



Scotland's constitution and the Work of Charities LINK Members' Discussion, 23 January 2014

Deborah Long (LINK Chair) welcome to delegates

Welcome to the first seminar LINK had organised on constitutional futures. We live in exciting times. In September, those of us lucky enough to live in Scotland will vote on whether Scotland should be a country independent from the rest of the UK. The outcome is far from being decided. The polls remain stubbornly split into three, between 'yes', 'no' and 'haven't decided'. Between now and September 18, many things could happen, both in Scotland and in England, that could have a significant impact on the vote, particularly influencing those who haven't yet decided which way they will vote.

However, one thing we can be sure of: things will change after September, whatever the outcome. Whether we have further devolution in Scotland, or full independence, the perspective for charities in Scotland in terms of governance and policy, may well look very similar. The problem we have is that it is impossible at the moment to resolve and clarify the constitutional arrangements we'll be working under this time next year. Whatever happens, this is just another evolutionary step on a constantly changing political stage. It's not scary or frightening – it's just part of living in a modern democracy, which constantly offers opportunities and options. Scotland and Scotland's people have benefitted from having our own Parliament, reconvened after a 300 year break in 1999. Our parliament is widely, although not universally, seen as working well for Scotland and today people in Scotland feel confident and secure. Our politicians are generally, although again not universally, seen as caring about Scotland and working to make Scotland a better country.

Rather than discuss what will happen in September this discussion is to share ideas about how we can all be prepared for change – some inevitable, some long term and some medium term. These changes will include changes to the tax and gift aid system. They will include the need for our policy work to be seen to be made in and relevant to Scotland. They will include a changing relationship with Europe and the rest of the world, as Scotland and the rest of the UK embark on possibly very different trajectories. These changes may include requirements to changes to accounting and reporting systems, pensions and HR. Ultimately, these changes may include, although it seems unlikely, changes to charity set up and functioning, particularly burdensome for cross border charities. Whatever, now is a good time to be casting our eyes to the horizon and making an effort to understand what the future may throw at us in the next 12 months or so. Take the chance to find out what other organisations are doing and thinking. Please be inspired to make the changes to make your organisation more effective in Scotland, using this opportunity and taking the initiative. We own this discussion as much as our politicians. Let's make the most of this exciting time to up our game and deliver for Scotland's environment in the future.

How will we do this?

Starting with a presentation from Lloyd Austin (Head of Conservation Policy, RSPB Scotland) on the optional outcomes paper circulated. These are the:

- Known known – Scotland Act. This will happen.
- Known unknowns: ie, further devolution, or independence.
- There may be some unknown unknowns, which we'll discover.

The main thing is for us to contribute our thoughts on the known knowns and the known unknowns as we go through. The discussion includes a closer look at the EU – not around whether Scotland or the rest of UK will be members of EU but options in the paper. Take the opportunity to explore any discussions you may have had with UK colleagues on organisational structures in the UK and preparations you've been putting in place.

Andy Myles (LINK Parliamentary Officer) will outline *Referendum Challenge*, the work LINK has been doing to inform our members about the implications for the environment of constitutional change. Again we won't be discussing the next steps of this work – LINK's Governance Group leads on that - but we will share the information we've managed to gather, not without some pain, on what the constitutional campaigns think they can deliver for the environment through their preferred constitutional set up.

Key decision-making dates:

- 18 Sept 2014 – Scottish referendum on independence
- 18 Sept onward – Some more clarity regarding future of current 'UK'
- May 2015 – Westminster Parliamentary elections
- April 2016 – Scotland Act 2012 fiscally takes effect*
- May 2016 – Holyrood Parliamentary elections



Optional Outcomes of the Scottish referendum (Appendix I – the paper as circulated January)

Lloyd Austin introduced the paper developed in conjunction with Andy Myles. These were offered as thoughts for discussion rather than with any formal status, and presented three scenarios: implementation of Scotland Act of 2012 <http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted>; or further devolution; or independence. In none of these scenarios would the status quo continue. Just as devolution since 1999 has been changing things contained in the 1998 Scotland Act (eg devolution of the railways or offshore marine planning – the latter negotiated for by NGOs across UK during passage of the Marine and Coastal Access Act 2009 to get better planning mechanisms) there would continue to be devolution.

Scotland Act 2012 headline points:

The Scotland Act 2012 was a manifesto commitment of the pro-union parties in 2007 (Scotland elections) subsequently brought about by the Calman Commission. It was passed at Westminster and legislation to implement it has also been passed by Scottish Government at Holyrood.

Policy and fundraising – brings some devolution of taxes esp landfill and stamp duty on land transactions which Holyrood has already legislated for to implement in Scotland; there are opportunities in Landfill for fundraising; there is provision for Holyrood in future to implement new devolved taxes subject to Treasury 'ok', giving an opportunity to lobby for new forms of tax (LINK's economics taskforce may consider case to press for green tax).

Scottish variable rate change – Holyrood has power to set the SVR; if they set it at 10p tax rate remains as per UK; if they set higher/lower, Scottish residents will be on a different tax rate; this will come into effect after the Holyrood elections in 2016 under the next Scottish Government; for UK-level employers this may mean different tax rates for employees resident in Scotland (HMRC guidance sets out rules

<http://www.hmrc.gov.uk/news/technote-scot-taxrate.pdf>).

