Friends of the Earth Scotland

Developments in Environmental Justice

Friends of the Earth Scotland response to the Scottish Government's consultation

21 June 2016

Introduction

Friends of the Earth Scotland (FoES) welcomes the opportunity to respond to the Scottish Government's consultation on Developments in Environmental Justice. FoES have been campaigning for some years for improvements to our justice system to ensure compliance with our international obligations under the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters.

Ten years on from UK and EU ratification, and despite the introduction of Protective Expense Orders (PEOs) and the Court Reform Bill, Scotland remains in breach of the access to justice provisions of the Aarhus Convention and the Public Participation Directive (PPD).[1] In particular, reform is necessary to comply with the Aarhus and PPD requirements for substantive review, and the cost regime in Scotland needs further change to ensure that access to justice is not prohibitively expensive. The consultation document refers to Scotland's 'ongoing compliance' with the Convention. Yet, the position of the Aarhus Convention Compliance Committee (ACCC) is that Scotland is currently in breach of its Convention obligations. This has been the case for several years and was recently reaffirmed by the ACCC in October 2015.[2]

In our view, the introduction of an Environmental Court or Tribunal (ECT) could go some way to improving compliance with our legal obligations under Aarhus, and act as a vehicle for taking a more holistic approach to compliance with the Convention. Therefore, we are disappointed that the consultation does not, in fact, deliver on the 2011 SNP manifesto commitment to consult on options for an environmental court or tribunal. Rather, this consultation seeks views on the current justice system and impact of recent changes to it in so far as they relate to environmental justice matters, and asks whether further changes are required, including specifically whether a specialist environmental court or tribunal should be established.

We note that the consultation does not consider first instance environmental decision-making and appeals outside of the court system e.g. the scope of DPEA. While we appreciate that a review of Scotland's planning system is currently underway, this excludes a significant portion of the jurisdiction an ECT might be expected to have. Indeed, from an Aarhus perspective, the planning system is where civil society has the greatest opportunity to engage in the area of environmental law and decision-making.

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[1] Case C 530/11*European Commission v United Kingdom of Great Britain and Northern Ireland* [2014] ECR 0000 http://curia.europa.eu/juris/liste.jsf?language=en&num=C-530/11 and pg 73 of the Report of the fifth session of the Meeting of the Parties addendum http://www.unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/ECE.MP.PP.2014.2.Add.1_aec.pdf

[2] http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP5decisions/V.9n_United_Kingdom/First_progress_review_on_V.9n_UK.pdf

The Aarhus Convention

The Aarhus Convention recognises that protection of the environment is essential for the thriving of human society and introduces rights and responsibilities to that end. Aarhus is about enabling decision-makers to make better decisions in the context of the environment we depend on. It requires that people and communities are engaged in decision-making that impacts on the environment, and puts an active duty on citizens to act in its defence, including by going to court where necessary.

The Convention aims to improve the accountability, transparency and responsiveness of developers, decision-makers and authorities in relation to the environment. The first two 'pillars' of Aarhus enshrine rights to access information and participate in decision-making that impacts on the environment. EU Directives[3] are in place to implement many of these provisions. In Scotland these are translated into freedom of information[4] and environmental assessment[5] legislation.

The third 'pillar' of Aarhus requires that members of the public and NGOs have access to justice if rights under the former pillars are denied or if national environmental law has been broken.[6] These procedures must include review of both the *"substantive and procedural legality of decisions, acts or omissions"*, provide effective remedy and be *"fair, equitable, timely, and not prohibitively expensive"*.[7] While the third pillar of Aarhus has not been wholly transposed into EU law, the PPD facilitates implementation of access to justice provisions in respect of the right to review procedures *"to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive"*.[8] Further, decisions of the CJEU have made it clear that Article 9 provisions for access to justice are of indirect effect.[9]

Where Aarhus compliance under the Scottish legal system is most deficient in this respect is in relation to raising challenges to environmental decisions, generally done by way of judicial review (JR) or statutory appeal. While important strides have been made recently in case law, with the introduction and amendment of Protective Expense Orders (PEOs), and with aspects of the Court Reform Act, we are concerned that significant barriers remain. The interrelationship between the three pillars (information, participation and then challenge if necessary) means that a failure in the implementation of the third pillar has a negative effect on the performance of duties under the first two pillars of Aarhus. Without adequate access to review procedures environmental laws risk being ignored and unenforced; equally, rights to information and participation in decision-making are meaningless without access to the courts to enforce them.

