

# The LINK Newsletter

Update from Scottish Environment LINK  
Winter 2010-11



## Scottish Sustainable Land Use Strategy

LINK followed up its publication of the eNGOs proposals for the first Sustainable Land Use Strategy, [Living with the Land](#) with publication of ten [case studies](#) as examples of sustainable land use, illustrating the benefits that flow from it. This was to assist Government's thinking for its first Sustainable Land Use Strategy, to be published by the end of March 2011. The government's consultation document [Getting the best from our land—A draft land use strategy for Scotland](#) was launched in September for comment by mid December.

LINK Sustainable Land Use taskforce organised a conference for 8 November to debate the issues. It was chaired by Rob Edwards with presentations on the Challenges for the Land Use Strategy from Peter Russell, head of the Rural and Environment Directorate; Promoting Sustainable Food and Farming from Jim McLaren, President of NFUS; Addressing Climate Change through Land Use from Dr Alan Renwick, Scottish Agricultural College; Securing the Provision of Ecosystem Services from Stuart Housden, RSPB Scotland; and Promoting Sustainable Urban Development from Maf Smith, Director of the Sustainable Development Commission, Scotland. These were followed by a lively panel debate with MSPs of all parties: Patrick Harvie (Green), Sarah Boyack (Labour) Bill Wilson (SNP), John Scott (Conservative) and Liam McArthur (LibDems).

Over 80 people from statutory and voluntary land use interests took

part, and there were good discussions on the scope and opportunities of the strategy.



*Conference speakers Stuart Housden, Maf Smith and Chair, Rob Edwards*



*The panel of MSPs*

Before the conference LINK submitted an [early response to the consultation](#) and briefed MSPs on the Rural Affairs & Environment and Transport Infrastructure & Climate Change Committees on what was lacking in the draft, in summary that it:

- presents direction and aspiration but is not a strategy with clear goals and action;
- is weak and unambitious, and fails to set out proposals and policies to meet Governments' sustainable land use objectives, as required by the Climate Change (Scotland) Act 2009;
- needs a more definitive statement on how it should be

incorporated into governance structures and influence other existing land use strategies;

- is limited in scope, particularly with regard to urban land use, recreation and access;
- lacks clarity regarding how it will be developed and monitored; and
- in its current form, is unlikely to move Scotland towards more sustainable use of land resources and the optimal delivery of multiple benefits.

Following the conference Parliament's RAE Committee undertook early scrutiny of the draft strategy on 8 December 2010, [taking evidence](#) from nine organisations, including LINK, on the proposals under consultation. The Committee received a clear message that, in its current form, the strategy is not fit for purpose and fails to set clear goals and actions that will drive land use in a more sustainable direction. There is still time to improve the strategy and LINK, and many others who gave evidence, hope the opportunity to do so will not be missed.



*Participants at LINK's conference*

# The Environment and the Law



LINK Members' Congress on 18 November was on the theme *The Environment and the Law*. Ninety members and guests (pictured) gathered to hear the presentations and to take part in discussions. Dr James Harrison, of Edinburgh University's School of Law, began with an outline of how international environmental treaties function from global to local levels, with interesting suggestions for NGOs to pursue in Scotland/UK. Frances McCartney, founder of the [Environmental Law Centre](#) followed with a comprehensive guide to the opportunities of the Aarhus Convention with astute commentary and analysis from recent cases. Andrew Thin addressed the challenges ahead for the environment, the different and complementary roles of the statutory and voluntary sectors, with emphasis on the need to engage the public to more vocally support our causes. Lloyd Austin delivered a dummies guide to the law, good preparation for the afternoon's workshops. These covered the future public sector landscape, the better regulation agenda, access to justice, and the better implementation of existing legislation, on the findings of a review of environmental law prepared for LINK by Tamsin Bailey, which she had summarised in an earlier presentation.

