

Background

1. On 28 February 2025, the Scottish Government published a [consultation](#) on strategic lawsuits against public participation – commonly referred to as SLAPPs. These are legal actions or threats of legal actions that have the aim or effect of suppressing public participation on matters of public interest. SLAPPs have been widely recognised as a growing threat to freedom of expression and particularly, but not only, to civil society actors such as journalists, academics, environmental defenders, and authors. The aim of the consultation was to invite views from those with experience of SLAPPs and to enable a view to be formed on the best way forward for Scotland, drawing on experience and practice in other jurisdictions, including non-legislative solutions.

2. The consultation ended on 23 May 2025. The Scottish Government received a total of 27 responses to the consultation with 12 of those from individuals and the other 15 from organisations. Those respondents who were content to have their name published are listed at **Annex A**. Not all respondents answered all of the questions and a significant number (10) preferred to offer their views using free text. A statistical breakdown of the responses is provided at **Annex B**.

3. The questions covered a wide range from: personal experience of SLAPPs; views on the existing position in Scots law; and views on potential legislative and non-legislative solutions. A summary of the responses to the questions is set out below.

Personal knowledge of and impact of SLAPPs

4. We asked about whether or not respondents had experienced or been affected in some way by a SLAPP here in Scotland. We wanted to understand better the prevalence of SLAPPs and what impact they had on those who were the subject of them and how they were resolved. We also asked if respondents had any knowledge, either directly or indirectly, of individuals or organisations who had benefitted financially from bringing a SLAPP.

5. Of those who responded (17), 6 confirmed that they had been affected by SLAPPs in Scotland either personally or in the course of their employment. A number of respondents outlined the particular circumstances of their experience. One respondent summarised the impacts of being the subject of a SLAPP as: -

“a detrimental effect on our time and resources, as well as our ability to publish materials in the public interest”.

6. A number of those with experience of a SLAPP were individuals. In these circumstances there was clearly also a personal cost experienced by subjects of SLAPPs where they felt threatened and intimidated and feared having to pay significant legal costs. Often, whilst court proceedings were threatened they were either not pursued or sisted leaving the individual in a state of limbo with the issue unresolved and the threat persisting. The situation was described as stressful. In some cases where an individual has entered into legal proceedings, they have received crowd funding to meet legal costs and/or solicitors have worked *pro bono* otherwise the financial impact may have been extremely damaging. Others have dropped the work which was the subject of the SLAPP over concerns that legal costs could be potentially ruinous for them and their family.

7. Respondents who had not directly experienced a SLAPP made the point that, by their very nature, SLAPPs are difficult to quantify, because their aim is to silence. One respondent suggested that the limited evidence available pointed to them being ‘invisible’ rather than ‘absent’. The vast majority of respondents were of the view that SLAPPs exist in Scotland and are being used effectively to stifle the publication or dissemination of information which is in the public interest.

Conclusion

Respondents provided evidence of what appear to be SLAPPs taking place in Scotland and whilst there remains little data about the prevalence of SLAPPs they do exist.

The need for anti-SLAPP legislation

8. We asked whether anti-SLAPP legislation should be introduced in Scotland. Of the 17 respondents who answered the question directly, 16 (94%) agreed that it should be introduced. The majority of those who chose to make a broad statement in response to the consultation were also of the view that legislation is needed. The remainder were neutral, with one seeing it as a matter of policy for the Scottish Government. Only one respondent took the view that there was no need for legislation and this was on the basis that they do not consider there is a problem which needs to be addressed.

9. We also asked whether respondents had views or evidence of effective measures operating in other jurisdictions and whether approaches in other jurisdictions would translate to the Scottish legal system. We received, in some cases detailed, information about laws that exist in other jurisdictions, including England and Wales, the United States of America, Canada, the European Union and South Africa. Some were considered more effective than others. Those who responded considered that there was potentially much to learn from other jurisdictions but ultimately any legislation would need to be tailored to the Scottish legal system.

10. There was some consensus around what made anti-SLAPP laws effective, namely, early dismissal mechanisms, cost recovery provisions and appropriate damages and penalties.

Conclusion

There was strong support among respondents for anti-SLAPP legislation to be introduced in Scotland.

Scots law

11. We asked whether there were existing provisions in Scots law which may support someone who is the subject of a SLAPP. There were 15 responses and views were split with 6 respondents answering yes, 6 respondents answering no and 3 opting for don't know. Of the 6 who answered in the affirmative, several mentioned the concept of vexatious litigants,¹ summary decree motions and the "inherent power of courts to dismiss for abuse of process". Most of the respondents who highlighted the existence of these provisions were, however, not of the view that they were adequate to address the issue of SLAPPs.