A well-designed Environmental Court or Tribunal, that holds Aarhus principles at its core, could go some way to tackling ongoing compliance issues, particularly regarding substantive review and costs. Rather than continuing to tweak the existing system the Scottish Government should think innovatively about how to establish a world-class environmental justice system within our own unique legal framework.

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[3] For Pillar 1, Directive 2003/4/EC on public access to environmental information (repealing Council Directive 90/313/EEC); for Pillar 2 Directive 2003/35/EC providing for public participation in planning, which amended Directives 85/337/EEC (Environmental Assessment) and 96/61/EC (Integrated Pollution Prevention and Control) in relation to public participation and access to justice.

[4] Environmental Information (Scotland) Regulations 2004 http://www.hmso.gov.uk/legislation/scotland/ssi2004/20040520.htm

[5] Environmental Assessment (Scotland) Act 2005 http://www.legislation.gov.uk/asp/2005/15/contents and Environmental Impact Assessment (Scotland) Regulations 2011 http://www.legislation.gov.uk/ssi/2011/139/signature/made

[6] Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Article 9 http://www.unece.org/env/pp/documents/cep43e.pdf

[7] Aarhus Convention Article 9 (4)

[8] DIRECTIVE 2003/35/EC http://eur-lex.europa.eu/resource.html?uri=cellar:4a80a6c9-cdb3-4e27-a721-d5df1a0535bc.0004.02/DOC_1&format=PDF

[9] Reference for a preliminary ruling under Article 234 EC from the Najvyšší súd Slovenskej republiky (Slovakia), in the proceedings Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky in Case C-240/09

Consultation questions

1. What types of case, both civil and criminal, do you consider fall within the term 'environmental'? Please give specific examples. Which processes are currently used to deal with those cases you have identified? Do you consider those processes are sufficient? Please provide reasons for your response.

The Aarhus Convention provides a useful starting point for defining civil 'environmental cases' in its definition of 'environmental information'.[10] The Scottish Government's Environmental Crime Task Force defined environmental crime in language echoing the Convention as *"an act or omission which directly or indirectly damages the environment (or has the potential to damage the environment) and which constitutes a breach of criminal law."*

In considering the potential for an Environmental Court or Tribunal in the context of the need for Aarhus compliance, the question may better be posed as what should the jurisdiction of an ECT for Scotland be? Should an ECT have jurisdiction over all disputes impacting on the environment or should its role be within specified limits?

The introduction of new civil penalty powers for SEPA, as part of a shift towards civil enforcement of environmental law, is a key driving force for the introduction of a specialist ECT in Scotland. The Land Court was chosen as a temporary route of appeal for the various new penalties, pending consideration of a potential new ECT. SEPA's approach to enforcement - proportionality, accountability, consistency, transparency, targeting and timeliness[11] - must clearly also be reflected in the handling of appeals. Creating a specialist ECT (whether by way of adapting and additional resourcing of the Land Court or a different route) to deliver this would send a strong message about the importance of environmental enforcement in an age of increased awareness of the necessity of environmental protection.

An ECT, however, might not be the appropriate place to hear all environmental enforcement cases, with the stigma of a conviction in a criminal court a powerful deterrent for the most serious offences. We understand that SEPA is currently awaiting guidance from the Lord Advocate as to which cases should be referred to the criminal courts.[12] For the same reason of appropriate deterrent, wildlife prosecutions may better remain in the criminal courts. The role of an ECT in relation to criminal cases could always be reviewed at a later stage, with better resourcing and training for sheriffs hearing environmental cases in the criminal courts required in the immediate term.

In order to comply with the Aarhus requirement for substantive and procedural review an ECT must provide for a route of appeal for members of the public with a sufficient interest to challenge *"acts and omissions"* by public and private bodies that breach environmental law. This could be achieved by way of the introduction of equal rights of appeal in certain planning cases, for example those that meet specific criteria, such as being subject to Environmental Impact Assessment, to be heard by the new ECT.