Gift aid - it appears this will not change. HMRC guidance indicates that because only 9% of total UK population resides in Scotland Gift aid will be reclaimed by charities at the same rate in Scotland as elsewhere in the current UK, irrespective of residency. However, if future Scottish Governments raised tax, employers would not be able to reclaim all the tax from Gift aid; if tax were lower in Scotland, more tax could be reclaimable on donations by Scottish residents.

Further devolution headline points:

The 2011 election outcome in Scotland was an SNP majority Govt which put the independence referendum firmly on the agenda; all political parties have some wish to be seen to stand up for Scotland. The three pro-union parties have set up processes to consider more powers for Scotland: LibDems under Menzies Campbell 'Revitalising Federalism'; the Conservatives under Lord Strathclyde; Scottish Labour's 'Devolution Commission'; none of which have yet produced detailed proposals. Depending on what happens in September 2014 proposals can be expected in these parties' manifestos for the 2015 Westminster elections, and potentially legislative proposals after that, possibly passed as early as 2017 and in effect by 2020.

Independence headline points:

Whilst the obvious agenda for independence is the SNP/Scottish Government version, there are various agendas. Yes Scotland is an alliance of all these versions including Greens, Socialist (various strands), Centre Right (Wealthy Nation), Scottish Democratic Alliance (favouring and independent Scotland outwith the EU, like Norway). The White Paper on Independence <http://www.scotland.gov.uk/Publications/2013/11/9348/0> focusses on the SNP/Scottish Government version. However, a yes vote in September will not decide the actual version of independence which Scotland would get: that will be decided by the 2016 Holyrood elections. So, any negotiations, eg to keep things in common with the 'UK' would only start then.

Independence and the Scotland Act*(s) - Post a yes vote in 2014, an independent Scotland might not implement all of the Scotland Act 2012; it might instead be put on hold, with the focus of negotiations shifting to an Act of Dis-Union which would then repeal the Scotland Acts.

Whatever the referendum outcome:

Although there will anyway be change post Sept 2014 (implementation of the Scotland Act* at a minimum) – there will be time to find out the likely shape of the next phase of change as discussions develop between the 2014 referendum and the 2015 Westminster, and then 2016 Scottish parliamentary elections, and the subsequent passage through Parliament of these changes; it will not be a situation of surprise. After a yes vote in 2014, the 2014-16 period would find things up in the air as Scotland cannot be independent until a date is set through a process of discussion. And if the 2015 election then returned pro-union parties in Scotland these



would need to reconstitute themselves. SNP intends at this stage to continue as an active party even if its main mission were by then achieved. Party politics will affect things; it is worth focussing on their manifestos for 2015 and 2016 to monitor and influence. There is real value in monitoring the process of discussion, to find out decisions so that NGOs can make appropriate changes internally and develop appropriate advocacy strategies. A developing Scottishness regarding public policy and discourse should be anticipated, which NGOs should take into account in their public affairs strategies. There will also be legislative, administrative and technical things to respond to under the options, in terms of finance and governance.

Discussion points around the Optional Outcomes Paper:

Gift aid – The Scotland Act would bring about different scenarios for reclaiming. Existing legislation applies in Scotland until a future Scottish Government changes this; cross border charities could reclaim for English members from the their Treasury and from Scottish members from a Scottish Treasury. And if a Scottish Government decided there should be no Gift aid, the latter part of that would not apply. For charities registered and operating in one part of the UK only, it will be different: they could not reclaim from members outside that country; they could constitute themselves as charities in the other country to do so, though observing the two sets of regulations; or they could start operating as a cross-border charity (eg JMT, based in Scotland). If raising money from other EU countries, they would have to work out how best to bring that revenue in; worth consideration as wider cross border (cross EU) memberships could be a good way to resource advocacy. RNLI and Barnardos are British Isles-wide in scope, so can reclaim tax paid in any of the UK countries or in Ireland (Republic of).

Rate of change - discussion after a yes vote between September 2014 and the 2016 elections, would focus on the constitution (eg legislation for, entry to EU, number of members of Scottish Parliament, elections process, titles), with policy content (eg taxes, agency structures) determined by the 2016 election. In terms of the rate of change, discussions have already started within the pro-union commissions (see above), and through the SNP Government in Scotland's White Paper process (above), as well as across civic society, and the Secretary of State in London may seek similar dialogue. LINK has pressed for environment to be recognised in any Scottish constitution: if the constitution for remainder of UK were revised, NGOs could also lobby for environment to be included. As to relationships in the UK, these have been changing and will continue to, similarly to relations in / with EU, especially with an EU referendum on the radar in 2017 for the UK.

Civic discussion/ Third sector role – LINK's approach of asking how environment and sustainability will fare under different constitutional scenarios, has been noted as a strong one and is mirrored by some others in the sector in Scotland; other players are engaging more in discussion of independent scenarios. LINK has engaged with Scottish charities regulator OSCR on the guidance to charities as to how and why they should engage in this debate <http://www.OSCR.org.uk/publications-and-guidance/charities-and-the-independence-referendum/>. Essentially charities want to engage, but not be drawn into one or other of the two campaigns. Talking to charities like RNLI about future potential structures has also been useful. LINK and others in the sector made the case ahead of 1998 for an open and robust relationship between the sector and government and parliament, and this will continue to form part of their (and others') advocacy.

