpretation of the English and Welsh courts where legal standing is granted on grounds of public interest and is looked at more generally.

88. We accept that the low numbers of judicial review cases are partly accounted for by administrative review under statutory environmental appeals, but dispute this in relation to the planning system. There is no third party right to appeal under the planning system in Scotland (nor England, Wales and N. Ireland), yet it is through the planning system that most individuals and communities come into contact with environmental regulation. The Aarhus Convention and the Public Participation Directive establishes rights of review for individuals, communities and NGOs yet it is these very groups who are excluded from the right to appeal under the current planning system, leaving judicial review as the only right to review, as a last resort and a very expensive and limited right at that.

89. The draft fails to include a link to further information on the court system in Scotland.

Aricle 9, paragraph 1

91. We note that there is a low level of requests under the Environmental Information (Scotland) Regulations 2004.[4] Further, it is our understanding that the Citizens Advice Bureau is not geared towards assisting with such cases.

Article 9, paragraph 2 and 3

94. We re-iterate comments at paragraph 87.

Article 9, paragraph 4

[2] http://www.scotcourts.gov.uk/opinions/2012CSIH19.html
[3] www.supremecourt.gov.uk/docs/uksc-2012-0098-judgment.pdf
[4] Scottish Information Commissioner, 2012/13 Annual Report Upholding the Right to Know, p11 "We still receive relatively few appeals concerning requests for environmental information. It is unclear whether this is due to requesters not realising they can make such requests, or whether it is authorities failing to recognise requests that should be dealt with under the Environmental Information (Scotland) Regulations 2004 rather than FOI (or both)."

98. The fee to petition the Court of Session rose from £191 to £197 in April 2013.[5] It will rise again to £202 in April 2014. We note that the Scottish Government plans to introduce a leave stage for permission to petition the Court of Session for judicial review and consequently we anticipate the fee for petitioning the Court will be compulsory. The draft implementation report fails to mention any sums in relation to other court fees payable in the UK jurisdictions other than the initial fee to petition. In Scotland, where (as the report rightly notes at paragraph 106) the Scottish Government is moving towards a policy of full cost recovery, fees in the Court of Session are set to double by 2014.

We consider that the policy of full cost recovery will have a serious impact on parties seeking access to justice under the Aarhus Convention, because the complexity of environmental cases and a lack of specialization in the judiciary means environmental judicial reviews tend to require lengthy hearings, and fees include an hourly rate for time in court. Fees for the Court of Session are already very expensive – prohibitively so for the ordinary person – particularly in relation to the time spent in court in judicial review cases.

For example in *McGinty* the Outer House hearing took 18 hours, which we estimate would incur costs of approximately £1,620 for the hearing alone; in *Walton* hearings in the Outer House lasted for 22 hours, and in the Inner House for 18 hours amounting in our estimate to £5,580. Under the new regime, McGinty's costs for time spent in court alone would double to £3,240 in 2014; and Walton's more than double to £12,060.

Because of the restrictions on legal aid in environmental cases (as outlined in response to 106), it follows that such cases are highly unlikely to secure an exemption from court fees on the basis of legal aid.[6]

106. We question the phrasing and sentiment of the statement that "it is not appropriate for the general public to bear the cost of resolving civil disputes" particularly in light of Advocate General Kokott's recent opinion in *European Commission v United Kingdom* in relation to the importance of greater equity of arms in civil actions against public authorities.[7]

We strongly dispute the assertion that "access to justice is assured through the continuing provision of legal aid …". While recent reforms in Scotland mean that more adults now qualify for civil legal aid purely in financial terms,[8] applying for legal aid is an increasingly complex and time consuming process. In addition, the first type of legal aid – advice and assistance – has more restrictive

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[5] http://www.scotcourts.gov.uk/rules-and-practice/fees/court-of-session-fees

[6] The granting of a legal aid certificate (together with some other exemptions in terms of receipt of certain benefits) give an exemption from the payment of a court fee

[7] Case C 530/11 European Commission v United Kingdom of Great Britain and Northern Ireland:

> "74. In actions brought against public bodies, no true equality exists from the outset as those bodies generally have much greater resources at their disposal than the persons covered by Article 10a of the EIA Directive and Article 15a of the IPPC Directive. To that extent, therefore, a one-way protective costs order is simply an initial step towards establishing equality of arms.
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> "75. Furthermore, actions of that kind ultimately involve an interest common to both parties, namely, ensuring that the law is upheld. A public body which is unsuccessful in proceedings before a court because its decision under challenge proves to be unlawful does not deserve protection in relation to litigation costs comparable to that afforded to an applicant. It was, of course, the public body's own unlawful act that prompted the action to be brought.
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> "76. Finally, under the Aarhus Convention particular emphasis is placed on the public interest in upholding the law. (45) That interest prohibits, at least in the proceedings covered by Article 10a of the EIA Directive and Article 15a of the IPPC Directive, detriment to an instrument such as the conditional fee agreement which can help an applicant to avoid prohibitive costs for his own representation.
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> "77. Moreover, that objective of the Aarhus Convention serves to refute the argument of the United Kingdom in relation to the limited resources of the relevant authorities. It is admittedly the case that funds spent by the authorities on legal proceedings cannot be used to fulfil their primary tasks. However, the Convention accepts this. That is also appropriate since the judicial enforcement of environmental law or the risk of a legal challenge forces the authorities to exercise particular care in applying the law in this area."

[8] http://www.slab.org.uk/getting_legal_help/Extended_eligibility.html

financial criteria than civil legal aid. As a result, there is more limited access to a solicitor to obtain initial advice and help on environmental issues. We note that Advocate General Kokkot has criticised means testing of legal aid in the UK.[9]

But the real problem with legal aid in relation to our obligations under the Aarhus Convention is that the system has granted very few awards[10] of legal aid for environmental cases and effectively prohibits aid for public interest cases, which most Aarhus challenges are. When deciding whether to grant legal aid, under Regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002,[11] the Scottish Legal Aid Board (SLAB) looks at whether 'other persons' might have a joint interest with the applicant. If this is found to be the case SLAB must not grant legal aid if it would be reasonable for those other persons to help fund the case. Further, the test states that the applicant must be 'seriously prejudiced in his or her own right' without legal aid, in order to qualify.[12]

These criteria strongly imply that a private interest is not only necessary to qualify for legal aid, but that a wider public interest will effectively disqualify the applicant. This has a particularly adverse effect in relation to Aarhus cases; environmental issues by their very nature tend to affect a large number of people. In fact, it would appear impossible to obtain legal aid on an environmental matter that was purely a public interest issue. We consider that removal of Regulation 15 is essential for Aarhus – and Public Participation Directive – compliance.

This situation is exacerbated by the Scottish Legal Aid Board's recent introduction of a system whereby all the expenses of the case to be covered by legal aid (including Counsel's fees, solicitors fees and outlays) will be capped at £7,000. We think that £7,000 is an unrealistic figure to run a complex environmental judicial review. While applications can be made to increase the cap, this system is likely to further lessen the number of solicitors willing to act in this area as they run the risk of incurring liability for counsel's fees and outlays which are not covered by the level of the cap particularly in a fast moving litigation, when it can be difficult to anticipate all costs in advance.

Moreover, while environmental cases tend to affect more than one person, community groups cannot apply for legal aid in Scotland. By contrast, England and Wales has a system that allows the joint funding of a case, where the Legal Services Commission grants legal aid to an individual subject to a wider community contribution, based on what the community group can pay. By their very nature environmental cases tend to affect a large number of people, therefore it makes sense to provide for joint applications. It is also a more sensible use of public money than potentially funding multiple individual cases and, in cases against public authorities, defending those actions.

Lastly we are aware of difficulties that arise due to the restrictions on protection from liability for expenses under the Legal Aid (Scotland) Act 1986. Generally in Scotland someone with a full legal aid certificate will have any liability for expenses modified unless they have acted in a manner which

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[9] Case C 530/11 *European Commission v United Kingdom of Great Britain and Northern Ireland*: "29. For example, the United Kingdom has a legal aid scheme but does not deny the fact that associations cannot apply for legal aid (13) and that legal aid is means tested. As associations and individuals with the capacity to pay (14) must also be protected against prohibitive costs, this instrument is inadequate to ensure costs protection."

[10] In correspondence with the Scottish Parliament's Public Petitions Committee (regarding FoES petition on Aarhus compliance), SLAB indicated that in a three-year period (2008-2011) only two environmental cases where Regulation 15 was considered had been granted legal aid (http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/40063.aspx). In the same period, three cases had been refused Legal Aid citing Regulation 15, and all were environmental cases. Correspondence with SLAB in April 2012 confirmed that two of the three cases refused were later granted on appeal, and by that point a further award of Legal Aid had been granted in a case where Regulation 15 was relevant, amounting to a total of 5 cases granted over a 4 year period. We consider that it is likely most of these cases had a strong private interest. To the best of our knowledge, only one of these grants was in a public interest matter, and this was when the case was on appeal, at which point SLAB somewhat arbitrarily decided that Regulation 15 did not apply to the appeal proceedings. It is not clear on what basis this decision was made, but it may be cited as an example of legal aid being available for public interest cases. A seperate Freedom of Information request confirmed that in the last 5 years the Scottish Government had not had any discussions with the Scottish Legal Aid Board on the impact of Regulation 15 in environmental cases.