Currently such challenges are made by way of judicial review and statutory appeal. However since both are limited to examining questions of process the Aarhus and PPD requirements for substantive review are not met, nor, despite the recent introduction of Protective Expense Orders and the Court Reform Act, the Aarhus and PPD requirements that access to justice be *"fair, equitable, timely and not prohibitively expensive"*, and review procedures provide for adequate remedy. Recent rulings of the CJEU and the UK Supreme Court leave little doubt that, despite recent changes, the Scottish system requires further reform to comply with the prohibitive expense requirements of Aarhus and the EU Public Participation Directive (PPD), as referenced above.

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[10] See http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf pg 50
[11] http://www.sepa.org.uk/media/219244/enforcement-policy.pdf
[12] http://www.sepa.org.uk/regulations/how-we-regulate/better-environmental-regulation/

The number of judicial reviews and statutory appeals on environmental issues in Scotland is low. The majority are taken by developers or third parties with a commercial interest, with very few taken on an Aarhus basis.[13] Fears that introducing better access to the courts, or an equal right of appeal, will open the flood-gates and have an adverse impact on the economy are ill-founded. This has not been the experience of the New South Wales and Vermont ECTs, both of which hear appeals from individuals in certain planning and environmental cases. The introduction of a leave stage, as introduced under the Court Reform (Scotland) Act 2014, is designed to filter out any frivolous or unmeritorious cases in the Court of Session, and similar checks could be put in place for an equal right of appeal. Rather, the benefit of more open access to review procedures comes from improved engagement and decision making from developers and public authorities who know their actions can be challenged. In other words, it is the credible threat of legal action that is crucial to ensure that both development proposals and decision-making are of a high quality. We consider that this largely absent in Scotland.[14] However, whether the Court of Session – an expensive place to do business both for litigants and the public purse – is the best place to provide Aarhus compliant access to justice in these cases should be considered when assessing the scope and jurisdiction of an ECT.

2. This paper outlines the improvements to the justice system that this Government has delivered in relation to environmental justice. Do you agree that these changes have improved how environmental cases, both civil and criminal, are dealt with in Scotland? If you do not agree, please explain why.

We welcome a number of changes made in recent years, in particular the new test of 'sufficient interest' in judicial review and statutory appeal cases, and the introduction and amendment of Protective Expense Orders (PEOs), which cap petitioners' liability in Aarhus cases before the Court of Session.

However we note that in terms of changes to the civil legal system, the introduction of PEOs is the only measure the Scottish Government has undertaken specifically in order to improve Aarhus compliance. In the ten years since Aarhus ratification – in which major environmental issues such as climate change, pollution and resource depletion have only become more pressing – no comprehensive review has been undertaken of what a holistic model of compliance could look like in Scotland, and how it might serve to improve delivery of important environmental outcomes. We remind the Scottish Government that the Convention places a positive duty on parties to, *"consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice."*[15]

While, broadly speaking, the 2014 Court Reform Act is welcome, its impact on key areas of Aarhus compliance, particularly costs and substantive review is very limited. Indeed, the Scottish Parliament's Justice Committee in its Stage 1 report on the Court Reform Bill noted *"the differences between the requirements of the Aarhus Convention and the scope of judicial review in Scots Law. The Committee is sympathetic to calls for the introduction of an environmental tribunal for Scotland."*[16]

Improved case management, specialisation and the introduction of a leave stage should result in better use of court resources, a better user experience for both sides and speedier decisions; however the introduction of time limits is cause for concern. In our view the new three-month time limit for judicial review, where no time limit has previously been in place will cause problems for petitioners in complex cases and particularly where there is uncertainty in funding any legal action.