Independence and status of NGOs – Independence would not require NGOs to devolve – they can continue to be cross border entities. RSPB plans to continue to cross UK and international borders and is taking stock of operations in Canada, Australia and the US, about federal as well as unitary experience. Many international development NGOs operate across international jurisdictions and there are various models. The Scottish Government White Paper on Independence expresses a desire for shared markets, cooperation with other charity commissioners, and much more to remain the same – and has been criticised as 'independence-light' for this reason, by more fundamentalist players.

Scottishness –potential for restriction on NGOs operating outside Scotland not having registered in Scotland? Probably no more than in terms of the 'localness' agenda applied anywhere, ie., importance of making selves relevant to areas in which NGO wants to operate, making a strong case for mandate there, and thinking about perceptions there of the organisation's operations. There will be some technical issues – Regulators may ask for separate accounts, eg. But the broad issue is how the NGO is perceived in the countries/areas in which it operates, its relevance and approach there. So if Scottish, and wishing to operate in England, it may in future need to register with Charities Commission also. A no vote in Scotland could mean there would be less call Scottishness, perhaps, though this relates to people's attitudes and over recent years there appears to have been a swing to more of a sense of nationality across UK; however, this could swing back in future.

Government / NGO fora – IUCN and other government or quasi government entities could have to change to meet post referendum realities. Discussed later – see below.

Impact on Financial Conduct Authority – FCA is currently reserved under UK Government and there is no sign of proposals for change. Change would be unlikely under Scotland Act or further devolution scenarios, because of the breadth of the economic context; however, independence in Scotland could have significant impact. In that respect, though, as noted above, the current White Paper is ‘independence light’ because the SNP Government is keen to convince business about consistency with current UK; political pressure for cheap and simple solutions will likely prevail; the EU context to operations limits the scope to be different.

Charity regulator plans - As a government agency OSCR can't take a view until/unless laws are changed as to its operations. Dialogue is ongoing for a separate NI regulator now (currently within the Department), and things could take same direction in Wales in future. These regulators have an established method of liaising, as a forum of charity regulators including Republic of Ireland, meeting every six months to exchange information and experience. OSCR was committed to a review within its first ten years, though, depending on the outcome of the referendum, this could be postponed or overtaken by events. A future OSCR could be pressed to be more rigorous regarding cross border charity reporting, which at present is not onerous.

Members' perceptions of the NGOs in relation to the independence debate – value of charities having discussion with memberships as to the boards' findings about the future, in terms of impacts on organisational objectives, was stressed. RSPB had considered, set up internal process, and have a communications plan around referendum issues. Important to do this using normal communications processes eg., AGM, magazines, newsletters and member groups. Discussed later – see below.

Income management, finances and administration

Scotland Act says there will be one authority, ie the HMRC, for income tax.

Further devolution proposals are not as clear: the political parties may suggest different scenarios, though it is unlikely that Scotland could run a separate authority under the Scotland Act 2012.

An independent Scotland would be likely to need its own Treasury; Revenue Scotland already operates as an administrative division in Scottish Government for Landfill Tax purposes. SNP currently want the Bank of England and the sterling to pertain in an independent scenario though a Scottish Government group is taking views – the Tax Collaborative (LINK is represented on this group by Lloyd Austin) on how to set up a channel for negotiation, and it, too, could morph into a Revenue Scotland body. So far, this group has no interest in green taxes (which remains a policy issue to pursue in other ways).

Charitable trusts / foundations and implications of change - Some Trusts have recently said they won't commit to fund in Scotland past 2016 until they know the referendum result, owing to unfounded media speculation about how Scots organisations might operate after. The challenge that should be made to the Trusts is to remind them where/how broadly they source their funds and the nature of their own charitable objectives, and they should be encouraged against kneejerk reaction. Each CT's founding statement has a bearing on whether it could and would fund in Scotland. If Scotland were to be outwith the UK in future, and a Trust's objectives referred to the UK, it could be challenging to secure funding for Scotland from that organisation. However enabling Acts, post a yes vote, are likely to address that kind of issue (eg interpretations for foundations, titles for each geo-political area) between 2014 and 2016.

Data protection – accessing donor details in sister / UK organisations post a yes vote to attract members who might be interested in joining a Scottish body? On day one of an independent Scotland, Scotland will still be governed by the UK DP Act; the new Scottish Government would give the Scottish data commissioner DP responsibilities of the UK; so, the status quo can be expected until a Scottish Government decided to make changes. Scotland may carry on sharing the DVLA as well as other UK entities. Subsidiary companies cannot share data now, so independence could add complexity to this situation in Scotland. If UK and Scotland were both in the EU in future, there may be EU legislation too on sharing data between member states to observe.

Income tax – If Scotland Act were enforced, employees in Scotland would be Scottish taxpayers; tax rates would be reduced by 10p in the £ and substituted by the Scottish Variable Rate amount (if that were 10p, there would be no change in the pay packet: if it were another amount there would be change for Scottish taxpayers, up or downward). For UK charities, the question to address is whether their payroll systems can cope with distinguishing between Scottish and non-Scottish residents, for reductions from pay, and returns to HMRC. There are other EU models in operation. NGOs involved on stakeholder groups about regulators and taxes,

should press for absolutely minimal changes affecting charities and business, given the costs associated with change, and the importance of charities using their funds for the objectives for which people have donated the money in the first place.