12. Those who answered no, were also of the view that these existing provisions were insufficient or ineffective. They considered that their availability was subject to a high threshold and in the case of a vexatious litigation order, a pattern of behaviour needs to be established which should not be a pre-requisite for a SLAPP.

Conclusion

It would appear that existing provisions in Scots law are considered by a majority of respondents to be insufficient to address the issues manifested by SLAPPs.

¹ Vexatious Litigation Orders (Court Reform) (Scotland) Act 2014.

Benefits of specific legislative developments

13. The consultation paper examined two particular anti-SLAPP legislative developments. The first is the [European Union Directive 2024/1069](#)² (“the EU Directive”) which provides safeguards against manifestly unfounded claims or abusive court proceedings (or SLAPPs) in civil matters with cross-border implications brought against persons on account of their engagement in public participation.

14. The second is a Model anti-SLAPP law which was drafted by interested stakeholders³ to, in their view, give effect to the Scottish Government’s ambition to incorporate international human rights protections into Scots law, the United Kingdom’s ongoing obligations as a member of the Council of Europe, and recent developments in the European Union to counter SLAPPs. The Model Law was set out at Appendix B in the Scottish Government’s consultation.

EU Directive

15. Respondents were firstly asked if they foresaw any conflict between the EU Directive and Scots law. Two respondents considered that there may be conflict as they had concerns that in Scots law: there is no suitable early dismissal mechanism; there is no concept of punitive damages or penalties; and there is no full cost recovery of legal costs. The point was also made that the Directive excludes domestic cases as opposed to cross-border cases.

16. Respondents were asked what features not in the EU Directive should be incorporated into any Scots law on SLAPPs. Four respondents provided suggestions and views, which included a requirement for a pursuer to make a statement of truth at the time of raising the action. Another considered that the requirement for proceedings considered manifestly unfounded (Article 16) was too high a threshold.

² The Directive was published in Official Journal on 16 April 2024. EU Member States have until 7 May 2026 to comply with the directive.

³ A model law for Scotland has been drafted by Prof Justin Borg-Barthet and Dr Francesca Farrington, Anti-SLAPP Research Hub, University of Aberdeen and was set out in Appendix B of the consultation. Comments were solicited from anti-SLAPP and Scots law experts, including Nik Williams (Scottish Anti-SLAPP Working Group, UK Anti-SLAPP Coalition & Index on Censorship), Charlie Holt (Coalition Against SLAPPs in Europe & UK Anti-SLAPP Coalition), Dirk Voorhoff (University of Ghent), Ricki-Lee Gerbrandt (University of Cambridge), Graeme Johnston (Scottish Anti-SLAPP Working Group), Ewan Kennedy (former Solicitor), Dr Erin Ferguson (University of Aberdeen), Prof Greg Gordon (University of Aberdeen), and Dr Jonathan Ainslie (University of Aberdeen).

17. Further views were sought on whether there were any other relevant factors which should be considered in respect of alignment with the EU Directive. Four respondents thought that there were. There was a view that Scotland should go beyond the ambition of the EU Directive by adopting the Model Law. Another regarded the Article 20 requirement to produce annual data on SLAPPs important.

The Model Law

18. We went on to ask about specific aspects of the draft Model Law. The majority of respondents did not answer these questions. A summary of views of those who did respond is set out below:-

Are you content with:	Yes	No	Don't Know
Section 4 (security for costs and damages)	7	1	2
Sections 5 & 6 (defender's remedies)	5	1	4
Section 6 (restriction of pursuer's expenses)	7	1	3
Section 8 (penalties for pursuers)	7	4	0
Section 10 (public interest interventions)	9	2	1
Sections 11 & 12 (prevention of cross-border SLAPPs)	4	2	5
EU Directive and Council of Europe expression	5	0	6

19. In most cases there were clear majority views. The majority were content with: the provision on security for costs and damages; the remedies available to defenders; the restriction of a SLAPP pursuer's entitlement to expenses; and were content that overall the Model Law gave adequate expression to the EU Directive and Council of Europe recommendations, while still taking account of the specific character of Scots Law. One respondent (the Scottish Law Agents Society) did not agree that there was an issue with SLAPPs in Scotland and therefore considered there was no need for any reform.