LINK commissioned this review to find out whether aspirations at the time of drawing up eight key pieces of legislation have been realised. [Scotland's Environmental Laws Since Devolution—From Rhetoric To Reality](#) was a time-limited review based on the views and experiences of LINK members, with interviews from some charged with delivering the legislation, and observations from third parties. A draft had been circulated to those attending Congress with the final version published some weeks later on the LINK website, taking account of Congress discussions.

The report shows progress in many of the areas the legislation sought to address though in most cases there is definite room for improvement. Tamsin Bailey identified five cross-cutting issues and recommendations which had clearly emerged from her interviews and which are detailed in the report. LINK has since circulated it to a wide range of organisations and welcomes feedback.

The issues that LINK considers most pressing and will be pursuing are:

1. The Scottish Parliament's founding principle is to share power with civic society through participation. Access to Justice, and adequate funding for citizens and citizen groups to use these laws, are fundamental concerns and are limiting the Parliament's achievement of this principle.
2. The nature of the debate needs to change to encompass the broader social and economic issues within the environmental context. Too often desire to continue with business as usual prevails, with

only lip service paid that the environment is the context for all our activity.

3. We need to ensure more effective and rigorous scrutiny of what is being done to implement the legislation, challenging, in proportionate ways, where actions are not being followed up.

4. There is a need to pay greater attention to development and scrutiny of secondary legislation.

5. In these times of cuts, government needs 'critical friends' challenging it to ensure environmental issues are adequately addressed and that, while economic and social factors need to be taken into account, they should not be viewed as over-riding any environmental concerns as a matter of course.

LINK is very grateful to all the speakers, workshop leaders and to the experts who helped to keep the workshop discussions on track. Helen Zealley, summing up, reminded members of the valued work that has been achieved and that a key role of our sector is to keep challenging the status quo by asking the key question - Why? A report on the Congress will shortly be available on the LINK website.



*A workshop at Congress*

## More Network News

**Agriculture** The taskforce, convened by Katrina Marsden (RSPB), has been updating LINK's vision for agriculture *Beyond the CAP* with a series of filenotes to expand on LINK's position on issues as reform gathers pace. The filenotes also give LINK's views on related reports, communications and broader issues. In December LINK circulated the first update; [Final report of the Inquiry into Future Agricultural Support for Scotland \(the Pack Report\)](#) followed by [The Draft Scottish Government Budget SRDP 2011-2012](#) in January.

**Climate adaptation** The LINK taskforce convened by Jim Densham (RSPB) is preparing a response to Scotland's Adaptation Framework Sector Action Plans and Strategic Environmental Assessment.

**Freshwater** The taskforce submitted a [response](#) to SEPA's *Planning for Floods – Planning for the Future* consultation in October, welcoming SEPA proposals to set up local flooding advisory groups. LINK raised concerns that the number of groups proposed is too many to facilitate adequate stakeholder engagement. SEPA and the taskforce will meet shortly to discuss solutions to these concerns.

Lisa Webb (RSPB) convenor of the taskforce met the Water Industry Team at Scottish Government in October to discuss how LINK can engage in discussions surrounding the Scottish Water investment programme which will be taken forward during 2011.

**Marine** The taskforce has responded to several consultations, including those on the [offshore wind plan](#), the new [marine licensing system](#) and the [UK Marine Policy Statement](#). It has liaised with its sister Links to discuss the new system of Marine Protected Areas/Marine Coastal Zones and ecological coherence at a UK level.

Members had productive meetings with Marine Scotland to discuss the forthcoming National Marine Plan, the system of regional planning, the MPA selection guidelines and the Nature Conservation Strategy. Taskforce convenor, Calum Duncan (MCS), attended a Marine Strategy Forum workshop on the in-draft *State of Scotland's Seas* report. LINK has also discussed [marine priorities for the next Parliamentary term](#) with the political parties.

Alan Wells left LINK in December after several years of excellent work. We wish him well at his new post with the Association of Salmon Fishery Boards. His replacement, Sarah Archer, started work in January. Sarah has most recently worked with Defra on marine biodiversity issues, and will be based at WWF Scotland's office in Birnam.