[11] http://www.legislation.gov.uk/ssi/2002/494/regulation/15/made

[12] For a more detailed dissection see Frances McCartney, 'Public interest and legal aid' Scots Law Times, Issue 32: 15-10-2010

has prolonged or increased the costs of the litigation. However, these provisions do not apply to someone who has not been granted full legal aid certificate and thus is not designed as an 'assisted person' for the purposes of the legislation. This again has a 'chilling effect'; given the uncertainties over obtaining legal aid in environmental cases, many persons would be reluctant to raise proceedings until full legal aid is granted. However, this can mean that there are months of delay before a case is raised, which in turn only adds more uncertainty for the public authority and developer.

108. We acknowledge that the Scottish Courts have discretion regarding the award of costs in individual cases, however, such decisions come at the end of proceedings and therefore cannot mitigate for the chilling effect of the prospect of having to pay high costs.

Further the Lord President, Lord Gill, has indicated his reluctance to limit expenses after the event. In ruling on the respondent's motion for expenses in *Uprichard v Fife Council*, Lord Gill (then Lord Justice Clerk), noted:

"*Those who challenge decisions of this nature enter into litigation with their eyes open. They have to expect that if they should fail, the normal consequence will be that they will be liable in expenses. It would be reckless for a litigant to embark on a case of this kind in the hope that if he should fail, the court would relieve him of his liability for the expenses that he caused thereby. It is significant that the applicant was not deterred from raising this application by the possible extent of her liability should she fail*."[13]

111 – 113. Protective Expenses Orders (PEOs) are one way of tackling the issue of prohibitive expense in environmental cases, as they can provide some certainty and clarity in relation to costs from an early stage. The Scottish Government has recently – and reluctantly – codified rules of court on Protective Expense Orders in response to infraction proceedings from the EU;[14]however, in light of issues with accessing legal aid and increases in court fees the new rules of court are of limited value.

Recent rulings from the CJEU confirm that the requirement for proceedings to be 'not prohibitively expensive' applies to all costs arising from engaging in judicial proceedings.[15] Therefore, PEOs cannot be viewed in isolation. Should an individual or community lose a case they would additionally be liable for their own sides' fees that could amount to tens of thousands of pounds. Under this regime, the Government considers at least £30,000 – the level at which a presumptive cross-cap has been set – in addition to the PEO.

In *Edwards*, the CJEU further finds that "the cost of proceedings must neither exceed the financial resources of the person concerned nor appear, in any event, to be objectively unreasonable".[16] Given that the average (median) annual earnings in the UK is £21,473[17] we consider the prospect of paying out £35,000 is undoubtedly prohibitively expensive for most individuals, and therefore the presumptive levels of cap and cross-cap are too high, particularly in light of difficulties in accessing legal aid.

Even in itself the presumptive cap of £5,000 for petitioners is in our opinion too high. Based on the experience of the Environmental Law Centre Scotland, the sum of £5,000 would be difficult if not impossible for many community groups to find, let alone individuals. Evidence suggests that deprived communities suffer from the brunt of poor environmental decision making, with people

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[13] http://www.scotcourts.gov.uk/opinions/2011CSIH77.html, para 14
[14] The rules of court are at http://www.legislation.gov.uk/ssi/2013/81/made.
[15] *R Edwards v Environment Agency* http://www.bailii.org/eu/cases/EUECJ/2013/C26011.html and Advocate General Kokott's opinion in Case C 530/11 *European Commission v United Kingdom of Great Britain and Northern Ireland.*
[16] *Edwards* 40-41
[17] ONS Annual Survey of Hours and Earnings, 2012 Provisional Results http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-280149

living in deprived areas in Scotland suffering disproportionately from industrial pollution, poor water and air quality, [18] therefore such a limit would disproportionately impact on these communities.

We are concerned with the presumption under the Scottish expenses regime that litigants are either able to fund their own solicitors or that solicitors and counsel are prepared to work on a speculative, or no-win no-fee, basis. In our experience this is not the case. There are relatively few judicial review cases and generally a poor success rate for Petitioners. Very few solicitors work in the field and speculative or no-win no-fee cases will only operate in a market where there are a high turn over of cases, with the opportunity for the solicitors and advocates (barristers) to have sufficient 'wins' to cancel out the lost cases.

