



Paul Wheelhouse MSP
Minister for the Environment and Climate
Change,
The Scottish Government

15 July 2013

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Dear Paul

An environmental court or tribunal in Scotland

Further to our discussions at the recent G6 meeting on 26 June, LINK warmly welcomed the SNP's 2011 manifesto commitment on the creation of an environmental court in Scotland, which indicated:-


"we are open-minded about this, but wish to seek wider views. We will, therefore, publish an options paper as the basis for a wider engagement".

Further, we have welcomed initial discussions with officials as to the means to produce such an options paper and the wider engagement necessary. On the basis of this, and our positive experience in other areas of policy, I am writing to propose that that an Expert Working Group is established to look into options for an environmental court or tribunal for Scotland.

Environmental courts or tribunals are seen as a practical and cost effective response to the increasing importance and complexity of environmental law, with over 350 environmental tribunals in 41 countries.

A Working Group with a small but broad membership could draw on the expertise of legal professionals, academics, eNGOs, regulators and key industry sectors in order to make recommendations as to the most suitable way forward for the Scottish context. Its members could be charged with ensuring appropriate cross-sectoral engagement.

Its remit could include learning from environmental tribunals in other jurisdictions such as Vermont and New South Wales, as well as drawing together the various strands of legal and regulatory reform currently underway.

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Notwithstanding on-going reforms to the civil justice system we consider that the establishment of an environmental court or tribunal could ensure that Scotland is fully compliant with the access to justice provisions of the UNECE Aarhus Convention.

With a decision from the CJEU expected later this year in the Commission's infraction proceedings against the UK for non-compliance with the Public Participation Directive; revived EU interest in a third Aarhus Directive; and the Aarhus Convention Compliance Committee due to review the UK's progress in implementing Decision IV/9i in summer 2014, establishing a group to look into an environmental court or tribunal for Scotland now presents a timely opportunity to fulfil the present Government's manifesto commitment on this matter.

This suggestion is offered constructively as a means to expedite progress on this manifesto commitment. I do hope you will consider it positively and, if so, LINK's members would be very pleased to nominate eNGO representatives to take part in such a process.

I am copying this letter to Roseanna Cunningham MSP, Minister for Community Safety and Legal Affairs, as I understand this issue overlaps with her responsibilities and interests.

Yours,

A handwritten signature in cursive script that reads "Deborah Long". The signature is written in black ink and is positioned to the left of the typed name below.

Deborah Long
LINK Chair