**Planning** The taskforce, convened by Aedán Smith (RSPB), submitted a [response](#) to the consultation *Resourcing a High Quality Planning System*, underlining the need for retaining high quality expertise and for the public to be able to participate. The taskforce also [responded](#) to the consultation *The Environmental Impact Assessment (Scotland) Regulations 2010* broadly welcoming the proposals and suggesting some clarifications.

**Single Outcome Agreements** The taskforce, convened by Elizabeth Leighton (WWFS), is planning to co-host a conference on good practice on 21 February with the Sustainable Scotland Network, SNH, SEPA, the Sustainable Development Commission, CoSLA and the Improvement Service. LINK will shortly publish (on the website) its audit of SOAs commissioned from CAG consultants. Some useful and positive feedback on the draft audit was received from community planning partnerships, which will be summarised for a workshop at the conference.

**Wildlife & Natural Environment Bill** LINK [evidence at Stage 1](#) welcomed the draft bill's provisions on non-native species, muirburn and arrangements for SSSIs, though strongly criticised disappointing provisions for reform of the current cumbersome and outdated deer management legislation. The draft bill has no statutory basis for improving deer management planning, a key area in LINK's view. LINK sought legal advice on the subject of statutory deer management planning and compliance with the European Convention for Human Rights, apparently a barrier to introducing a duty on individual landowners to manage deer populations sustainably, to inform advocacy as the bill progresses. Deborah Long (Plantlife), Lloyd Austin (RSPB), Paul Walton (RSPB) and Mike Daniels (JMT) delivered [LINK's oral evidence at Stage 1](#). For Stage 2, members continue to liaise with each other and with SNH and others while engaging with the disparate elements of the bill as individual organisations. Stage 2 finished on 19 January with Stage 3 expected in early March.

**Scottish Environment Week** The [programme](#) for 1-3 March is on the website. This year there is an 'active citizen' theme with events in the Parliament on *Citizen Science*, sponsored by SEPA; *Citizens as Nature's Voice*, sponsored by SCVO; *Citizens and the Past*, sponsored by Historic Scotland; and *Citizens Enjoying Nature*, sponsored by SNH. The mid-week reception in the Garden Lobby will showcase local food and drink produced in the national parks and a pub quiz, sponsored by Calor, will round-off the celebrations. Half of our member bodies will be formally involved in these events and all members will receive invitations to the reception, widely acknowledged as the network event of the year.

## Protecting the Environment in a time of cuts

With the aim of contributing realistically to ongoing debates on cuts, now and over the next Parliamentary term LINK prepared a position paper [Protecting the Environment in a Time of Cuts](#), a strategic outline of principles on which to base decision-making with regard to the long term health of Scotland's environment.

Issues addressed in the paper were discussed with the Environment Minister in September, where LINK explained that members' concern was not with structures and

regulation as such but with ensuring that outcomes and key functions, desired by Government, or to which Scotland is committed, are delivered.

The Minister welcomed this approach. LINK believes Scotland could be more sustainable in five years' time even through an era of cuts, and has opportunities to increase jobs, develop healthier local communities, sustain wildlife and protect the environment.

LINK's interest is in strategic planning for the long-term, with attention to key environment commitments including climate, and to taking care of the environment that supports many industries, especially given the current comparatively tiny spend in this area in comparison with other sectors. The paper has been circulated widely for discussion, and is on the agenda for LINK's forthcoming meeting

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## LINK Further Information

For information about reports and initiatives referred to in this newsletter please visit the [LINK home page](#) Task Force outputs are listed under 'Work Areas'.