While we object to the level of the £5,000 cap, and the principle of an automatic cross cap (which was also criticised by the Advocate General in *EU v UK*), we note that petitioners will be able to apply to lower the £5,000 cap and increase the cross cap. We assume the requirement for certainty as to potential adverse liability (as required by Case C-427/07 *Commission v Ireland*) can be assured in this situation as petitioners have certainty as to their maximum adverse costs liability. However, while the rules do not enable the respondents to challenge the level of either cap, nor do they expressly forbid it. Therefore, it is not clear whether respondents would be permitted to challenge a petitioner's application to alter the level of either cap. This possibility clearly detracts from the ability of the system to provide the certainty required by EU law.

While it is encouraging that respondents are not able to require petitioners to disclose their means, it is not clear whether the Court is able to require such disclosure, and whether it has any discretion in granting a PEO based on a petitioners means, for example in relation to lowering the cap or raising the cross cap.[19] We are very concerned about the prospect of petitioners being required to disclose their means to the court under any circumstances, and point to *Walton*, where the petitioner disclosed his financial means in court and a national newspaper published his salary on its front page.

Further we are concerned that the rules apply only to individuals and 'non-governmental organisations promoting environmental protection'; and specifically preclude individuals representing an unincorporated body.[20] This provision would exclude an appellant such as William Walton, who acted in his capacity as Chairman of Roadsense, an unincorporated body, in *Roadsense v Scottish Ministers,* from applying for a PEO under these rules. While a petitioner in this position could of course apply under the rules as an individual, we consider this provision puts a barrier in the way of community groups wishing to take legal action. Community groups understandably may wish to take action as a joint entity so that liability does not rest on a single individual, but also to ensure that decisions taken as to the litigation and its conduct of the litigation reflect the wishes to the community, through the democratic decision making process of the community group. We also observe it is more cost effective for the public purse for communities to pursue an action as one instead of potential multiple actions.

The rules allow for PEOs to be awarded in appeals, but the cost limits are left to judicial discretion, taking into account decisions on costs in the lower court. We note that in *Edwards* the CJEU found that "the requirement that judicial proceedings should not be prohibitively expensive cannot be assessed differently by a national court depending on whether it is adjudicating at the conclusion of first-instance proceedings, an appeal or a second appeal." [21]

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[18] SNIFFER, Investigating environmental justice in Scotland: links between measures of environmental quality and social deprivation, 2005
http://www.sniffer.org.uk/Webcontrol/Secure/ClientSpecific/ResourceManagement/UploadedFiles/UE4%2803%2901.pdf

[19] http://www.legislation.gov.uk/ssi/2013/81/made 58A.3. (4)(e)in the case of an application for liability in expenses to be limited to an amount lower or, as the case may be, higher than a sum mentioned in rule 58A.4, set out the grounds on which that lower or higher figure is applied for.

[20] Ibid, 58A.1. (2) …references to applicants who are individuals do not include persons who are acting as a representative of an unincorporated body or in a special capacity such as trustee.

[21] Edwards 44-45

There are relatively low numbers of environmental cases, and the tendency has been for such cases to be appealed. We do not know the exact reasons for the relatively high appeal rates, but it might be because cases raised so far tend to raise important points of principle for third parties (such as availability of remedies and the standing requirements to bring cases) which have not yet been fully litigated in Scotland. Cases might also tend to be appealed due to the absence of any degree of specialism within the judiciary for dealing with environmental cases, and because they are challenges to the largest/most controversial developments in Scotland. We anticipate that cases raised in the immediate future are likely to continue the trend of being appealed, at least for the foreseeable future. We also think it likely that if the public authority or developer is unsuccessful at first instance, they are likely to appeal. Therefore we do not think the way that the rules deal with appeals is compliant with the PPD or Aarhus.

115. We note that the Taylor Review reported on 11 September 2013.[22] The Scottish Government has frequently indicated that the Taylor Review would mop up any outstanding issues regarding prohibitive expense in Aarhus cases.[23] However, we met with the Secretary to the Taylor Review in February 2012 as part of its consultation process, who confirmed that the Taylor Review remit does not specifically extend to examining the obligations of the Scottish Government regarding expenses and funding of environmental litigation under the PPD or the Aarhus Convention.[24] We note that the Review does recommend extending PEOs to all public interest cases, which of course could in theory cover many Aarhus cases not within the remit of the PPD and therefore not eligible under the new rules of court on PEOs. However, Taylor strongly implies that the EU law consider Aarhus cases to be defined by the PPD, and also his recommendation makes it clear that granting of PEOs and the level of cap is to be left to judicial discretion where not governed by specific rules of court.[25]