Immigration and visas – Scottish Government is currently arguing that Scotland will have different rules as to what needs to be checked about a prospective employee ahead of making a job offer, so this could affect employers operating in Scotland and other parts of UK. But Scotland in the end may not differ from the UK on this. Current discussions between UK and EU will also impact what can be changed in the context of the immigration laws.

Pensions – Scotland Act makes no changes and in other scenarios the future is unknown; however there is political debate around the question of which EU regulations would apply to an independent Scotland as regards full funding or not; the two campaigns take different stances on this with no real clarity at this stage. EU Court of Justice is the body which will ultimately decide - we are all citizens of Europe - though there is currently no appetite to take this question there. It is thought that the same rate of tax relief is signalled in the Scotland Act as now; also that under PAYE, pension contributions would continue to be deducted before tax is applied. **LINK to explore further**

Ownership of land/property/buildings– Stamp duty changes flowing from the Scotland Act are going ahead now and charitable relief will apply in Scotland in the same way as it currently does in UK. Future Scottish finance ministers could spot opportunities to raise more by removing relief, however! On wider land ownership issues LINK has recently submitted to the Scottish Government’s Land Reform Review Group and to a House of Commons inquiry; change will continue to be discussed whatever the September vote outcome, though this is restricted by international company law (NB - many estates in Scotland are registered offshore) and by the European Union Human Rights rules on private property rights (the constitutional campaigns are making no case to be outside the Council of Europe in this respect).

Advocacy and policy

Reserved / devolved - Many policy areas are already devolved in Scotland; others remain reserved and would do even under the implementation of the 2012 Scotland Act. See description of devolved and reserved powers at <http://www.scottish.parliament.uk/visitandlearn/25488.aspx>

Cross-border arrangements – JNCC exists under the current settlement to which Scotland Act indicates there would be little change. Further devolution would probably not affect this (though it could). And most current versions of independence would retain similar mechanism.

There’s general recognition that it makes good sense for the SNH-equivalent in operation in Scotland, Natural England and equivalents across the British Isles to have a mechanism which allows sharing of information and discussion: this could be provided through a ‘Council of the Isles’ arrangement (British-Irish Council after the Good Friday Agreement). SNP compares that to Nordic equivalents, and a pro-yes argument for the SNP is that a Council of the Isles would ensure such ongoing cooperation with the benefit of sovereignty of the Scottish voice (contrasting with what SNP feel to be decisions imposed on Scotland at present).

There could be benefit to a Council of the Isles approach to get genuinely-UK policy change. It was the political dissension in NI that led to the British-Irish/Council being established with inclusion of Republic of Ireland bodies in this grouping on issues including natural environment; and there is good cooperation on such issues now. JNCC has a largely reporting role so that in terms of its role for Scotland in future we need to know more about what Scottish/EU/International relationships will be; an independent Scotland would inherit all current UK and international obligations on which JNCC reports and which could be transferred to SNH unless the two separate governments agree to use the same body to produce the two reports.

JNCC-type mechanisms generally work fairly well: however, Defra omitted to include Scotland when reporting on Aarhus compliance, so there are gaps in these systems. The meeting felt a British Isles coordinating function will remain important and a Council of Isles arrangement may be best – this already works well across different bio-geographic boundaries.

Joint work and liaison through the Links - active UK-level work is not strong as so much is devolved; there is little UK-level joint lobbying; liaison is more a sharing of experience and understanding over a devolved UK.



United Nations programmes - also relevant. Cross border bodies may need to take responsibility for joint endeavour in this respect.

Discussions at EEB have noted there are anyway holes in the UK-EEB arrangement – this is something the NGOs and governments need to do better, anyway. A beefed-up JNCC could deliver? Representation of ‘the UK’ (eg at EU, internationally) could improve through this debate.

Worth discussion at Joint Links level: topic for 2014 Links Seminar?

Role of IUCN UK also refers – **LINK and Stuart Brooks to discuss further.**

Lobbying Bills (ie current Westminster Bill, proposed Scottish Bill) – very important in relation to all the forthcoming elections and all areas of NGO advocacy. NGOs should understand importance of the Bills and monitor progress carefully. There is very broad opposition to the UK Bill esp. Part 2 (though other Parts come under fire too); potential to affect NGOs’ roles is high; yet no discussion of large corporates’ freedom to lobby the EU, for example. A parliamentary inquiry ahead of a Scottish Bill has just closed in Scotland. Monitor in run up to Westminster 2015 elections whether parties pledge to repeal Lobbying Act ahead of its enforcement.