20. We also asked if respondents were content with imposing penalties on SLAPP pursuers as set out in section 7 of the Model Law. Whilst the majority (7) of those who answered were content, 4 respondents were not. In the main their concern was centred on the fact that Scots law has no real experience of dissuasive or punitive damages and that the courts would therefore be unlikely to impose them. One respondent was of the view that the Model Law "already afford[ed] the opportunity of

full recovery of expenses and an award of damages.” Another was of the view that the “courts already have the power to penalise parties by imposing awards of expenses against them.”

21. On the question of whether respondents were content with allowing public interest intervention, two of the 12 who responded were not. One thought there was a risk of litigation becoming a forum for political arguments and the other that it duplicates the rights of parties to seek to intervene anyway.

22. Of the 9 in favour it was generally agreed that intervention could provide a better balance of power between defender and pursuer and would bring expertise and experience to the case whilst ensuring that the costs did not fall entirely on an individual.

23. Most (5) of the 11 respondents to the question of whether the provisions in the Model Law were sufficient to prevent cross-border SLAPPs did not know. Four respondents thought they would be. There were divergent views between the two respondents who thought the provisions were insufficient. One thought it was unnecessary as there was no evidence of SLAPPs existing. The other thought the provisions did not go far enough: “they do not prevent a SLAPP pursuer from initiating or continuing proceedings outwith Scotland” and “it could be made clearer that the new special grounds of jurisdiction may be exercised while court proceedings are pending elsewhere”.

24. Of the 11 who responded to the question of whether or not the Model Law gives adequate expression to the EU Directive and Council of Europe recommendations while taking account of the specific character of Scots law, a small majority (6) didn’t know whilst 5 thought it did.

25. Two respondents thought there may be conflicts between the Model Law and other provisions in Scots law. One thought that there were “inevitably conflicts in interpretation” when trying to align separate legal systems. Two respondents highlighted that the concept of penal damages are not available in Scots law but both were of the opinion that they should be.

26. When asked if there were any features not included in the Model Law that should be considered for inclusion in possible legislation, 10 respondents offered a view with 5 opting for don’t know, 3 for Yes and two for No.

27. One view was that there should be a requirement for a ‘statement of truth’ to accompany any letter before action which would require the pursuer to affirm that the statements in the letter are correct with consequences for lying. Two respondents thought that a non-exhaustive list of SLAPP indicators would be useful. One also suggested: a broad definition of ‘public participation’ and ‘public interest’; clarity that the Model Law applies to interdicts; and a reassertion that Scottish courts should have the power to prevent a party from pursuing a SLAPP outwith Scotland.

28. There was a short series of questions around the preferred approach between the EU Directive and the Model Law, mainly in relation to definitions.

29. 6 of the 11 who responded preferred the definition of ‘public participation’ in the Model Law and two preferred the definition in Article 4 of the EU Directive. Two respondents had no preference and one didn’t know.

30. Views were more split on the definition of ‘matter of public interest’ with 5 of the 10 respondents who answered, preferring the definition in the Model Law, 3 preferring the definition in the EU Directive, one preferring neither and one didn’t know.

31. On the definition of ‘abusive court proceedings’, 6 respondents preferred the Model Law definition, two the EU Directive definition, two neither and one didn’t know. Those in favour of the Model Law definition felt it was more objective and a number of respondents thought that, in particular, the fact there was no requirement to demonstrate the intention of the pursuer contributed to that objectivity.

32. When asked which approach to early dismissal of proceedings was preferred, 7 respondents opted for the Model Law, one for neither and 3 didn’t know. No-one preferred the EU Directive approach.

33. On whether or not there should be a time limit for an expedited hearing on a motion for early dismissal of proceedings, 8 respondents said yes and 3 didn’t know. A number of others who didn’t directly answer the question, set out their view that it would keep costs to a minimum and avoid cases being unnecessarily “stretched out”.

34. The EHRC highlighted that a quick and effective dismissal procedure “may conflict with human rights obligations”. They were of the view that both the Model Law and the EU Directive provide for expedited proceedings and that the addition of a time frame as provided for by the Model Law ensures certainty whilst providing some flexibility in more complex cases.

35. When asked whether 90 days was sufficient, 6 respondents said yes, one said no and 3 didn't know. The respondent who disagreed with 90 days was of the view that 60 days was preferable as legal expenses could be high if the period were longer.

Conclusion

The EU Directive is seen by a majority of respondents as a useful starting point for legislation meant to tackle the problem of SLAPPs. It is not, however, seen as a perfect legislative solution to tackle the problem. In general, respondents prefer the provisions contained in the Model Law over the EU Directive provisions. They are seen as an improvement. Concerns were expressed about some aspects of anti-SLAPP legislation and its compatibility with Scots law, in particular the concept of punitive damages.

