**Update on first case and possible future cases**

We really had no option but to withdraw from our first case (due to possibility of being liable to thousands of pounds (as the Scottish Government introduced 2 technicalities which meant we could not guarantee a PEO). A complaint has been sent to the European Commission by a third party regarding

1. Scotland's failure to have transposed art 3 of the EIA Directive (requiring an assessment to be carried out)
2. the fact that planning legislation imposes an extra barrier to challenges to planning appeals by requiring you to have participated as an objector in the application process.

But as Brakeland whom we saw in action in Geneva when he, Head of Legal Enforcement at the Directorate General (DG) Environment of the EU Commission, being questioned on giving information about carbon emissions made unacceptable comments when he said, “if we were to take instead of a 110 m high wind turbine a 110 m high metal statute, you would not be expected to do a detailed carbon assessment on that, so why do you expect a detailed carbon assessment for the wind turbine?"

His department processes these complaints and in European Law they have 'absolute discretion on what they enforce' and they insist on it, even though it is in breach of Article 3(1) of the Convention with respect to proper enforcement measures. The fact that Pat Swords had a complaints process with the EU and they refused to do anything about it for a number of years was a contributing reason why the Compliance Committee opened the case against the EU, which led to a 'showdown' in Geneva. They are still absolutely refusing to put in proper enforcement measures. In other words we could be wasting our time in even considering that this Unit 2A in DG Environment will do anything.

A number of simultaneous test cases need to be heard in a court of law as to whether the whole wind industry is unlawful in relying on planning policies which were themselves unlawful in that they breach the requirements of the Åarhus Convention.

<http://windsofjustice.org.uk/wp-content/uploads/2014/08/P-SWORDS-SLIDE-DECK-Aarhus-Convention-Wind-Energy-etc-Boston-Nov-2013.pdf>

**The petition** intended for use in the first case is still very valid and can be used in new high profile cases.

**Ground 1: *That the Respondent has failed to fulfil its obligations under the EIA Directive (Directive 2011/92/EU) by failing to transpose Article 3 thereof***

**Ground 2: *That the EIA Regulations are outside devolved competence and beyond the powers of the Scottish Ministers because they are (as a result of the transposition failure described within Ground 1 above) incompatible with EU law***

**Ground 3: *That the Respondent has failed demonstrably to carry out an environmental impact assessment as required by Article 3 of the EIA Directive.***

**Ground 4: *That the Respondent failed to give adequate reasons for the conclusions reached on environmental impact.***

**Ground 5 *That the Respondent acted unlawfully in relying on planning policies which were themselves unlawful in that they breach the requirements of the Åarhus Convention.***

Within the dark sky park (strangely coinciding with the opening of the Commonwealth Games which naturally the media and press were focused on) **Dersalloch Windfarm** - approx 2km East of Straiton, was approved **directly** by Scottish energy Minister, Fergus Ewing.  The article regarding this decision can be viewed [here](http://www.bbc.co.uk/news/uk-scotland-scotland-business-28446762).

After a 7 year battle which amassed close to **5000 objections** (including objections from the Planning Authorities East and South Ayrshire Councils),  Save Straiton for Scotland anti windfarm group were repeatedly informed that this application would be going to Public Local Inquiry (PLI), at which point it would be given a full and proper review taking account of post 2005 changes in planning and landscape policy, cumulative impact, and the application itself in terms of access  and location of turbines. It appears however, as can be seen from the Scottish Government [decision letter](https://savestraiton.files.wordpress.com/2014/07/dersalloch-decision-letter.pdf), that there is a convenient 'clause' in the Electricity Act (see page 6), essentially meaning that the objections from South Ayrshire Council were deemed late, so this did not in this case automatically trigger a PLI.

This is just another occasion when the Scottish Government is abusing the law and the judiciary are horrified.

In addition to this PLI clause - the 4723 objections do not appear to have any bearing on the decision. It might be pertinent at this point to roll the clock back 18 months to a point where the national press was questioning the continual waiving through of windfarm applications despite 10,000 objections having been received directly by Scottish ministers (at that point between 2008 and 2013).  A report in the [Herald](http://www.heraldscotland.com/news/home-news/10000-object-to-wind-farms-in-five-years.19912462) at the time quoted a representative for the Scottish Government saying  **“Scotland has open, inclusive and transparent planning processes which give the right protection to our magnificent landscapes, and which takes the views of local communities into account.”**

**Dersalloch needs to be a test case to put an end to this dogmatic approach by the Scottish Government.**

The John Muir Trust has now lodged a petition to the Court of Session asking for a judicial review of the decision in June by Energy Minister Fergus Ewing to grant consent to the 67-turbine Stronelairg wind farm in the Monadhliath Mountains between the A9 and Loch Ness.

Anti-Viking Energy campaign group Sustainable Shetland has announced that it will take its fight against the 103-turbine wind farm to the Supreme Court in London. In 2013 the Court of Session upheld Sustainable Shetland’s appeal in a judicial review against the Scottish Government’s decision to grant consent for the controversial project. The project had been given the green light by energy minister Fergus Ewing back in April 2012.

But earlier this summer the Inner House of the Court of Session overturned Lady Clark of Calton’s ruling, saying Ewing had acted lawfully in giving the project consent.

The leasing of Scottish Water and Forestry Commission Scotland Land by the Scottish Government to windfarm developers now needs to be challenged through the courts.

The Scottish Government is very aware that Appeals are expensive and beyond the scope of ordinary people and councils which is why they feel able to ‘bend’ the law and ignore local democracy.