Advocacy on issues reserved to the UK level – If there is a no vote in September, and pro-union parties put proposals in their manifestos for the 2015 and 2016 elections, NGOs could consider what further devolution would benefit their objectives, in terms of currently reserved issues. Examples are to press for offshore nature conservation powers to be legislatively devolved, devolution of energy policy or at least of more of the components. **Discuss at LINK workshop following referendum**

Future of relationships within the UK and in the EU

Organisational relationships and structures

Various models are in use amongst LINK, namely:

- 3- or 4-country base (eg RSPB)
- single country base but wider membership (eg JMT)
- devolved sisters (eg Ramblers)
- autonomous sisters (eg FoE, FoES)

Round the room summaries of where organisations are at Jan 2014 in this debate:

RSPB – optional outcomes paper had gone to Board and Council for Scotland and UK Council; a Senior Managers Group had been created to establish a process to monitor and to put in place responsibilities as and when needed so that when that point comes the organisation is ready to respond as appropriate. There is a devolved, four-country approach stressing local identity and autonomy, with each of the four orgs leading in their territories and linkages on common values and in terms of biogeographic disposition. Also operate internationally (eg on flyway issues) to represent the UK-ness/needs.

Butterfly Conservation – risk paper initiated in Scotland to go to Board and Council on potential implications of Scottish referendum for the organisation, which has not been considered before. Has active Scotland office and brand heavily as BCS in Scotland; have staff in NI and Wales; mission is to work where the butterflies are.

Scottish Wild Land Group – no consideration yet given. Scottish-only organisation though with a lot of members who are not resident in Scotland. Volunteer-led and -driven, no staff, very little fundraising activity.

John Muir Trust – established and registered in Scotland, working a lot in England and Wales, membership across the UK. For some time now, concerned with being relevant to communities in which operations take place. Board flagged need for discussion some time ago, and the significance of the issues has contributed to JMT strategic review being pulled forward to inform how to position, communicate, organise and govern the organisation going forward. Unlikely to position on the vote itself. Developing position to communicate to members at AGM in May.

Woodland Trust – HQ in England, with country-specific operations across UK. Scotland has been alerting the organisation for a while to the significance of the referendum and a first paper is to go to trustees in February. Today’s meeting very informative esp. regarding communications with members.

Marine Conservation Society – UK organisation including a Scottish office and Scottish staff. Trustees are aware of the potential for change and will discuss in June. No Executive discussions yet.



Whale and Dolphin Conservation – HQ and registered in England, also registered in Scotland where only public-facing venture is located. Has subsidiary organisations in US, Germany, Austria and familiar with working across borders. Today very helpful as no internal discussions have yet happened.

Council for British Archaeology – Set up in 1944 and series of groups have since been set up, all autonomously registered charities – Archaeology Scotland is one, leading on advocacy in their part of the UK. There is good liaison among these groups and the Directors communicate regularly. Have had little discussion of the referendum so today is useful and will inform CBA trustees' meeting coming up very soon.

Friends of the Earth Scotland – 35 years old, independent Scottish organisation, though collaborates on a lot of eg reserved policy issues with FoE England. Some tensions exist between FoE groups in UK on funding bids though there have been some collaborations on these too, now. FoES works with FoE England on EU issues.

Plantlife – UK organisation with offices and staff in Scotland, Wales and England, where HQ is located. For some years, and driven from Wales and Scotland, the organisation has been branding reports and papers in the different countries to be relevant locally and that is the established pattern now. A dripfeed on constitutional issues to HQ from Deborah Long has been very useful.

Ramblers – a 'devolved sister' with Ramblers Wales and Ramblers in England (called GB), which is also where GB services, central to all the sisters, are based. There is a GB level board, a Scottish committee which is the Scottish policy committee and equivalent in Wales. 90% policy work in Scotland is devolved, and Scotland is involved in very few GB campaigns given little crossover of relevance. The Scottish committee have for some time wanted to develop a position on the referendum because RS in 1997 voted 'yes' for devolution, for obvious reasons; now no position is needed because the extent of devolution is so great. However the Board has delegated a sub-committee to discuss governance issues. Scottish committee paper at <http://www.ramblers.org.uk/scotland/what-we-do/ramblers-position-on/referendum-2014.aspx> and blog <http://www.ramblers.org.uk/what-we-do/blogs/2014/january/referendum.aspx>

Bat Conservation Trust – Conference call planned in March to start discussing impacts, but this meeting has been first time considered it in any detail. Today very helpful to kick start thinking.

Buglife – Registered in England, offices across the UK and further afield. Scotland raised the issue in 2012 with the Board, and this has been included in the organisation's risk register since then. Board now looking to rectify the gap in terms of Scottish trustees, and a paper on the referendum implications is to go to the next Board meeting.

Froglife – England HG, registered in England and Scotland, working wherever funding is sourced to do so. Have a Scottish trustee. Have not given these issues much thought so today is useful. Have a 'competitor' organisation in ARC (Amphibian and Reptile Conservation). Find it hard as smaller charity to network in England.

Member perceptions: issues – questions arising, dealing with these

Have organisations considered the implications of the referendum with their members or had encouragement to take a position?

RSPB – have not been told not to be neutral, which is the position the Board feel best, as the political status of Scotland makes no difference to RSPB's objectives being achievable. Have had no formal communications with members, though one or two informal exchanges.

BCS – Nothing was raised at 2013 members' day; members simply want aims pursued. Are working to ensure locally tailored communications.

JMT – the plan is to discuss with members at the May AGM, not to take a position on the vote; have toyed with idea of focus groups as due diligence, given the spread of membership. No breakaway requests to date. JMT is perceived as Scottish but acquiring land in Wales with Scottish members asking why, so trustees considering how members would relate to / want to support the organisation if Scotland were independent.