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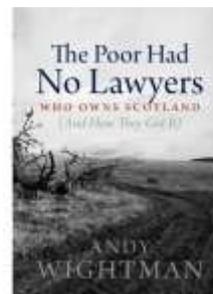
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# News and Views from Members

The following are articles from LINK member bodies and guest contributors

## The Poor Had No Lawyers Who owns Scotland (And How They Got it) *Andy Wightman, Birlinn 2010*

**Reviewed by Bob Aitken, LINK Honorary Fellow**



This important book is another massive instalment in Andy Wightman's life work on land and its ownership in Scotland. It is as highly rational, authoritative and insightful as we've come to expect. But there's a strong sense that *The Poor Had No Lawyers* is merely the latest survey report of research in progress rather than anything claiming to be final and definitive. Perhaps that was inevitable given the context of continuing change in legislation and politics which Andy assesses; but he is also continually broadening and deepening his own perspective. So while this book updates Andy's useful listings of the largest Scottish landholdings in various sectors, it largely takes as read the detailed inventory of ownership that formed the core of *Who Owns Scotland*.

Andy's central thesis is that "Land is about power", a premise which most LINK members would probably find entirely unexceptionable. But that core argument is buttressed by a substantial sub-theme: that the power relationships derived from land are underpinned by a legal system which "has historically been constructed and adapted to protect the interests of private property."

As the subject requires, the book is hugely wide-ranging. It opens with a sweeping historical account of the evolution of land ownership by a succession of "land grabs" consolidated by legal processes contrived by those in power, for those in power. The writing in this

section is necessarily dense and quite formal. The other three-quarters of the book takes the form of a series of substantial chapters reviewing and analysing current components of the land ownership system and its expression on the ground, from our cities through to the remote Highlands. (In passing I should mention that Andy's quirky chapter titles – a sharply ironic quotation, or a pithy epitome of the subject matter – are one of the incidental pleasures of his book). I found these later narrative sections a good deal more readable; Andy relaxes into a mode of writing that is often informal, anecdotal, and humorous, though given the subject matter the humour is often in the nature of fantastical and infuriating farce. For instance, the treatment in a two-page box of Conditional Tax Exemption on heritage, long a *bête noire* of mine, falls somewhere between *Catch-22* and *Gulliver's Travels*. I regret that the section on the National Land Fund overlooks the egregious lunacy of the use of public funds twice to purchase the Rowardennan estate, and its eventual transmogrification into the Ben Lomond National Memorial Park. In a judicious selection of anecdotes and quotations Andy exposes (as Rob Lambert did in his *Contested Mountains* about the Cairngorms) the almost unbelievable arrogance and blatant power-broking of some landed interests. He identifies as one very substantial beneficial by-product of Devolution the removal of the incubus of the House of Lords from

much of Scottish political business, but he makes less of it than I would have liked.

Some of these subject chapters, like the extraordinary saga of Macleod's attempted sale of the Cuillin, where Andy acknowledges his debt to Alan Blackshaw, and the review of the politics and economics of hunting estates, are small masterpieces of surgical dissection and forensic analysis. They will be of high value to various LINK taskforces. Others – and I have to include Andy's account of the recent expansion of the conservation NGO estate – are rather too short and generalised to be satisfying. My impression is that Andy's review of the complex issue of commonities in particular is largely still under development.

Nevertheless the cumulative effect of these diagnostic chapters is a powerful critique of the whole nexus of Scottish landownership and land law. I might have liked to see some fuller development of that critique into a discussion of the relationship between our now predominantly urban society and the often rugged and unyielding national land resource, between the structures of our rural society and the dominant forms of land use, between Westminster and Holyrood – perhaps set in an international context. But there's another book in all that.

While he welcomes the initiatives of the Scottish Parliament in land reform to date, Andy parallels the

conclusion of Tamsin Bailey's [recent review](#) for LINK in arguing that the initial impetus of legislative reform has not been carried forward, and that inertia and complacency have settled back over the land question, like ancient dust briefly disturbed by a new broom.

My personal conclusion from the Wightman exposition is simple if radical: that all we need to sort out these problems is a good-going revolution, using the model so convincingly demonstrated by our French friends a while back. Andy's own prescription is less brutal, if not much less radical: he assembles a "bid list" of a dozen changes he thinks are vital to

tackle the problems that arise from our present pattern of land ownership and its legal underpinnings. Seven of these relate to matters of land law, five to broader issues of land policy. They include a reform of the law on prescriptive acquisition of land; rights for tenant farmers to acquire their land; the recovery of common lands and further promotion of community ownership of land; land value taxation; and regional land boards to manage public lands. One Wightman proposal that I'd judge a non-starter is the restoration of town councils, which Andy argues would enhance local democracy and identity, as well as providing a stronger mechanism to

conserve common lands. I can't imagine that our current local government structures will be dismembered without much stronger arguments than those.

