

LINK MEETING WITH CABINET SECRETARY RICHARD LOCHHEAD, 5 JUNE, HOLYROOD

A meeting in the regular series LINK has, normally with Environment Minister. Paul Wheelhouse had a competing commitment on this occasion and Richard Lochhead attended.

Participating

Scottish Government: Cabinet Secretary Richard Lochhead MSP; Bob Macintosh - Environment and Forestry; Keith Connal - Natural Resources; Gareth Heavisides - Natural Resources; Gráinne Lennon - Planning.

LINK delegates: Deborah Long, Helen Todd, Mary Church, Aedan Smith, Bruce Wilson, Charles Dundas, Jen Anderson.

Introductory

Richard Lochhead (RL) noted that this was the third meeting with LINK in a short period. (LINK had logged concern with Environment Minister and officials in March at the 2+year gap in terms of the network's access to the Cabinet Secretary; we indicated our view that this did not compare well with Mr Lochhead's regular contact with other stakeholders such as NFUS. Meetings had followed involving Task Forces on CAP (April) and Marine (May) with the Cabinet Secretary.)

RL invited introductions and asked about organisational memberships, which were stated (organisational and LINK roles, memberships in Scotland and wider) by those members present and by Jen Anderson for LINK. RL offered the chair to Deborah Long (DL).

1. Aarhus compliance

Mary Church (MC) outlined why LINK feels Scotland is not compliant with the Aarhus Convention and lags behind Westminster and other countries. She suggested that the Making Justice Work (MJW) programme offers a way to address this, though LINK sees little in terms of specific proposals amongst these reforms to ensure that Scotland complies with its international obligations in terms of access to justice in environmental matters. She reported that LINK had been talking with officials in the Justice Directorate and liaising with the EC over ongoing infraction proceedings and potential further action against the UK for non-compliance with the access to justice provisions of the Public Participation Directive (PPD). MC noted that the SNP's manifesto commitment to explore environmental tribunals presents another means of complying with Aarhus obligations, and asked what progress there has been in progressing this and how LINK might support Government with this area of work.

RC sought examples of differences between Scotland, and England and Wales and MC explained why PEOs, though levelling the playing field somewhat, are not entirely satisfactory and where Legal Aid provision is not available here, observing that even costs of £35,000 would be 'prohibitively expensive' to someone on an average salary. RC wondered how 'prohibitively expensive' was being defined in this context and MC replied that this related to being able to go to judicial review. She asked what input the Minister had been making on these issues and what intention there was to tackle the problem through the tribunals commitment. RL undertook to talk with the Justice Secretary on the issue and indicated an interest in exploring where wildlife crime sat in relation. He asked was the existing 'cap' not much use and MC cited the Trump v. local community in Aberdeenshire where a local resident could be expected to take on a billionaire's legal fees.

RL observed that though NGOs were 'one thing', if vociferous parties are allowed to court easily there would be no wind farms or other developments, in his constituency, for example. MC assured him that LINK's agenda is not to accommodate or encourage numerous vociferous cases but to ensure better practice in Scotland in complying with the first two pillars of Aarhus, i.e. the credible threat of legal action ensure that rights under the former pillars are not denied.

Bob Macintosh (BM) asked if the Protective Expense Orders (PEO) mechanism provided for this, or if something else were needed. MC observed that the introduction of PEO though a move in the right direction, is not enough to ensure compliance even with the PPD, particularly due to difficulties in accessing legal aid in public interest cases, and because of the outstanding question of substantive review. Whilst the ongoing MJW reforms will improve aspects of justice across the board and therefore in environmental cases too, Aarhus and the PPD specifically require states to provide for review of both the “substantive and procedural legality of decisions, acts or omissions”, and that access to justice in environmental matters must be “fair, equitable, timely, and not prohibitively expensive”. Scotland she suggested could address this proactively rather than through infraction proceedings.

RL told delegates that the Government has no intention to block access to justice in environmental cases. With reference to cases currently afoot he wondered how these related to individuals’ access to justice. MC confirmed LINK was aware of the Taylor Review, did not feel Aarhus compliance was part of its remit and welcomed the Minister’s offer to find out more on whether and how the Taylor Review relates.

RL asked for information on international comparisons and MC offered to provide this as well as more information on protective expense orders, and broader non-compliance issues.

MC reminded the Minister that LINK would like to hear further about Government’s intended timescale and process for SNP’s promised tribunal options paper and would be pleased to work with Government in developing this. Aedan Smith (AS) added that these could be instrumental in terms of consistency of approach and provision of a single body.

2. Planning

AS introduced this, reporting that LINK has regular contact with the officials and that members broadly welcome the draft National Planning Framework and SPP in terms of their support for Scotland’s environmental objectives. He handed over to others for specific issues as follows.