Decision makers' perceptions – issues

Under further devolution or independence, there is potential to work as international NGOs.

Scottishness in the way in which the policy community goes forward is increasing – will decision makers take notice? In recent White Paper meetings between NGOs and Scottish Ministers, it's clear that SNP do not want to jeopardise the flow of finance south to north. They listen to advocacy from those working more on



behalf of Scottish than non-Scottish interests, though, will promote the Norway model and object to David Cameron's proposals. Cross-party, most MSPs (Scotland) understand that an organisation's core purposes may relate very little if at all to borders, that issues have a global-local spectrum, that NGOs may not have yes/no views but do have positions on the targets of their advocacy. Effective relations are largely in the way an organisation portrays and presents itself, and being clear in each constituency about one's mandate both helps and matters. While Scotland has been critical of UK charities not interpreting themselves and their messages 'locally', they know that we are good at stressing the EU and international dimensions, and at highlighting where Scotland could be a leader – so in general our standing is good.

Unintended consequences in relation to joint concerns across the UK/British Isles in future – a consequence of devolution, not intended, has been Westminster's assumption that various problems can simply be ascribed to SNP's preferences, where in fact some of these issues are more substantive and require joint consideration. NGOs need to take care to ensure we can influence reserved matters (in a 'further devolution' scenario) by ensuring staff in England know the Scottish views and represent these to MPs, or work with devolved / autonomous sisters, or work via the Links. In an independent Scotland scenario, we could be up against Westminster disclaiming responsibility and an independence-light government in Scotland wanting to work together with the UK – a 'family fallen out' scenario. Would this be part of an 'EU family' though? Nothing is guaranteed as yet. **Should the Joint Links be made more effective as a mechanism to address such 'family quarrels' across British Isles in future?**

Which reserved issues are important for the environment? Various, including:

- tax/economy and the alternatives to GDP debate
- energy esp climate and infrastructure
- some transport policy and emissions (aviation and shipping)
- international affairs
- sign-up to things in the EU and beyond

to name a few.

EU and international relationships - contact with EU / international obligations / networks liaison

Both campaigns say Scotland may/may not be in the EU in future: however the accepted civic wisdom is that Scotland will be part of Europe via discussion between 2014 and 2016. Important to note that:

- much environmental policy derives from EU and beyond and is crucial in Scotland; all decisions are made by majority voting or unanimity (the 4 administrations currently agree this by protocols – things are sometimes fractious and perhaps sorted by UK government veto)
- much EU policy is implemented by the administrations across UK involving massive direct contact with EU – further devolution would increase that direct communication and might formalise the system for devolved discussions ahead of EU Council meetings (eg open meeting/system of votes), or the regional governments might have more say in whether x should be passed (along lines of German Bundesrat approach). Both the constitutional campaigns claim their idea is best for Scotland – either a top table / or being a member state. It is said that Holyrood has not been an effective legislator in EU terms. However in any future constitutional option, there would be ways of ensuring democratic representation of all parts of the British Isles. European Court of Justice may ultimately decide.
- This debate is overshadowed by the current UK (Conservative-led) review of competences to identify which are EU and which UK, and then negotiate for some to be returned to UK (if Cons are re-elected in 2015 and a referendum on Europe is to go ahead in 2017)
- We need to increase effort to get Scottish Parliament and Governments to take Europe seriously, getting them more involved. That means focussing on best mechanisms for getting ideas into and out from Europe, more contact, possible a Bundesrat mechanism across British Isles, working more with Governments to ensure EU and international obligations are met, using international networks (Birdlife, Plantlife Europe, WWFI, FoEI, etc) and sister Links, IUCN, EEB to support this. That calls for improvements to our current 'inside-UK' comms on relations with EU and beyond, too.
- Can we discount a 'Scotland outside Europe' scenario? All EU law must be transposed to domestic legislation by member states; for a further devolving or independent Scotland, that situation would remain in place until repealed; so from an environmental perspective if Scotland were outside EU for a year-ish, during this discussion or repeal process, existing EU legislation would remain in place with which Scotland and business would have to comply. Transfer of funds could be more of a challenge.



LINK's 'referendum challenge' <http://www.scotlink.org/work-areas/referendum-challenge/>

What Referendum Challenge aims to do - Andy Myles explained RC had been agreed as LINK's way of focussing its role on members' collective raison d'etre (environment and sustainability) in the lead up to the referendum, of asking the constitutional campaigns to tell the network why their option would be best for the environment, and of not being dragged into the constitutional arguments. RC contains broad overarching questions about future Scotland's approach to the environment. Campaign responses are not hugely impressive, are hedged in terms of the next Scottish elections/government, are generalised and do not suggest that much would change for the environment. LINK will host a debate involving representatives of both campaigns on evening of 26 February 2014 in Edinburgh with opportunities to question campaign reps on the future for environment and sustainability.

