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Natural justice for the environment can be helped by specialist courts

We all have a right to a healthy environment, a human right. - Perhaps a contentious statement back in the day, but the fundamental idea of a link between human rights and the environment has become abundantly clear and generated huge international support.

By [Isobel Mercer: Environment Courts Needed To Protect Nature](#)

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The Scottish wildcat is one of the native species under threat. Picture Ian Rutherford

Many countries have begun to establish this right in law; indeed the First Minister's Advisory Group on Human Rights recently recommended the 'right to a healthy environment' be set out in Scots law, something that Nicola Sturgeon is working to take forward.

For people in Scotland, this means a right to live in a country free of air pollution, with clean rivers and lochs, land and seas rich with wildlife, and nature back in our towns and cities. This is clearly dear to many people's hearts: a recent poll found that 70 per cent of Scots want to see greater action on climate change, with a high proportion concerned about threats to wildlife.

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But what could you do if you thought your right to a healthy environment was being infringed?

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At the moment, your options would be limited. The main way to raise a legal challenge is through judicial review, but this requires deep pockets – so much so that the process has been declared prohibitively expensive by international experts. Steep costs act as a barrier to ordinary citizens and civil society organisations being able to speak up when environmental rights and protections are violated. Only 16 environmental cases and 77 planning cases were brought to judicial review between 2008–2018.

Brexit, forever looming on the horizon, would make access to justice even more elusive. All EU citizens can lodge a complaint at the European – Commission if they think laws are not being enforced. No equivalent – complaints process exists in the UK so, if we leave the EU, we will also lose this way of challenging processes that affect our everyday lives.

Fortunately, the Scottish Government has published a consultation to tackle this, but a new complaints mechanism is not guaranteed. That is why environmental charities are calling for a Scottish Environment watchdog that would, among other things, replace this complaints – process.

But a complaints mechanism without access to a court system is hollow – a mouthpiece surrounded by deaf ears. The case for a specialised Scottish Environment Court is strong. Despite this, and despite public support, the Scottish Government decided in 2016 that now was not the time.

Environmental courts might sound radical, but in fact there are 1,500 across 44 countries. In Australia, New South Wales Land and Environment Court recently put a stop to a controversial new coal mine, based on the impacts it would have on climate change. Sweden’s Environmental Court rejected an approach to storing nuclear waste just last year.

Environmental courts have specialist judges and experts that allow them to deal with the technical and scientific detail that general courts often struggle with. Whereas a judicial review can only explore procedural issues, environmental courts can look at the substance: what has been decided, why, and is it likely to cause environmental harm?

Evidence has shown that specialism makes environmental courts fairer, cheaper and quicker. This applies to all parties, not just environmental groups; these courts also benefit decision-makers, business and land managers by being faster, more consistent and more robust. Scotland’s natural world is home to rare and iconic species such as golden eagle, red squirrel, wildcat and capercaillie. Our rivers and lochs support globally important populations of Atlantic salmon and freshwater pearl mussels. The Flow Country has one of the largest blanket bogs in the world, storing three times more carbon than all of the UK’s woodlands.

Sadly, this is all at risk – 56 per cent of species have declined since 1970 and Scotland’s Caledonian pine forests now cover just over 6 per cent of their original area. The Scottish Government’s commitments on environmental protections are welcome and reassuring, but the scale of the challenge must not be underestimated.

Making sure that action is taken to protect and restore nature, and our ability to embrace and defend our right to a healthy environment, are deeply connected.

Now is the time for the Scottish Government to join the international movement and live up to its progressive credentials by creating a Scottish Environment Court. This will mean that Scotland’s citizens don’t lose their voice and can continue to speak up for nature. Fight for Scotland’s Nature, a coalition of 35 environmental charities, is encouraging as many people as possible to respond to the Scottish Government’s consultation. A simple e-action that you can take can be found at www.fightforscotlandsnature.scot/action/

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