

Equalities, Human Rights and Civil Justice Committee
Tuesday 12 November 2024
24th Meeting, 2024 (Session 6)

The Aarhus Convention

Introduction

1. On 3 September 2024, as part of its work programme discussion, the Committee agreed to hold an evidence session exploring the Scottish Government's lack of compliance with the Aarhus Convention.
2. This session will build on previous work that the Committee has undertaken in relation to the broader issue of access to justice and barriers which exist which prevent challenges from proceeding.
3. Barriers to accessing justice can include excessive costs, unsuitable legal procedures and lack of access to legal aid. In civil cases, the general rule is that the losing party pays the winning party's costs. Bringing a court case can therefore be risky financially.

Background

4. [The Aarhus Convention](#) is a UN treaty which, amongst other things, requires states to provide access to justice to allow challenges in court to breaches of environmental law (this includes aspects of access to justice such as the cost of bringing court actions, cost caps and legal aid).
5. The Aarhus Convention's compliance committee has found that the UK and Scotland are not complying with the Aarhus Convention (for details on Scotland see paras 49-69 of [the committee's most recent compliance report from 2024](#)).
6. The UK and Scottish Governments had to report to the UN on compliance by 1 October 2024. The Minister for Victims and Community Safety, Siobhan Brown stated in response to a [Parliamentary Question](#) by the Deputy Convener that the government would provide a further update in advance of the 1 October deadline. An [update](#) was provided on 17 October 2024.
7. Correspondence is also published on the Compliance Committee's webpage: <https://unece.org/env/pp/cc/decision-vii8s-concerning-united-kingdom>
8. Environmental Standards Scotland (environmental regulator) has recently published [a document with an overview of compliance in Scotland](#) which says:

“... 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.”
9. It goes on to state:

“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.”

and that

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

10. At the end of September, the UK Government launched a call for evidence in relation to compliance in England & Wales:

https://assets.publishing.service.gov.uk/media/66fa74a7080bdf716392eb16/access_-_justice-relation-aarhus-convention-call-for-evidence.pdf

11. ERCS also organised a rally outside the Court of Session:

<https://www.ercs.scot/news/environmental-campaigners-rally-outside-court-of-session-as-scottish-government-misses-access-to-justice-deadline-press-release/>

Evidence session

12. At today’s meeting, the Committee will hear evidence from:

- Dr Ben Christman, Legal Director, Environmental Rights Centre for Scotland;
- Professor Colin T Reid, Emeritus Professor of Environmental Law, University of Dundee;
- Mark Roberts, Chief Executive, Environmental Standards Scotland and
- Jamie Whittle, Convener, Environmental Law Sub-committee, Law Society of Scotland

and then from

- Siobhian Brown, Minister for Victims and Community Safety
- Walter Drummond-Murray, Head of Civil Courts and Inquiries and
- Lisa Davidson, Senior Policy Adviser, Civil Courts, Scottish Government.

Format

13. The evidence session will be held in person and broadcast on [SPTV](#).

Topics

14. This session will provide an opportunity for the Committee to explore topics including:

- The mechanisms in which individuals and NGOs can access justice in environmental cases in Scotland.

- Examples of the main barriers faced by individuals, community groups or NGOs when bringing environmental cases and the impact on individuals and communities.
- The role of the Environmental Standards Scotland in ensuring access to justice.
- Views on the changes recently made to the PEO rules and the anticipated impact.
- Whether court fee exemptions should apply to all courts in Scotland.
- Whether changes should be made to the legal aid rules to improve access to justice for environmental cases.
- Views on whether a dedicated environmental court could improve access to justice in environmental cases.
- An update from the Scottish Government on its progress towards addressing concerns previously raised by the Compliance Committee and its contribution to the UK wide report.

Next steps

15. The Committee will consider the evidence it has heard at today's session in private and agree on next steps.

Clerks to the Committee
November 2024