Inevitably, given its subject and its exhilarating breadth, there are things in this book that will annoy and exasperate almost any conceivable reader – and some much more than others. But as before, we are all indebted to Andy Wightman for pulling together so much material of such importance to the land and people of Scotland, and marshalling it into a powerful and (mostly!) convincing argument.

## WWF's Earth Hour – 26 March 2011, 8.30 – 9.30pm

*Julie Stoneman, WWF Scotland*



*Heather Reid switches off the lights at the Falkirk Wheel in 2010*

WWF's Earth Hour is now something of a global phenomenon. Starting in 2007 in Sydney, Australia, when two million people switched off their lights for one hour to take a stand against climate change, the event has spread across the globe. By 2010 hundreds of millions of people were taking part in 128 countries, with some of the world's best known landmarks, including the Eiffel Tower, the Empire State Building, and the Great Pyramids, switching off.

WWF's Earth Hour is so successful because the concept is very simple, highly graphic and media-friendly. While switching off the lights for an hour isn't going to save the climate, it sends a strong signal to decision-makers that there is strong public support for action on climate change, and it also provides an across-the-board opportunity to demonstrate commitment to take that action.

That's why it's not just a fun event for people to show they care about the climate, it's a way for community groups, organisations, businesses, universities, public bodies – even governments – to show the wider public that they are part of the climate change movement, and they are serious about making efforts to reduce their greenhouse gas emissions and enabling others to do so.

In Scotland, 2010 was our biggest Earth Hour yet, with thousands of people switching off at the same time as iconic landmarks such as

Edinburgh Castle, the Scottish Parliament, Falkirk Wheel, Kelvingrove Museum and the Wallace Monument.

The event was supported by the Scottish Government, 29 local authorities, over 300 schools and nearly 200 businesses, public bodies and other organisations.

All kinds of activities took place, such as a night golf charity event at Fairmont St Andrews, candle-lit meals, film screenings and torch-lit walks. There were also several Earth Hour pub quizzes and Earth Hour cocktail parties.

We're planning for Earth Hour 2011 to be the biggest and most successful yet, and we're looking for involvement from every sector. So if you're interested in taking part visit the [website](#) for more information or contact WWF Scotland 01350 728200 or email [earthhour@wwfscotland.org](mailto:earthhour@wwfscotland.org).

# The truth about bovine TB and badgers –all you wanted to know, but never dared ask



*Eddie Palmer, Scottish Badgers Trust*

**First of all, the Scottish situation** Scotland's cattle industry celebrated when, on 8 September 2009, the Standing Committee on Food Chain and Animal Health, E.C., declared the industry Officially Tuberculosis-Free (OTF), and after all member states unanimously agreed, the European Commission announced the decision on 15 October 2009. This was because the number of confirmed bovine TB cases in Scotland has been at a consistently low level over a sustained number of years. The only rise in recent years, in 2002/03, coincided with re-stocking of cattle from England (in Dumfries and Galloway, source identified).

**What happens in Scotland now?** New measures have already been introduced, including additional TB testing for cattle sourced from England and Wales, saving Scottish farmers paying for testing before cattle are moved from south of the border. Badgers are safe currently from the hysteria in England and Wales.

**So, we don't have bTB in Scotland because there are no badgers?** Wrong! We have a healthy badger population, and badgers and cattle living in near proximity in at least three areas, Grampian, Ayrshire and Galloway. We know this due to

our Scotland-wide stratified distribution badger survey from 2006-09.

## **So, why is Scotland different?**

We don't really know, but think it is due to higher standards of animal husbandry in Scotland. Anyway, aren't you assuming that badgers have something to do with bTB?