Helen Todd (HT) reported LINK’s disappointment at Scottish Government’s recent turn of mind over the removal of hill tracks from GPDO. LINK members had felt the case to remove tracks had been strongly evidenced. Hearing from the Planning Minister in March that he would consider this further, LINK had just launched a campaign to provide him with further evidence, particularly around tracks for sporting purposes bulldozed over extensive areas of the uplands. LINK saw the ultimate decision as important in terms of Scotland’s treatment of its landscapes and biodiversity and expectations in terms of standards. LINK was aware that planning authorities found this issue onerous, the NPAs were doing their own review of impacts on their management functions, and that the financial burden of change could be very low. LINK was not seeking to stop the making of tracks but to ensure scrutiny and achieve consistency of approach, which we believe would also be supported by the both national park authorities and in all likelihood by the local authorities too. This was an opportunity for public debate. The campaign sought to engage walkers to send pictures for a portfolio to be finalised late summer. Mr Mackay had also expressed interest in walking and seeing issues on the ground and LINK would be following this up. LINK’s campaign would run over the summer and would continue to keep Mr Lochhead informed, also. RL noted that this was a ‘knife-edge’ decision and that he was aware of the details; what about Wade roads, he wondered. LINK’s view was that Wade roads generally followed contours rather than making large-scale, extremely visual, bulldozed intrusions up and down hills – a major landscape issue, besides having biodiversity and hydrology impacts.

Bruce Wilson (BW) asked if Government supports, and how it would promote, the proposal for a National Ecological Network (NEN). LINK members were disappointed not to see this in NPF3 when the Scottish Biodiversity Strategy gave pointers to its future creation. RL indicated that Government had no objection to, indeed was interested in, the concept; but, as permission was not required, it did not feature as a project in NPF3. BW and AS presented LINK’s view that the most effective way to implement a NEN is by making it a national development in the NPF to demonstrate to authorities and private sector that it is priority and part of the vision. How else could this be promoted and progressed, in the LUS?

RL confirmed this had been under discussion just prior to the meeting. Bob Macintosh said the 2 land use pilots were a good opportunity to get away from single purposes and use a single framework for a number of roles. NEN could be built into the pilots as one of several dimensions. He encouraged LINK members to engage in the pilots. To the Minister's query about whether NPF3 gives NEN a nod, Bob said Government supports the NEN concept but can't include all specifics in the NPF. Gráinne Lennon reported that the Planning Department is definitely interested in the NEN concept, had attended the NEN conference; if NEN were not in NPF3, she said, it would be in other strategies. AS welcomed the update reiterating that LINK hoped for inclusion in the NPF3 but supported the LUS route; he asked if LUS would be progressed in tandem with NPF3, noting that these are separate documents to date, but that there is increasing recognition of the benefits of integration of documents. RL acknowledged this point with an 'okay'. Keith Connal (KC) interjected the view that these concepts can be all things to all people, and that the current description of NEN is not clear. AS thanked him for this feedback and BW indicated that the briefing would be developed and re-submitted. RL concluded the item saying this was a worthwhile idea.

AS welcomed the draft planning documents' treatment of wild land, a welcome step in the direction of protecting our landscapes and wild land assets and helpful to all concerned. HT reported LINK members' welcome for the inclusion of a wild land map and statements on development on sites. She reported that members saw issues around spatial planning and bufferzones and would address these in responses. LINK members were also concerned about other environmental issues including peatland protection, which they would be interested in taking forward with Government. AS suggested these could be addressed with a sophisticated steer in the planning framework if Government adopted SNH's locational guidance in full. The level of protection currently afforded to peatlands was discussed with RL; LINK delegates observed that this is criteria-based, rather than strategic and appropriate to large scale development, suggesting that the locational guidance would underpin local authorities' areas of competence and give a clear steer to these bodies and to the Energy Division as to where development would and would not be appropriate. RL said he had personally pushed for the inclusion of wild land and was pleased at progress, and felt this was an indication that Government was making progress on a big agenda. He asked Bob Macintosh to look further at LINK's other suggestions. Bob Macintosh also noted that regional LUSs are key for local authorities to increasingly use to identify important areas.

MC reported LINK members' welcome for the changes in the SPP draft compared to previous guidance, as regards unconventional gas extraction; together with the electricity statement, this gave good support to the Government's policy of meeting more of our needs via renewables. Members would comment on the scope to strengthen this further, particularly regarding buffer zones round wells and between these and settlements (eg 2km in New South Wales). She noted that agriculture, food and drink lobbies have been instrumental in securing these around the world. Whilst the UK licences oil and gas, the SPP is an obvious place to give a clear signal about this industry, and she asked what LINK could do to support Government on this. RL requested a note on international comparisons. The relevance of the central (heavily populated) belt as a key target for development and the current situation in the Falkirk Council area were discussed. AS reported LINK's view that the downsides of unconventional gas extraction far outweigh any benefits, the industry would contribute significantly to climate change emissions and not at all to Scotland's renewable energy targets; given the regulatory framework, the SPP was the most obvious place to state a presumption against this development.

HT reported real satisfaction within LINK at the inclusion of walking and cycling in NPF3 for which members including Sustrans and Ramblers Scotland had been pressing for many years. This was an important step forward and members would play their part in supporting Sustrans, SNH and Scottish Canals in taking this forward. She asked if the NCN will be monitored so that carbon savings are factored accurately into the RPP; RL hoped so as this was more or less standard now but would double-check.