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[13] Brodies, Feb 2013 Judicial Review of Planning Decisions in Scotland, http://www.brodies.com/sites/default/files/pages/planning%20e-update%20report%20february%202013.pdf

[14] An example of this is the recent complaint regarding continual planning breaches by the Trump organisation in its development at Menie (see http://www.heraldscotland.com/news/environment/trump-criticised-for-planning-breaches.21352328); given the difficulties that one resident had in trying to obtain access to the courts over a number of permissions, including one over her own home, it is not surprising that no other resident or NGO has considered taking legal action

[15] Article 9(5)

[16] Justice Committee 5th Report, 2014 (Session 4) Stage 1 Report on the Courts Reform (Scotland) Bill http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/76275.aspx#v

There is a real problem in Scotland with a finding a solicitor able to act on a *pro bono*, reduced fee or legally-aided basis, in environmental cases and the introduction of a presumptive three-month time limit will exacerbate this. It will also create a particular barrier for community groups for whom it can be extremely time-consuming 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 in respect of the exact decision to be challenged. Although there is flexibility in the Act, with the possibility for granting of extensions, a presumptive three-month limit is likely to put potential litigants off (the 'chilling effect').[17] While we are broadly supportive of the introduction of a leave to proceed stage for judicial review under the Bill, we note that 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. It goes without saying that the 6-week time limit in statutory appeals is even more problematic in this respect, and contrary to the Aarhus requirement for *"fair and equitable"* treatment.

We warmly welcome the recent extension of the scope of PEOs to include appeals to the Court of Session arising from decisions of the Scottish Information Commissioner on Environmental Information requests, and relevant proceedings which include a challenge to an act or omission on the grounds that it contravenes the law relating to the environment. The scope of PEOs is therefore now more closely aligned with the Convention itself. We also warmly welcome the expansion of categories of persons eligible to apply for PEOs to include 'members of the public', and 'members of the public concerned', mirroring the language used in the Convention itself. One of the most concerning flaws of the previous version of the rules was that they appeared to explicitly exclude community groups from applying for a PEO,[18] and indeed, to the best of our knowledge, no community group has successfully applied for a PEO under the rules to date. The definitions of 'members of the public' and 'members of the public concerned' in the Aarhus Implementation Guide are broad and certainty include community groups, however it is too soon to say how the Court of Session will interpret the amended rules.

It is too early to judge the impact of PEOs, however we note that the rules ultimately assume that a sum of £35,000 – the presumptive amount an unsuccessful petitioner would be expected to pay – is not prohibitively expensive. Yet average annual earning in Scotland fall well below this sum, and evidence suggests that deprived communities suffer from the brunt of poor environmental decision making, with people living in deprived areas in Scotland suffering disproportionately from industrial pollution, poor water and air quality,[19] this limit therefore disproportionately impacts on these communities. That is to say nothing of the fact that court fees and counsel costs could very quickly amount to double that sum in a complex judicial review.

Further, the policy of full cost recovery in the Court of Session actively worsens the barrier of prohibitive expense for parties seeking access to justice under the Aarhus Convention. While court fees may be dwarfed by other costs such as counsel, they are far from insignificant. For example in *McGinty vs Scottish Ministers*, we estimate that the Outer House hearing took 18 hours incurring fees of approximately £1,620 for the half hourly rate of time spent in court alone; under the current regime this would double to £3,360 in 2016. In *Walton vs Scottish Ministers* the hearings in the Outer House lasted for 22 hours, and in the Inner House for 18 hours amounting in our estimate to £5,580; this would more than double to £12,493 in 2016. Clearly these costs risk being prohibitively expensive for most litigants, particularly for those on a low income. The ACCC is clear that, when assessing whether the costs of litigation are 'prohibitively expensive', costs are considered in a

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[17] See for example *Bova and Christie v The Highland Council and others* [2013] CSIH 41 http://www.scotcourts.gov.uk/opinions/2013CSIH41.html and *R v Barnet London Borough Council* [2013] EWHC 1067

[18] Under the rules which came into force in 2013, the applicant for a PEO had to be 'an individual' or 'a non-governmental organisation promoting environmental protection' (58A.2(2)). The rules state that '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' (at 58A.1.(2)), thereby excluding many community groups.

