



Scottish
Environment
LINK

5 Atholl Place
Perth

PH1 5NE

T: 01738 630804

E: enquiries@scotlink.org

W: www.scotlink.org

Bill Barron
Crofting Bill Team Advisor
Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

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CC:

Walter Drummond Murray, Head of the Courts and Reserved Tribunals, Justice Directorate
Charles Stewart-Roper, Head of the Environmental Governance and Strategy Unit, Future Environment Division

Dear Bill,

Scottish Environment LINK position on the Crofting Bill

I am writing on behalf of Scottish Environment LINK's¹ Governance Group, to convey our joint support for the inclusion of a Scottish Land Court/Lands Tribunal for Scotland merger as a distinct chapter in the Crofting Bill.

While some members may have responded individually to the Bill consultation and have differing views in some areas, we are in agreement on the need for judicial reform to address Scotland's complex, intimidating, and expensive legal system. Many LINK members previously supported the Scottish Government's proposal for such a merger. For example, the Environmental Rights Centre for Scotland (ERCS)'s [2020 consultation response](#) to the proposed merger identified the opportunity to rationalise Scotland's incoherent, inconsistent and complicated landscape of land and environment-related appeals, and create a more coherent, valuable and substantial court entity.

The proposed Land Court/Lands Tribunal merger provides us with the opportunity to revisit the institution design of such a court and consider whether its functions could be extended to better serve the needs of Scotland's communities. We note that in the crofting law reform consultation 2024, the government already proposes to change the jurisdiction of the Land Court and enable it to hear appeals currently heard in the Court of Session. We have [long advocated](#) for the establishment of a dedicated environmental court or tribunal, which would increase access to justice, address the current fragmentation in routes to remedy, and develop judicial expertise to improve effectiveness and efficiency. An expanded Land and Environment Court offers a promising route towards achieving this objective, as a simplified 'one-stop shop' with specialist expertise to adjudicate on land and environmental matters.

ERCS observed in its [2020 consultation response](#) how judicial review of environmental and planning decisions could be gradually transferred from the Court of Session to an expanded Land and Environment Court, in order to improve access to justice in environmental matters and bring Scotland into full compliance with the UNECE Convention on access to information, public

¹ LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests. <https://www.scotlink.org/>

participation in decision-making, and access to justice on environmental matters (the Aarhus Convention). Proposals for a Scottish Environment Court have been further developed by [ERCS/Christman](#) (2021), who rebutted concerns around costs and considered how institutional design could promote access to justice, and [Gemmell](#) (2023), who outlined how a dedicated court could provide an appropriate judicial route to remedy for environmental matters and replace the loss of oversight from the European Commission and the European Court of Justice following the UK's departure from the European Union.

As you will be aware, in 2023 the Scottish Government's Future Environment Division undertook a [Review of the Effectiveness of Environmental Governance](#), in order to comply with its legal duty under [Section 41 of the UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#). The report and consultation were required by law to consider whether the law in Scotland on access to justice on environmental matters is effective and sufficient, and whether and, if so, how the establishment of an environmental court could enhance environmental governance arrangements. However, as we outlined in our [evidence submission](#) to the Net Zero, Energy & Transport Committee, the Review did [not meet its statutory duties](#), and there is therefore a need to revisit this question – ideally through an expert working group or specialist committee to substantively engage with evidence on this matter.

The Scottish Government's formal response to the environmental governance consultation is still awaited. However, it is clear from the responses of which we are aware that there was considerable disquiet at the apparent conclusion not to undertake any further consideration of an environmental court. In the light of this, the Scottish Government should initiate another stage of such consideration.

As the proposed Scottish Land Court/Lands Tribunal for Scotland merger (likely to be legislated for within the Crofting Bill) relates to this issue, it would be an ideal opportunity to set out plans for such further consideration. Thus, as part of this new legislation, provision should be incorporated for a specialist committee or working group to be established with the remit of identifying the most appropriate design, mandate, and jurisdiction of an expanded court to deliver on the ambition of simplifying administrative and dispute resolution procedures, increasing affordability and efficiency, and delivering environmental justice.

We hope our proposals offer a constructive contribution to the bill drafting process and would be happy to discuss matters with you in further detail if required. We look forward to hearing from you.

Given their respective responsibilities, I am copying this letter to Charles Stewart Roper and Walter Drummond Murray.

Yours sincerely,

Lloyd Austin, Convenor of LINK Governance Group



Scottish Environment LINK the voice for Scotland's environment

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