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Lord Smith  
The Smith Commission  
144 Morrison Street  
Edinburgh  
EH3 8EX

Friday, 24<sup>th</sup> October, 2014

Dear Lord Smith

### **More powers for the Scottish Parliament**

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with 37 member bodies representing a range of environmental interests sharing the common goal of contributing to a more environmentally sustainable society. Our membership organisations have over 500,000 individual members cumulatively. LINK provides a forum for its member bodies facilitating and enabling informed debate, information-sharing, discussion and joint action. LINK assists communication between member bodies, government and its agencies and other sectors within civic society. Acting at local, national and international levels, LINK aims to ensure that the environment is fully recognised in the development of policy and legislation affecting Scotland.

LINK has been carefully following the debate on constitutional issues for many years, and where appropriate, contributing our thoughts. One recent contribution was during the referendum campaign, where we challenged both the Yes and No camps to tell us how their proposed constitutional path would best deliver the ten aspirations for Scotland we laid out in our leaflet – 'The LINK Referendum Challenge'. We published the responses of both sides to the Challenge on our website and referred members and others to those responses, in order that they might take account of

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environmental issues in making their decision. LINK itself remained strictly neutral throughout.

*“In our view, the constitutional question should not be seen in isolation, however, from the substantive economic, social and environmental issues that are central to Scotland’s future. We face many pressing and urgent issues of substance, such as combating climate change and the loss of biodiversity, and people (including many of our members) want to know how the constitutional solutions on offer will make a real difference in tackling these and similar major issues. We will continue to pursue environmental improvement whatever our constitutional arrangements are, but we hope that the campaigns can provide arguments as to why their position offers the greatest hope of achieving sustainability.”*

The full text of the ‘Referendum Challenge’ can be found at: <http://www.scotlink.org/files/publication/other/LINKReferendumChallenge2012.pdf>:

and the responses can be found at:

<http://www.scotlink.org/public/work/referendum-challenge-updated.php>

I also enclose a copy of the full text.

On the basis that LINK has no formal position on the constitutional issue beyond the ‘Referendum Challenge’ leaflet, we have nevertheless, very quickly consulted our members on the issue of “more powers” for the Scottish Parliament and we submit the following items and ideas for consideration by the Commission.

1. In our ‘Referendum Challenge’ leaflet, we set out our ten aspirations for the type of Scotland LINK members want to see. We request that the Commission bear these in mind as they proceed with their work. We will test the solutions proposed by the Commission, and any legislative proposals arising from their work, against these aspirations.
2. As per our discussions during the referendum period itself, we can add to the ‘Referendum Challenge’ an eleventh aspiration - that the protection and stewardship of the land, sea and air of Scotland, and all the many species of life we share this space with, should be enshrined in a written form within the constitutional settlement. We respect the uncodified nature of the constitutional arrangements of the United Kingdom, but we note also, that many have

suggested that a written, legislatively based, entrenchment of the Scottish Parliament be pursued. Our aspiration would apply to any such solution for Scotland, as well as applying to any settlement in the wider UK.

3. As per our submission to the Calman Commission, we call for the devolution of legislative powers over environmental protection in the marine environment out to 200 nautical miles. At present these extend to 12nm, with devolved administrative functions to the full 200nm under international law. This matter is dealt with more extensively at: <http://www.scotlink.org/files/policy/PositionPapers/LINKmtfLetterJMurphyDevolve.pdf>
4. As per years of discussions within LINK, we call for the Commission to give full consideration to devolving the rights, duties and functions of the Crown Estate within Scotland to the control of democratically elected Scottish public bodies. We have no formal position on this issue but over many years we have expressed dissatisfaction with the current arrangements in respect of protecting Scotland's marine environment. Whether devolved or not, these powers should be subject to statutory requirements to contribute to sustainable development, including securing environmental objectives.
5. As per our experience of the years since the establishment of the Scottish Parliament in 1999, we ask the Commission to give full consideration to the relationship between planning policy (which is devolved) and energy policy (which is reserved), and the possibilities of reconciling differences through the devolution of powers over energy licensing, generation and transmission. Our member organisations have used devolved planning powers to oppose developments of nuclear power, conventional fossil fuel extraction, certain renewable energy developments and, recently, unconventional gas. They have found themselves in unsatisfactory situations where the direction of public policy at Westminster, using one set of powers, is completely contradicted by the direction of public policy at Holyrood.
6. As per our experience of the years of devolution thus far, we call for the rights of Scottish Ministers participating as part of

UK delegations to the European Union, and other international bodies and conventions, to be properly defined in legislation, in order to ensure that Scottish interests are properly represented. In a diverse range of matters, including in particular, agriculture and land use, and fisheries and marine environmental protection, we have witnessed many occasions where Scottish Ministers have been excluded by the current arrangements from representing the very specific and important interests of the Scottish environment during negotiations within the EU, and at other international fora such as the United Nations Convention of the Parties on climate change.

7. As per our observation of the changes that have occurred over the last 15 years in the “cross-border” (and Great Britain) status of forestry bodies and issues, we ask the Commission to give full consideration to the apportionment of reserved and devolved functions – bearing in mind the scientific factors considered in the recent review of the structure of the Joint Nature Conservation Committee, where LINK supported the continuation of joint functions. You can find the full LINK submission on the Triennial Review of the JNCC at:  
<http://www.scotlink.org/files/policy/ConsultationResponses/LINKJNCCReviewApril13.pdf>
8. In the light of concerns expressed by our member organisations as to their financial stability, we call for due consideration by the Commission to ensuring a taxation environment under any new constitutional settlement that both sustains and encourages corporate giving, legacies and individual giving through the corporate, individual and gift aid frameworks, which are essential to maintaining robust and effective non-governmental organisations and civic life in Scotland. Any disruption of these matters might adversely affect our ability to play our role in Scottish life.
9. In the light of our experience of the discussions within the Calman Commission of the devolution of Landfill Tax and other taxes, such as Aggregates Tax, we call for due consideration by the Commission to ensuring a taxation environment that specifically allows for the Scottish Parliament and the Scottish Government to pursue fiscal

reforms which shift burdens from non-damaging onto environmentally damaging activities. We call for such reforms at all levels of government and will criticise or oppose any settlement which prevents or hinders such reforms.

We apologise for the very broad nature of most of these items, and the lack of detail. We understand, however, the severe time constraints faced by your Commission, and we are certain that you will be aware of the serious concerns of many in Scottish civic life that the timetable laid down for your work does not allow for a full and proper consideration of the many highly detailed, complex and overlapping areas of constitutional reform you have been tasked with.

In addition to these quickly gathered ideas for consideration by the Commission, we reserve the option of supporting submissions by other organisations with whom we work in Scotland.

LINK is committed to openness and transparency and we are very happy for this submission to be published by the Commission. We will be publishing it on our own website, as we do with all submissions or briefings to public bodies.

Should there be any opportunity to meet and discuss this submission, we would be very content to attend. If there are any matters in this submission which we can amplify or clarify, please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in cursive script that reads "Helen Todd".

Helen Todd  
Chair, Scottish Environment LINK