Non-legislative solutions

36. The consultation included a chapter which examined non-legislative proposals and in particular the work emanating from the UK SLAPPs Taskforce.⁴ One of the ongoing workstreams relates to the production of guidance for journalists. We asked whether the guidance should be extended to include other civil society actors, for example, authors, academics and environmental campaigners. Eleven respondents offered a view with 9 agreeing that it should be extended and two who didn't know. Respondents recognised that whilst focus has, rightly, been on journalists, others too would benefit from guidance.

37. We asked, what more, if anything, could be done outwith legislation to tackle SLAPPs. Over a third of respondents made a range of suggestions. Some common themes included; raising awareness of SLAPPs; effective regulation for law firms and solicitors; and training for all those who have a role to play in SLAPPs.

38. Our final question asked whether the EU Directive (Article 19) and provisions 13 and 14 of the Model Law which relate to information and transparency around SLAPPs, including for example access to information, awareness raising and data capturing, are adequate.

39. Ten responded and 4 agreed they were, one disagreed and 5 didn't know. Those in support said they would help provide valuable data as well as acting as a disincentive.

Conclusion

A number of respondents were clear that legislation should not be seen as the only way for the Scottish Government to deal with SLAPPs. Guidance, awareness raising and collecting information were seen as important.

⁴ [SLAPPs Taskforce - GOV.UK](https://gov.uk/slapp-taskforce)

Other

40. Finally, some respondents took the opportunity to make some general comments. These focussed on concerns about access to justice being complex and costly. The Scottish Courts and Tribunal Service (SCTS) also commented that the draft Model Law, in its current form, may present a number of operation challenges for the SCTS.

ANNEX A

List of Respondents

1. Amnesty International UK [Organisation]
2. Anonymous
3. Anti-SLAPP Research Hub [Organisation]
4. David Hooper [Individual]
5. Ewan G Kennedy [Individual]
6. John Beattie [Individual]
7. Law Society of Scotland [Organisation]
8. National Union of Journalists [Organisation]
9. Newsbrands Scotland [Organisation]
10. Respondent A [Individual]
11. Respondent B [Organisation]
12. Respondent C [Organisation]
13. Respondent D [Individual]
14. Respondent E [Individual]
15. Richard Smith [Individual]
16. Roger Mullin [Individual]
17. Scottish Anti-SLAPP Working Group [Organisation]
18. Scottish Council for Voluntary Organisations (SCVO) [Organisation]
19. Scottish Courts and Tribunals Service (SCTS) [Organisation]
20. Scottish Human Rights Commission [Organisation]
21. Scottish Law Agents' Society [Organisation]
22. Scottish Women's Rights Centre [Organisation]
23. Sense about Science [Organisation]
24. Simon Barrow [Individual]
25. Staniford [Individual]
26. The Senators of the College of Justice [Organisation]
27. Transparency International [Organisation]

ANNEX B

Statistical Summary of Responses

Question 1: Have you been affected by SLAPPs in Scotland, either personally or in the course of your employment?

Option	Total	Percent
Yes	6	22.22%
No	11	40.74%
Don't know	0	0.00%
Not Answered	10	37.04%

Question 4: Are you aware, or have you acted on behalf of, of an individual or organisation who has benefited financially from bringing a SLAPP?

Option	Total	Percent
Yes	3	11.11%
No	14	51.85%
Don't know	0	0.00%
Not Answered	10	37.04%

Question 5: Should anti-SLAPP legislation be introduced in Scotland?

Option	Total	Percent
Yes	16	59.26%
No	1	3.70%
Don't know	0	0.00%
Not Answered	10	37.04%

Question 8: Are you aware of any other provisions of Scots law that may support someone who is the subject of a SLAPP?

Option	Total	Percent
Yes	6	22.22%
No	6	22.22%
Don't know	3	11.11%
Not Answered	12	44.44%

Question 9: Can you envisage any conflicts between the Directive and other provisions of Scots law?

Option	Total	Percent
Yes	2	7.41%
No	3	11.11%
Don't know	7	25.93%
Not Answered	15	55.56%

Question 10: Are there any features not included in the Directive that should be considered for inclusion in possible legislation?

Option	Total	Percent
Yes	4	14.81%
No	1	3.70%
Don't know	6	22.22%
Not Answered	16	59.26%

Question 11: In your view, are there any other relevant factors that Scottish Ministers should consider if EU alignment in this area is to be considered?