117. Protracted legal proceedings are costly and stressful, particularly for first time litigants, are not in the interests of petitioners, respondents or the courts. However, the emphasis of the Aarhus requirement for access to justice to be timely is clearly weighted towards speedy decisions by the courts rather than any requirement for individuals to take cases promptly.[26] Decisions from the Court of Session are notoriously a long time coming, with the petitioner in *McGinty v Scottish Ministers* waiting over a year for a decision to be handed down. We note that improvements to case management as part of the Scottish Government's implementation of the Scottish Civil Courts Review should help speed the system up for all parties.

However we are concerned about current proposals in the Court Reform (Scotland) Bill to introduce a three-month time limit for Petitioners. Introducing such a time limit may help provide certainty for developers, but it will cause problems for petitioners in complex cases and particularly where there is uncertainty in funding. As outlined above there is a real issue with a finding a solicitor able to act on a *pro bono*, reduced fee or legally aided basis, and the introduction of a presumptive three-month time limit will exacerbate this.

A three-month time limit will create a particular barrier for community groups who will find it extremely difficult to organise, develop collective understanding, agree a course of action and raise the necessary funds to go to court if that is their decision.

We note that there is often a considerable grey area as to when exactly the time limit starts from in respect of the exact decision to be challenged. Although we note there is a degree of flexibility is

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[22] http://scotland.gov.uk/About/Review/taylor-review/Report
[23] Scottish Government consultation on Legal Challenges, 25-29 'The [Taylor] review…will look among other things at the cost and funding of public interest litigation, including environmental actions'
http://www.scotland.gov.uk/Publications/2012/01/09123750/2
[24] Confirmed in email correspondence with Kay McCorquodale, Secretary Taylor Review, 15 March 2013
[25] Taylor Review Chapter 5, paras 29 and 33
[26] UN/ECE Aarhus Implementation Guide, 2000 p134

contained in the Bill, a presumptive three-month limit is likely to put potential litigants off (a further 'chilling effect').[27]

Further, we note that the Court Reform Bill will also introduce a leave to proceed stage for judicial review. We consider that an appropriately designed leave stage could be used to award Protective Expense Order's and settle issues such as standing, thereby reducing the 'chilling effect' where uncertainty created by these matters hanging over the petitioner for the duration of the case put potential litigants off (and cause considerable unnecessary anxiety for those who go ahead).

However, the Bill as drafted does not indicate at what point leave to proceed would be assessed, therefore there is a risk that combined with a three month time limit, a leave stage could actually hinder access to justice as petitioners struggle to access funds and lawyers to martial the necessary legal arguments to satisfy the Court in order to gain leave to proceed.

Finally regarding this section, we note that the introduction of a statutory appeal process for Marine Licenses under the Regulatory Reform Bill will largely benefit developers, and where third parties wish and are able to appeal in this process they will be stymied by the extremely short time limit of 6 weeks. The proposed appeal and existing appeals under Roads and Planning legislation are broadly similar to judicial reviews therefore we consider it inappropriate to apply different time limits. As per above, we consider that a time limit of 3 months will prove difficult for individuals, communities and NGOs to raise the necessary finances, seek legal advice and prepare for any challenge, but a time limit of 6 weeks will prove near impossible, particularly in instances involving legal aid.

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About Friends of the Earth Scotland

Friends of the Earth Scotland is an independent Scottish charity with a network of thousands of supporters, and active local groups across Scotland. We are part of Friends of the Earth International, the largest grassroots environmental network in the world, uniting over 2 million supporters, 76 national member groups, and some 5,000 local activist groups - covering every continent. We campaign for environmental justice: no less than a decent environment for all; no more than a fair share of the Earth's resources.

About the Environmental Law Centre Scotland

The Environmental Law Centre Scotland is a charitable law centre using law to protect people, the environment and nature, and increase access to environmental justice. We help protect the environment and support sustainable approaches and solutions by providing advice, advocacy, training, updates and research. We work with both local communities and other non-government organisations to use law to protect the environment. We seek to test the law, and work to ensure that Scotland complies with its European and international obligations.

[27] See for example *Bova and Christie v The Highland Council and others* [2013] CSIH 41 http://www.scotcourts.gov.uk/opinions/2013CSIH41.html and also *R (on the application of Maria Stella Nash) v Barnet London Borough Council & (1) Capita Plc (2) EC Harris LLP (3) Capita Symonds (Interested Parties)* [2013] EWHC 1067 (Admin)