## **Well, farmers say so, as does the Westminster Agricultural Minister!**

The link between badgers (or other animals), and the infection of cattle, is tenuous. The transmission from cattle to cattle is known (by air, breath and sputum). The route of transmission to and from badgers is as yet unknown.

## **Haven't you said all this to people in England?**

From Scottish Badgers, we have tirelessly pointed out some of these issues, and they have never been aired (as far as we know) in any newspaper, or on any radio or TV show.

## **So why take it out on badgers?**

Well, this is a real mystery - there is definitely something very strange going on. You only have to listen to, for example, Adam Henson, the farmer on the 'Countryfile' BBCTV programme to gain a flavour.....'Well, we've tried everything else, and it hasn't

worked, so we might as well kill badgers'. This is the tenor of the current debate (for serious science, and other views, see the weblinks below).

## **What else could be going on?**

Farmers have not explored what the benefits of really tight bio-security on farms could be - for example, still letting badgers wander through cattle sheds. Also, at any one time 10% of all cattle, sheep and pigs in Britain are on the road, being transported. As far as we know, no badgers go away on holiday - they stay put.

This is a really complicated subject - for more, look at the websites of The [Badger Trust](#), our sister organisation in England and Wales; at the very new website of the [Badger Protection League](#), a new umbrella of groups (includes residents in Pembrokeshire, due to have a badger cull, and also the local [Wildlife Trust](#) there).



# Challenge to the Cairngorms National Park Local Plan

*Gus Jones, Badenoch & Strathspey Conservation Group*



The first Local Plan produced by the Cairngorms National Park Authority (CNPA) is an important publication. In autumn 2007 Badenoch and Strathspey Conservation Group warned that it appeared that the Park Authority was capitulating to the demands of landowners and developers with a plan that did not conform to the National Park Plan ('Housing Threat to CNP', [LINK newsletter Autumn 2007](#)).

Representatives from the Scottish Campaign for National Parks and BSCG provided evidence to two Reporters at a Public Local Inquiry into the Local Plan in 2009. Last

September a coalition of 16 LINK member bodies sent a letter headed 'Serious concerns over the Cairngorms National Park Local Plan submitted to Ministers' to Cabinet Secretary John Swinney. This urged "Ministers to intervene so as to ensure that the CNP Local Plan is in accordance with the National Parks (Scotland) Act 2000 and the 2007 National Park Plan."

The letter also recommended broad acceptance of the findings of the Local Plan Inquiry published in December 2009. These were advisory only and key concerns of the Reporters were not taken on board by the CNPA.

Disappointingly, planning minister Stewart Stevenson failed to intervene but mentioned recourse to the courts. Consequently three LINK member bodies made the bold decision to pursue a legal challenge. The appellants - the Cairngorms Campaign, the Scottish Campaign for National Parks and the Badenoch and Strathspey Conservation Group are seeking a Protective Costs Order given the public interest of this case and their limited financial resources. More details of the challenge are to be found at [www.bscg.org.uk](http://www.bscg.org.uk).

## New Director for Woodland Trust Scotland

*Jacqui Morris, Woodland Trust Scotland*



Carol Evans, former director of the National Autistic Society (NAS) Scotland, took up her new position on 1 September 2010 as Scotland director for the Woodland Trust.

Carol joins the Trust as it launches a major push to increase native tree planting rates through their campaign 'More Trees, More Good'. The Trust has set an ambitious target of doubling native woodland cover over the next 50 years, with the emphasis on planting on other people's land as well as on its own estate.

Whilst at NAS Scotland, Carol led a high profile campaign "We Exist"

for a Scottish Autism Bill. The NAS Scotland together with over 100 key people and organisations from across Scotland, asked the Scottish Government to implement a national strategy, backed with legislative power through a Scottish Autism Bill to meet the needs of people living with autism in Scotland.

Carol has over 13 years director level experience with a successful track record with the civil service, private and third sector. This experience will be valuable as the Trust drives its woodland creation ambitions forward