Option	Total	Percent
Yes	4	14.81%
No	1	3.70%
Don't know	6	22.22%
Not Answered	16	59.26%

Question 12: Are you content with the provision on security for costs and damages set out in Section 4?

Option	Total	Percent
Yes	7	25.93%
No	1	3.70%
Don't know	2	7.41%

Question 13: Are you content with the remedies made available to defenders in Sections 5 and 7?

Option	Total	Percent
Yes	5	18.52%
No	1	3.70%
Don't know	4	14.81%
Not Answered	17	62.96%

Question 14: Are you content with restricting SLAPP pursuer's entitlement to expenses as set out in Section 6?

Option	Total	Percent
Yes	7	25.93%
No	1	3.70%
Don't know	3	11.11%
Not Answered	16	59.26%

Question 15: Are you content with imposing penalties on SLAPP pursuers as set out in Section 8?

Option	Total	Percent
Yes	7	25.93%
No	4	14.81%
Don't know	0	0.00%
Not Answered	16	59.26%

Question 16: Are you content with allowing public interest interventions as set out in Section 10?

Option	Total	Percent
Yes	9	33.33%
No	2	7.41%
Don't know	1	3.70%
Not Answered	15	55.56%

Question 17: Are Sections 11-12 sufficient to prevent cross-border SLAPPs?

Option	Total	Percent
Yes	4	14.81%
No	2	7.41%
Don't know	5	18.52%
Not Answered	16	59.26%

Question 18: Does the Model law give adequate expression to the EU Directive and Council of Europe recommendation while taking account of the specific character of Scots law?

Option	Total	Percent
Yes	5	18.52%
No	0	0.00%
Don't know	6	22.22%
Not Answered	16	59.26%

Question 19: Can you envisage any conflicts between the Model law and other provisions of Scots law?

Option	Total	Percent
Yes	2	7.41%
No	1	3.70%
Don't know	6	22.22%
Not Answered	18	66.67%

Question 20: Are there any features not included in the Model law that should be considered for inclusion in possible legislation?

Option	Total	Percent
Yes	3	11.11%
No	2	7.41%
Don't know	5	18.52%
Not Answered	17	62.96%

Question 21 a): Do you prefer the definitions of “public participation” as set out in Article 4 of the Directive or Section 1(4) of the Model law or neither?

Option	Total	Percent
Article 4 of the Directive	2	7.41%
Section 1(4) of the Model law	6	22.22%
Neither	2	7.41%
Don't know	1	3.70%
Not Answered	16	59.26%

Question 21 b): Do you prefer the definitions of “matter of public interest” as set out in Article 4 of the Directive or Section 1(4) of the Model law or neither?

Option	Total	Percent
Article 4 of the Directive	3	11.11%
Section 1(4) of the Model law	5	18.52%
Neither	1	3.70%
Don't know	1	3.70%
Not Answered	17	62.96%

Question 21 c): Do you prefer the definitions of “abusive court proceedings against public participation” as set out in Article 4 of the Directive or Section 1(4) of the Model law or neither?

Option	Total	Percent
Article 4 of the Directive	2	7.41%
Section 1(4) of the Model law	6	22.22%
Neither	2	7.41%
Don't know	1	3.70%
Not Answered	16	59.26%

Question 22: Do you prefer the approach to early dismissal of proceedings as set out in the Directive or the Model law or neither?

Option	Total	Percent
EU Directive	0	0.00%
Model law	7	25.93%
Neither	1	3.70%
Don't know	3	11.11%
Not Answered	16	59.26%

Question 23: Should there be a time limit for an expedited hearing on a motion for early dismissal of proceedings?

Option	Total	Percent
Yes	8	29.63%
No	0	0.00%
Don't know	3	11.11%
Not Answered	16	59.26%

Is 90 days sufficient

Option	Total	Percent
Yes	6	22.22%
No	1	3.70%
Don't know	3	11.11%
Not Answered	17	62.96%

Question 24: Do you have any views on whether this guidance should extended to include other civil society actors, for example authors, academics, environmental campaigners?

Option	Total	Percent
Yes	9	33.33%
No	0	0.00%
Don't know	2	7.41%
Not Answered	16	59.26%

Question 26: Does Article 19 and sections 13 and 14 of the Model law provide an adequate legislative basis for the Scottish Government to bring in additional supports for someone who is the subject of a SLAPP?

Option	Total	Percent
Yes	4	14.81%
No	1	3.70%
Don't know	5	18.52%
Not Answered	17	62.96%