[19] 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

systemic manner and include court fees, legal representation costs, witness transport fees and expert fees.[20]

Litigants in receipt of legal aid can secure an exemption from court fees. However, we remain concerned that Regulation 15 of the Civil Legal Aid Regulations acts as a particular barrier to applicants seeking financial assistance in environmental cases. The rule strongly implies that a private interest is not only necessary to qualify for legal aid, but that a wider public interest – practically inherent in most environmental challenges – will effectively disqualify the applicant. Furthermore, unlike in England and Wales, community groups are not able to apply for legal aid under the Scottish regime. The consultation document notes that the Scottish Legal Aid Board (SLAB) consider that Regulation 15 does not have an 'overbearing influence' on accessing legal aid in environmental cases and provides some statistics to back this up. However, it is our understanding that data collection on awards of legal aid in environmental cases is poor, and these numbers may be problematic in terms of getting a full picture of awards in Aarhus cases. For example how 'an environmental aspect' is defined has a significant bearing on these statistics.

These long-term difficulties were exacerbated in 2013 by the introduction of a cap on the expenses of a judicial review to be covered by legal aid (including Counsel's fees, solicitors' fees and outlays) of £7,000. This is an entirely unrealistic figure to run a complex environmental judicial review or statutory appeal. While applications can be made to increase the figure, the cap is likely to reduce 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 within the cap. Due to the low levels of payment for legal aid compared with market rates, and the complexities of judicial review cases, individuals can struggle to find a lawyer willing to represent them on this basis, adding to the 'chilling effect' of prohibitive expense.

On total costs for taking an Aarhus judicial or statutory review, the Scottish Government is effectively unable to provide figures for petitioners costs where Legal Aid is not awarded.[21] It is hard to see how the current measures to ensure access to justice is *"not prohibitively expensive"* in these cases can be justified without a clear understanding of the costs petitioners are actually faced with.

3. Given the extensive changes that have already been delivered to the justice system (as outlined in this paper) and the need to ensure that any further changes are proportionate, cost-effective, and compatible with legal requirements, are there any additional ways in which the justice system should deal with both civil and criminal environmental cases? If so, please detail these. In particular, do you consider that there should be a specialist forum to hear environmental cases? If so, what form should that take (e.g. a court or tribunal)? Please provide reasons for your response.

As outlined above, further changes are required in order to comply with the Aarhus requirements that citizens and NGOs have access to justice to challenge the *"substantive and procedural legality of decisions, acts or omissions"*, which provides effective remedy and is *"fair, equitable, timely, and not prohibitively expensive"*.[22]

Rather than continuing to tweak the existing system e.g by providing for merits review, qualified one-way cost shifting and court fee exemption in the Court of Session, and removing legal aid barriers in Aarhus cases, the Scottish Government should think innovatively about how to establish a world class environmental justice system within our own unique legal framework.

We are pleased to note that the present Cabinet Secretary for Justice, Michael Matheson, told the Justice Committee in 2014:

"I am always open to considering how we can improve access to our justice system in an appropriate way….The first specialist court that I experienced was the drug court in Glasgow, which

[20] ECE/MP.PP/C.1/2010/6/Add.3, para. 128.
[21] http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/General%20Documents/Letter_from_Mr_Wheelhouse_Petition_1372_%282%29.pdf
[22] Aarhus Convention Article 9 (4)

was an innovative approach. When I witnessed it at first hand, I could not help but recognise the real value that it had. I recognise the importance of having different specialist courts, and I am open to considering how such specialisation can be continued in the future. I am also open to considering what the shape of our specialist courts should be in the future, including whether we should have an environmental tribunal or court. That is not to say that it will automatically happen, but I am open minded about considering whether it would be appropriate and how it would fit within the Scottish justice system."[23]

A new ECT could not only provide better access to justice for citizens concerned with protecting the environment, but a speedier, more cost-effective system, and a more level-playing field for developers and operators. The benefits an ECT could bring to Scotland would depend on its structure, powers and jurisdiction. In designing an ECT Aarhus values must be at its core in order to ensure compliance with the Convention and the best outcome for the environment and communities. Specialism, strong case management and an inquisitorial approach, such as that embodied in the Scottish Land Court, could not only result in greater efficiency and speedier decision-making but also lower costs to the public purse. Powers to prioritise urgent cases could avoid lengthy delays to high value and high public interest cases. The use of written submissions could avoid extended hearings with expensive legal teams, focusing oral representations instead on the key legal and merits arguments, leading to savings for developers, public bodies and citizens alike. An ECT with a range of remedies at its disposal can help provide a level playing field by removing any economic incentive of non-compliance, an approach the Scottish system is moving towards with the new SEPA penalty regime. ECTs can offer Alternative Dispute Resolution (ADR) mechanisms, thereby further reducing the costs and time involved in cases, where appropriate.

