

# **An Environmental Rights Centre for Scotland**

## **Background, Context and Vision of the Proposal**

**March 2017**

### **Background**

Scottish Environment LINK has been working to improve access to justice in environmental matters by way of its Legal Strategy subgroup for some years now. Through its members and in partnership with others, the subgroup has:

- campaigned to improve compliance by the Scottish Government with the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters;
- changed the law on standing in judicial review to enable anyone with a 'sufficient interest' to raise such an action;
- successfully pushed for the introduction and improvement of Protective Expense Orders to reduce liability for legal expenses for citizens, community groups and NGOs in taking legal action on environmental issues in the Court of Session;
- developed a strong case for the introduction of a specialist environmental court or tribunal in Scotland, which was the focus of a Scottish election manifesto commitment by the SNP and a consultation last year.

In recent months, the subgroup has identified the opportunity to establish an Environmental Rights Centre as a means to respond to a number of clear un-met needs in civil society in enabling the understanding and exercise of legal rights and remedies. In December 2016 SE LINK organised a seminar at which we sought input from legal, environmental, community and academic stakeholders to further develop our thinking. The seminar confirmed our sense of strong need for an Environmental Rights Centre and demonstrated broad support for the initiative.

### **Context**

The Government, local authorities and public bodies regularly make decisions that affect the environment. The environment has no voice, therefore it rests with citizens, communities and NGOs to speak up for it, and hold decision makers to account through the formal processes open to civil society, parliament, and through the courts. Judicial review in the Court of Session is currently the only effective form of legal challenge available. Due to (in some cases long standing) structural barriers, including prohibitive costs, restrictive timing, and lack of access to lawyers, as well as cultural reasons such as a lack of awareness of rights and legal remedies, effectively holding the executive to account for the impact of its decisions on the environment is extremely challenging in Scotland.

While improvements to judicial review procedures have been made, in terms of the introduction of Protective Expense Orders and the change in the law on standing, it is our view that more change is

needed, and that an Environmental Rights Centre could play a vital role in promoting further change, and in supporting citizens, communities and NGOs to take legal action on behalf of the environment.

An Environmental Rights Centre is needed more now than ever due to:

- the increasing complexity and importance of environmental law, particularly in the context of global challenges such as climate change
- the changing legal and constitutional landscape in Scotland as the Brexit process goes forward
- calls for appeals against decisions of the new Oil and Gas Authority to be heard in Aberdeen, proposals for an energy and natural resources specialist court in the Court of Session, and the growing case for an accessible, specialist environmental court or tribunal for Scotland.

## Vision

Our vision is for an Environmental Rights Centre that:

- provides a one-stop shop for citizens, communities and NGOs to seek advice and assistance in legal and planning matters relating to the natural environment
- educates citizens, communities and NGOs about their rights and responsibilities pertaining to environment and how these can be exercised by law
- plays a role in campaigning for improved access to justice in environmental matters and full compliance with the Aarhus Convention
- seeks to address inequality of arms in experience of litigation and the means to pay for it
- has in-house lawyers who can undertake litigation on behalf of citizens, communities and NGOs, offers non-legal routes of action, and signposts to external lawyers and experts
- identifies and pursues strategic litigation to test and improve environmental law.