AS summarised the points which LINK had made under the planning item and asked if the Minister engaged regularly as the environmental champion, with Government's planning policy. RL reported that he had many rigorous debates, an example being the wild land issue. He added that he relied on LINK members' guidance on some issue, would happily look at these as they came forward, and would keep a close eye on FUG. AS thanked him, noting the good turnout of Government colleagues at the recent event on FUG in

parliament. LINK would keep an eye on the issue and keep in touch with Government. KC interjected to say that at the official level, he and his colleagues found the information from the NGOs very helpful even if there was not always mutual agreement.

3. Forestry governance

Explaining that LINK had ideas (and a draft discussion paper already shared with officials) CD asked if the Minister could update LINK on Government's current vision for the future of FC in Scotland or the process by which that would be determined, including consultation; he reported LINK's upcoming meeting with Bob Macintosh at which details could be discussed. LINK was aware that SNP's manifesto committed to bringing forestry under control in Scotland; also that FC GB would be changing as a result of changes in England and in Wales.

RL said Government wanted the opportunity to take a fresh look at forestry since the status quo had been in place for a long time; with the rest of UK now instigating change, it was a question of waiting for the UK government (the ball was with Defra) to determine what they would do as this would influence options in Scotland. Financial implications of break-up had a large bearing (the breaker up could be left with the bill). In the long term there was potential to do things differently.

BM confirmed regular contact with Defra who knew the direction they wished to take but not yet the timing; whether there would be a legislative slot before the general election in 2015, or not, was the issue.

CD asked about the Scottish Government's internal review and BM said this covered two areas, first what to do with FC and second, the wider landscape of other bodies involved in natural heritage and land management in Scotland, policy and delivery. CD reminded him of LINK's *Governance Matters* which considered relevant issues; BM was aware of this. RL asked what LINK wanted to see and CD briefly outlined LINK's concerns, ie that where the functions lie affects their effectiveness, and that strategic rather than piecemeal reform will be important. In this context LINK was watching the process of merger of HS and RCAHMS with interest. RL noted that a lot could be done with FC and FE; however, a supply of timber for commercial purposes as one objective would continue to be important, alongside social and environmental purposes. Where Scotland goes with wider objectives such as those from the land reform review, community empowerment, climate change – would also be relevant. The answers were not all available yet; it would be an interesting two years. CD hoped Government would ask LINK for ideas.

HT then reported LINK's interest in the land reform review and reported that LINK had made a submission flagging LINK's concern as less about ownership and more about stewardship in relation to sustainability. She noted that the LRRG's initial report had little to say about the many communities of interest in Scotland with a big stake in land along alongside communities of place and hoped this would be rectified in the next phase. LINK was still waiting for an opportunity of discussion with the LRRG first contacted in February. HT also reported on the study published by NGO landowners which looked at the model and benefits of NGO ownership and management and asked what could be done to strengthen the environmental aspirations of the review. RL offered to pass on LINK's views to other Ministers. He noted that the LRRG was promising to put an emphasis on management which he thought should reflect LINK concerns, and too on communities of interest. RL also observed that the emerging concept of a Land Agency offered potential; he referred to the amounts of land in public, NGO, MoD and CEC ownership and the opportunity which, in his view, independence offered in this respect. He saw links to the previous discussion around forestry governance and felt there were opportunities ahead for a streamlined approach. HT recommended LINK's submission which took a high-level look at aims and means. RL acknowledged her suggestion.

5. Climate adaptation

Deborah Long (DL) sought the Minister's clarification. LINK had been developing ideas, talking with other organisations and with officials and was keen that Government ensured that Scotland discusses how it will negotiate a path into a new climate, not simply what it would do in the next 5 years, as members understood the consultation would do. Gareth Heavisides (GH) replied that alongside the consultation due

in the summer there was to be a parallel document which he understood would set out the context and strategic approach of Government to climate change; this was to be shared with key stakeholders and he would be happy to share it with LINK; he would get further details about this and report back.

RL asked for more information on LINK's idea of a strategic approach going beyond 5 years and DL reported on LINK's 5 principles for climate adaptation. RL noted that work needed on indicators for each sector, monitoring and reporting, on building up knowledge of big issues such as coastal erosion and impacts on coastal communities and concurred with DL that long-term solutions will be key. He felt answers to how to bring about behaviour change were challenging, he agreed there was a need to encourage the public to understand what is happening, to change where and how we live; indicated there was uncertainty about how to address the expectation of protection. DL reported LINK's recommendation that the Programme includes real action on the ground (not just high level policies and strategies) and a plan to demonstrate this to people so that they can see what adaptation and resilience to climate change involves. AS added that LINK would be pleased to work with Government and has opportunities through its own membership communications to help to explain the job ahead. So a keeping in touch between Government and LINK would be helpful. DL offered to write with briefing shortly.

The Minister thanked LINK delegates for interesting discussions, around big issues.

JA/LINK/13.6.13