The New South Wales Land and Environment Court is renowned for its strong case management rules, the results of which are reflected in impressive case completion statistics. In 2013 97% of planning and environmental appeals were closed within 12 months, and 80% within 6 months;[24] 91% of judicial review and civil enforcement cases were closed within 16 months, with an average case length of 126 days.[25] A significant number of cases falling under the jurisdiction of the Court are dealt with by way of ADR.

Industry and developers seeking a more level playing field were supportive of the creation of Vermont's Environmental Tribunal in 1990. The Tribunal aims to provide "effective environmental enforcement" by ensuring it is *"more expensive to commit a violation of the laws and regulations than to comply with them"*.[26] It also saves time and money by sitting locally, holding pre-trial phone conferences, written submissions to narrow the scope of the case and the use of ADR where appropriate.[27]

While case management, structure and place have important roles to play in reducing costs to both users and the public purse, they can only go so far in ensuring Aarhus compliance on this front. As long as the 'loser pays' principle continues to dominate, litigants in public interest cases risk significant legal costs for standing up for the environment. While a well-designed ECT should enable litigants to represent themselves, it is anticipated that it will often be necessary for litigants to have legal representation, particularly if an ECT takes on a judicial review role. An ECT should be designed to allow for legal financial assistance and one way cost shifting in public interest cases.

There are several options for an ECT in the existing and emerging court structure. A new tribunal under the Tribunals (Scotland) Act 2014 might be the most obvious place to start afresh and create an accessible, flexible, efficient and affordable ECT. However, the Scottish Land Court, which has many of the strengths identified in ECTs, already functions as a *de facto* ECT in certain appeals, including those from SEPA's new civil penalty powers. It may be that extending the jurisdiction –

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[23] Justice Committee, Official Report 25 Nov 2014, c44 http://www.parliament.scot/parliamentarybusiness/report.aspx?r=9652&mode=pdf
[24] See http://www.lec.justice.nsw.gov.au/lec/types_of_disputes/class_1.html
[25] http://www.lec.justice.nsw.gov.au/lec/types_of_disputes/class_4.html
[26] Former judge of the Vermont Environmental Court, in M Wright, 'The Vermont Environmental Court' 2010 3(1) Journal of Court Innovation 201
[27] http://www.law.pace.edu/sites/default/files/IJIEA/Commentary-Environmental_Court_of_Vermont_May_18_2011.pdf

and resourcing – of the Land Court is a more cost effective approach to Aarhus compliant access to justice.

Wherever it sits in the current courts structure, an ECT that is able to sit throughout Scotland, as the Scottish Land Court and Lands Tribunal currently do, utilising local courtrooms and other public buildings is highly desirable to ensure accessibility, and reduce costs both to the litigant and the public purse.

The former Lord President indicated his intention to conduct a feasibility study into a specialist energy and natural resources court within the Court of Session. While we welcome the implicit recognition of the complexity and value of certain environmental cases, such a court will not necessarily deliver the assurances we seek on Aarhus compliant access to justice.

Concluding comments

We urge the Scottish Government to establish an expert working group to look into options for a world class ECT that provides for affordable access to justice, reduces costs to the public, speeds up decisions and creates a more level playing field. Learning from the experience of established ECTs around the world we can create a system that works for the environment within Scotland's unique legal system. Aarhus compliance must, however, be at the heart of thinking around what an ECT for Scotland should look like in order to ensure we build a system fit to respond to the increasing importance of environmental issues.

Contact:

Mary Church, Head of Campaigns, Friends of the Earth Scotland
e: mchurch@foe-scotland.org.uk t: 0131 243 2700