

## Briefing on Scottish Government Debate: Demonstrating leadership in human rights

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

### SUMMARY:

Scottish Environment LINK members welcome the recommendations of the First Minister's Advisory Group on Human Rights Leadership and note the following:

- 1) **The report, "[Recommendations for a new human rights framework to improve people's lives](#)" calls for an Act of the Scottish Parliament to be passed that also enshrines the right to a "healthy environment". This needs to be developed and implemented in line with international agreements that Scotland is bound to such as the Aarhus Convention. This recommendation acknowledges the fundamental importance of our environment to our health and wellbeing. A fairer Scotland is impossible without a clean and healthy environment.**
- 2) **For this recommendation to be meaningful, it is important that the taskforce commissioned with taking forward this recommendation fully addresses the current failings of the Scottish Government to meet the requirements of the Aarhus Convention, as concluded by the Aarhus Convention.**
- 3) The [Aarhus Convention](#) empowers people with the rights to access information, participate in decision-making in environmental matters and to seek justice. It is the only legally binding global instrument on environmental democracy. Its provisions, if fully implemented, can help us respond to many challenges facing our world: from climate change and the loss of biodiversity, air and water pollution to poverty eradication and security.
- 4) It is our understanding that the First Minister set up the Advisory Group partly in response to the potential implications of Brexit for human rights. It is well understood that environmental protections, where legislation is largely developed at the EU level, will also need to be carefully looked at.
- 5) As such, Scottish Government commitments to a consultation on (post-Brexit) environmental principles and governance arrangements are critically interlinked with the full implementation of a right to a healthy environment as proposed by the Advisory Group.
- 6) This is because at present the European Commission complaint procedure is one affordable and accessible mechanism by which citizens, communities and NGOs can raise concerns. By contrast, domestic procedures such as Judicial Review are costly and usually cannot address the merits of the issue. This would underline the importance of the Advisory Group's recommendation that the implementation of the right must include access to justice – with reference to international standards such as the Aarhus Convention and the UN Framework Principles on Human Rights and the Environment. Present arrangements have been shown to be contrary to the Aarhus Convention.
- 7) **We call on Scottish Parliament to highlight the need for and seek reassurance that the taskforce which will lead on the implementation of these recommendations and any proposals that Scottish Parliament will be called to consider will thoroughly address this critical point about compliance with international standards and will explicitly address the concerns expressed by the Aarhus Convention Committee in terms of Scotland's compliance with the Convention.**

## **Recommendation on environmental rights**

Scottish Environment LINK's members and Fellows have, during 2018, been pleased to attend meetings of the Advisory Group's reference group as well as a specific Round Table meeting on the environment. LINK was, therefore, [delighted to welcome](#) the report's recommendation in relation to environmental rights.

The group have recommended that the new Scottish legislation should include, alongside economic, social and cultural rights a specific **right to a clean and healthy environment**. It says:

*“This overall right will include the right of everyone to benefit from healthy ecosystems which sustain human well-being as well the rights of access to information, participation in decision-making and access to justice. The content of this right will be outlined within a schedule in the Act with reference to international standards, such as the Framework Principles on Human Rights and Environment developed by the UN Special Rapporteur on Human Rights and the Environment, and the Aarhus Convention.”*

**LINK's members therefore welcome this recommendation which recognises the fundamental importance of our environment to our health and wellbeing and look forward to working with the new taskforce and subsequently the Scottish Parliament to implement this proposal.**

## **Human rights and implications of Brexit**

In addition to the general importance of this proposal, it is also important to note that the Advisory group was set up in the context of 'Brexit' with the First Minister commenting:

*“I wanted to ensure Brexit does not harm human rights in Scotland and that we remain in step with future advances in EU human rights. I also asked for recommendations to ensure Scotland is an international leader in respecting and enhancing human rights”.*

Intrinsically, the environment is an international and cross-border issue and 70-80% of our domestic laws relating to the environment originate in Europe. Thus, there can be no doubt that, if or when Brexit happens, the environment – and the laws and policies to protect and enhance our environment - will be severely affected. To meet the First Minister's ambition of international leadership, therefore, this recommendation must be fully and honestly implemented in parallel with other actions made necessary by Brexit.

A key post-Brexit challenge for all the UK's governments is the so-called “[governance gap](#)”. At present, the various institutions of the EU (notably the European Environment Agency, the European Commission and the European Court of Justice) undertake a range of environmental policy functions. In their absence, these functions will need to pass to existing or new bodies within Scotland and/or the UK. The Scottish Government has recognised this challenge, and [sought advice from a sub-group of its Round Table on Environment and Climate Change](#). A consultation paper on possible ways forward is expected imminently.

These matters interrelate, however, as a key part of any right to a clean and healthy environment is the right for citizens, communities and NGOs to challenge decision-makers in relation to matters that may undermine the enjoyment of that right – or may be contrary to legislation that seeks to give it effect.

At present, the [European Commission's complaint procedure](#) is one affordable and accessible mechanism by which citizens, communities and NGOs can raise concerns. By contrast, domestic procedures such a Judicial Review are costly and usually cannot address the merits of the issue. This underlines the importance of the Advisory Group's recommendation that the implementation of the right must include access to justice – with reference to international standards such as the [Aarhus Convention](#) and the [UN Framework Principles on Human](#)

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[Rights and the Environment](#). Present arrangements [have been shown to be contrary](#) to the Aarhus Conventions requirements.

LINK members therefore see the forthcoming Scottish Government consultation on post-Brexit governance and the proposed new environmental right as intrinsically linked. They both contribute to a better Scotland, where our environment is protected and enhanced, and is recognised as underpinning our own health and wellbeing. It is essential also that the engagement, participation and rights of citizens, communities and NGOs in environmental matters is both recognised and enhanced. Unless the latter is delivered, we cannot be the ‘international leaders’ that the First Minister aspires to be.

### Next steps

As we enter 2019 (and possibly the likely outcome of the Brexit debates become clearer), LINK members look forward to working with the First Minister’s new taskforce on human rights implementation.

Secondly, LINK members also look forward to seeing and responding to the Scottish Government’s consultation on (post-Brexit) EU environment principles and governance.

Thirdly, however, we must implement these measures with a clear vision of the importance of the environment, clear ambition for its protection and conservation and determination to deliver these outcomes. This is why [LINK has welcomed](#) the [Scottish Government’s development of a long-term strategy for the environment](#) – and debates relating to post-2020 ambitions for climate change and biodiversity.

But, consultations, discussions and strategies only are insufficient to deliver the level of protections that are required to see us through the current ecological and climate crisis. There is a clear need to underpin this all in a Scottish Environment Act – this is the key aim of the LINK members’ campaign to “[Fight for Scotland’s Nature](#)”. Such an Act should set clear ambitions, require actions to deliver those ambitions, underpinned by the EU environmental principles and supported by new governance mechanisms – including the implementation of the new environmental rights.

### For more information contact:

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