Discussion points:

- Filming and webcast on 26 February would be useful **LINK staff to take forward**
- More mileage ahead before September for the referendum challenge? LINK board believe this is not useful to pursue unless we could make environment central to the referendum and that is very unlikely. LINK manifestos work will instead focus on the 2015 and 2016 elections. The challenge document is however being used with others across civic Scotland, with Scottish Government and Ministers and members are encouraged to use it similarly. **Members**
- Useful to have articles in the press from members ahead of the debate? Yes, if space in the press can be secured. **Members**
- Value of viral films to use post-debate in February. **LINK staff**
- This audience to be invited to the 26/2 debate **LINK staff**

Conclusions

Deborah explained that there is limited capacity in LINK to pursue all the conclusions and encouraged everyone present to be proactive, and to share information they acquire on these:

- Pursue swift research & sharing of knowledge; to assess impacts of change; and adapt to change.
- Hold a further session (on operations) just after the referendum. Set up e-group to share intelligence. Exchange members' papers going to Boards on the subjects. Consider update to this optional outcomes paper, as capacity allows in LINK. Consider using the Links as a management forum.
- Use other third sector NGOs and intermediaries to share experience and knowledge.
- Explore alternative administrative models (eg RNLI, international development NGOs)
- Use current debate as trigger for reinvesting in sharing – media work relates
- Bear in mind possible 2016 OSCR review
- Plan for communications with memberships about delivering charitable objectives through adaptive structures
- Keep tabs on Scottish Government's Tax Collaborative Group (via Lloyd Austin) for lobbying and intelligence
- Consider advocacy work with London/ southern-based foundations
- Explore the Data Protection UK Act and work on use of opt-out clauses
- Develop thoughts on the JNCC reporting role in terms of 'Council of the Isles'
- Look at how to strengthen cross-UK linkages via the Links, and including Republic of Ireland
- Press for greater clarity by London-based Government departments on representation of countries
- Develop how we use colleagues in English parts of organisations to ensure appropriate collective views are represented in future when lobbying on reserved and devolved issues
- Continue to seek media coverage for key messages, and not underestimate power of social media

Thanks were recorded to Deborah Long, Lloyd Austin, Andy Myles and LINK and to all for attending and contributing.



Appendix I - Outline of possible changes/issues for NGOs under the constitutional options – paper as circulated for the January discussion

	Impact of:-		
	Scotland Act 2012	“Further devolution”	“Independence”
Governance	<p>No change.</p> <p>‘Charity law’ is already devolved, with separate legislation and regulator, but members can operate with dual registration/regulation.</p> <p>Although the 2012 Act, itself, introduces no changes, the devolved nature of charity law means that the Scottish Parliament/Government could – if it wished – introduce more stringent requirements for separate reporting, accounting, etc.</p> <p>‘SCIO’ legal status is already developing.</p>	<p>No significant proposals for further change known.</p> <p>‘Charity law’ is already devolved, with separate legislation and regulator, but members can operate with dual registration/regulation.</p> <p>The Scottish Parliament/Government could – if it wished – introduce more stringent requirements for separate reporting, accounting, etc. This might be considered more likely if a form of fiscal autonomy and greater differences in the tax system occur.</p> <p>‘SCIO’ legal status is already developing.</p>	<p>In the short term, change would be limited as the new country would inherit devolved arrangements.</p> <p>Longer term, a new legal culture and/or concern for separate accountability arrangements will emerge. This may result in new legal arrangements for ‘cross border members’ (CBM) - the need to ‘link’ the raising/spending of resource and/or a need to appear more “controlled-in-Scotland”. Scottish membership may need to be a separate ‘entity’ and/or become part of a separate accountability system.</p> <p>Overall, changes might be major – but, then again, SNP policy is increasingly inclusive of the “social union” and “shared services”. The negotiations may result in a situation where little change is needed. CBMs should monitor closely, be informed by arrangements elsewhere (e.g. RNLI in Ireland) and be prepared to adapt.</p>
Income management and finances	<p>Gift Aid: this will apply at the UK basic rate, regardless of where the taxpayer is resident¹.</p> <p>Changes to Landfill Tax could increase or decrease members opportunities for income from this source.</p> <p>Will the general “devolved tax” provision be used?</p>	<p>Will further income tax changes affect Gift Aid?</p> <p>Will further tax powers affect inheritance tax/legacies, other charitable reliefs, or VAT?</p> <p>Will further “green” taxes be devolved (eg APD) and, if so, will these have hypothecation opportunities?</p> <p>Will any new devolved taxes have different/new charitable reliefs?</p> <p>Will the accumulation of</p>	<p>All the issues to the left apply, as well as the possibility of separate company registration for CBMs and thus the need for separate accounts.</p> <p>Further, the ‘political accountability’ referred to above may lead to the need for “better linking” of income raised and expenditure accrued in Scotland.</p> <p>For all members, a separate EU member state, rules affecting CAP payments may vary</p>

¹ See HMRC Technical Note at: <http://www.hmrc.gov.uk/news/technote-scot-taxrate.pdf>



		differing taxes/rules lead to the need for separate accounts?	further than at present.
Staff and employment	A Scottish Variable Rate, to be set by Scottish Parliament will be introduced in 2015. CBM payroll systems will need to be flexible enough to implement any income tax changes potentially paying tax to two 'HMRC' organisations.	Will further changes, up to and including full fiscal autonomy, require additional changes to payroll systems? Will any employment, HR or H&S issues be devolved?	All of the issues to the left apply. These may be added to by complications of "cross-border" employment and pensions. Differing immigration/visa rules (within the EU framework) will emerge.
Pensions	No change.	No proposals for change known at present. Would greater fiscal autonomy affect 'cross-border' pension schemes, due to taxation changes, either for the employer or employee?	In the short term, change would be limited as the new country would inherit devolved arrangements. However, longer term, a new legal culture and/or concern for separate accountability arrangements will emerge. This may result in new legal arrangements, and/or the need for separate accounting. However, cross-border arrangements would apply, as they do to any existing multinational entity and, so long as rUK remained in the EU, would be governed by EU cross-border pension laws. However these may require CBMs to fully fund pension funds more swiftly than otherwise.
Land Ownership	Stamp duty exemption to be replaced by SLBT tax exemption. No financial consequences at present, but could mean different administration system necessary for CBMs. Most other relevant powers, e.g. planning, agriculture, forestry, already devolved.	No proposals for change known at present; but need to monitor any new tax powers insofar as they affect land (or not). Most relevant powers, e.g. planning, agriculture, forestry, already devolved.	In the short term, change would be limited as the new country would inherit devolved arrangements. However, longer term, a new legal culture and/or concern for separate accountability arrangements will emerge, potentially exacerbated by a 'land reform' or 'community rights' agenda which is running in Scotland.
	Will any existing, or new, powers be used to alter the legislation on land ownership or management? This is unknown and primarily political – driven by the 'land reform' agenda. Most issues related to property law, planning, etc already devolved and may/may not be used depending on politics – but the opportunities to cause significant risk is limited by EU and		



	ECHR legislation (so long as the UK/Scotland remains in the EU and/or subject to the ECHR). It is uncertain however if 'corporate bodies' are protected by all ECHR provisions.		
Advocacy and policy	No clear or definitive issues on style/presentation, but as devolution is extended (ultimately to the possible case of independence), there is increasing need for CBMs' policy to be seen to be made, in and relevant to Scotland. In either a further devolved or independent Scotland, this could (ironically) be easier to do as an "international NGO" (ie BirdLife/FoE International member working with partners across the EU/world) than as an "UK body with an English based HQ". CBMs must continue and enhance 'four (or more?) country' approach, as well as highlighting EU/international links.		
	In relation to the issues on which members advocate, the one most affected by further devolution, as currently proposed, relate to "greening the taxation system". As more tax powers are devolved, the Scottish Government will have the opportunity to review/refresh its approach to taxation. Members might advocate a "green" approach, but would need greater fiscal/economic expertise to become available.	The taxation opportunities, left, apply. In addition, there will be many more Scottish-based opportunities to influence EU policies, other international negotiations, overseas aid, aviation, shipping and a range of other currently reserved issues.	
EU relationships and issues	No significant change.	No significant proposals for change known.	Both the SNP and the wider 'Yes campaign' predicate their arguments/support on continuing membership of the EU. The details of this would be clarified during the post-referendum negotiations, but it would be expected that the <i>acquis communautaire</i> would remain for Scotland.
	With increasing devolution, the Scottish Government will pursue more direct contact with EU institutions, especially in relation to devolved matters (e.g. agri, fish, and environment). Scotland will be affected (or not) in the same way as the rest of the UK by the UK's review of competencies and any re-negotiations.	With increasing devolution, the Scottish Government will pursue more direct contact with EU institutions, especially in relation to devolved matters (e.g. agri, fish, and environment). Scotland will be affected (or not) in the same way as the rest of the UK by the UK's review of competencies and any re-negotiations.	In theory, CBMs could deliver '2' member states votes towards agreed policies – but this might prove damaging.
International	n/a	n/a	CBMs could need to re-arrange international organisation memberships.

Appendix 2 - Delegates

Jen Anderson, Chief Officer, Scottish Environment LINK
Lloyd Austin, Head of Conservation Policy, RSPB Scotland
Stuart Brooks, CEO, John Muir Trust
Jane Bryan, Finance Director, Whale and Dolphin Conservation
David Downie, Head of Resources, WWF Scotland
Roger Downie, Trustee, Froglife
Charles Dundas, Public Affairs Manager, Woodland Trust Scotland
Carol Evans, Scotland Director, Woodland Trust
John Finney, Trustee, John Muir Trust
John Fitzgerald, Development Coordinator, Friends of the Earth Scotland
Anne Marie Gardner, Administration Manager, Bumblebee Conservation Trust
John Hutchison, Chair, John Muir Trust
Barry Jaycock, Head of Finance and Facilities, Buglife
Michael Johnston, Trustee, Butterfly Conservation
Paul Kirkland, Director Scotland, Butterfly Conservation
Deborah Long, Programme Manager, Plantlife Scotland
Craig Mcadam, Scotland Director, Buglife
Helen McDade, Head of Policy, John Muir Trust
John Milne, Coordinator, Scottish Wild Land Group
Leigh Morris, Trustee, Marine Conservation Society
Andy Myles, Parliamentary Officer, Scottish Environment LINK
Michael New, Head of Finance, Plantlife
Peter Olver, Finance Director, Council for British Archaeology
Robin Payne, Trustee, Plantlife
Liz Radford, Acting CEO, Plantlife
Kareen Robertson, Communications & Finance Officer, Ramblers Scotland
Kit Stoner, Director of Operations, Bat Conservation Trust
Helen Todd, Campaigns and Policy Manager, Ramblers Scotland
Bill Wright, Trustee, John Muir Trust