



The Scottish Parliament
Pàrlamaid na h-Alba

2002 Act review
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11 March 2016

Via email only

Dear Lord Bonomy,

Review of the Protection of Wild Mammals (Scotland) Act 2002

On 13 January 2016, the Rural Affairs, Climate Change and Environment Committee took evidence on the Scottish Government's Wildlife Crime in Scotland 2014 Annual Report¹ from Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS). Following this, the Committee agreed to write to you to present the official report² of this meeting as formal evidence to the Review of the Protection of Wild Mammals (Scotland) Act 2002.

There are two main areas of the discussion the Committee wishes to highlight:

- Interpretation of the legislation;
- Vicarious liability.

The Committee also wrote³ to the Minister for Environment, Climate Change and Land Reform following the session outlining its views and recommendations (a copy of which is at **Annexe A**). The Committee also wishes to draw the section on fox hunting in this correspondence to your attention.

¹ Scottish Government, [Wildlife Crime in Scotland 2014 Annual Report](#), September 2015

² Rural Affairs, Climate Change and Environment Committee, [Official Report](#), 13 January 2016

³ Letter to the Minister for Environment, Climate Change and Land Reform:
http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20160203_Wildlife_Crime_Annual_Report.pdf

The Committee hopes this information will be useful to you in your deliberations. As the Scottish Parliament is due to dissolve on 24 March 2016, the Committee intends to highlight the Review as a potential issue for consideration by successor committees in its legacy report.

Yours sincerely

A handwritten signature in black ink that reads "Rob Gibson". The signature is written in a cursive style with a horizontal line underneath the name.

Rob Gibson

Convener

Rural Affairs, Climate Change and Environment Committee



The Scottish Parliament
Pàrlamaid na h-Alba

Dr Aileen McLeod MSP
Minister for Environment, Climate
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Via email only

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3 February 2016

Dear Dr McLeod,

Scottish Government's Wildlife Crime in Scotland 2014 Annual Report

On 13 January 2016⁴, the Rural Affairs, Climate Change and Environment Committee (the Committee) took evidence on the Scottish Government's Wildlife Crime in Scotland 2014 Annual Report⁵ from Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS). Following this, the Committee agreed to write to you with its views and recommendations on the outcome of this evidence session⁶.

Wildlife crime data and trends

Since the publication of the first annual reports on wildlife crime in Scotland, the Committee has been concerned about the presentation of data in the reports, and how a lack of clear information prevents the identification of trends in wildlife crime. Although previous calls for consistency⁷ specified a preference for data to be presented in calendar year format, the Committee understands the reasons why this may be difficult and welcomes the move to provide all information in a financial year format. We believe the most important issue is ensuring consistency and if this can be achieved using financial year data, this will facilitate easier comparison between annual

⁴ Rural Affairs, Climate Change and Environment Committee, [Official Report](#), 13 January 2016

⁵ Scottish Government, [Wildlife Crime in Scotland 2014 Annual Report](#), September 2015

⁶ Rural Affairs, Climate Change and Environment Committee, [Work Programme](#), December 2015

⁷ Rural Affairs, Climate Change and Environment Committee, [Letter to Minister on Wildlife Crime in Scotland Annual Report 2013](#), 5 December 2014

reports in the future. However, we understand that organisations contributing data to the report are still providing information in calendar year format⁸.

The Committee also heard from COPFS that the data provided in this year's report on cases marked "no action" was largely a repeat of the data provided in the previous year's report due to the shift from calendar year to financial year reporting.

The Committee welcomes the structure of this year's report and suggests this format is replicated in future annual reports to allow for easier comparison and familiarity for those using the reports.

While the Committee accepts the rationale for including data from the previous report, we urge the Scottish Government to ensure that in future all data relating to wildlife crime is presented in a consistent timeframe, which applies to all organisations contributing to the report. It is essential that future reports contain consistent data, uniformly presented, which can be tracked across reporting years.

The Committee has previously commented on the disaggregation of the data contained in the reports. On 13 January 2016, Assistant Chief Constable (ACC) Malcolm Graham of Police Scotland stated—

"It should be easier to achieve a level of granularity and clarity for wildlife crime because the level of recorded incidents is so low. We are speaking about several hundred offences. One improvement that we can make is to go into a greater level of detail on each of the offences, which is what we have done during the year. In the report, and in correspondence from the minister, some improvements and enhancements to that level of detail are highlighted, and I hope that we can continue with that work. More specific pointers about exactly what is expected or would be helpful would assist us in that process."⁹

Recognising the challenges inherent in providing data on the criminal justice process, the Committee welcomes efforts to present more detailed information in the report and ongoing work (including quarterly breakdowns for the six priority areas) to continue this process.

ACC Graham also indicated that the inclusion of information on the number of cases which could not proceed due to insufficient evidence or not qualifying as a crime could be considered for future reports. Similarly ACC Graham saw no reason why information on the level of police resources applied to wildlife crime could not be included. **The Committee welcomes these suggestions and looks forward to the inclusion of this data, including the level of COFPS resources applied to wildlife crime, in future reports.**

⁸ Letter from Scottish SPCA, 22 January 2016:
http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20160122_Scottish_SPCA_on_Wildlife_Crime_Annual_Report_2014.pdf

⁹ Rural Affairs, Climate Change and Environment Committee, [Official Report](#), 13 January 2016

Penalties

The Wildlife Crime Penalties Review Group published its report on penalties for wildlife crime in Scotland in November 2015¹⁰. The Committee explored the issue of whether current penalties represent a sufficient deterrent to those engaged in wildlife crime. The Committee also notes the research carried out by the Review Group showing “there was a general view that some recent developments could ensure that the law had a greater deterrent effect.”¹¹

Upon publication of the report of the Wildlife Crime Penalties Review Group, you wrote to the Committee¹² indicating you would be considering the recommendations in detail. **The Committee requests an indication of when your response to the report will be published and whether you are in a position to provide a view on the issue of penalties at this stage.** This information will inform the Committee’s legacy report to its successor committee(s).

Scottish Society for the Prevention of Cruelty to Animals

In your response to the Committee’s letter on the Annual Report 2013¹³, you indicated you would keep the Committee updated on developments with regard to a response to the Scottish Government’s consultation on the extension of powers in wildlife crime investigation to the Scottish Society for the Prevention of Cruelty to Animals (SSPCA).

To date, the Committee has not received an update and the Scottish Government has not published its conclusions resulting from the consultation. **The Committee requests details of when your analysis and conclusions from the consultation will be published, and expects this to be in good time for the Committee to include this in its legacy report to its successor committee(s).**

Fox Hunting

The Committee welcomes the inclusion of a section on fox hunting in the 2014 Report, having received correspondence¹⁴ from you in the summer indicating this would be the case. The Committee sought the views of Police Scotland and COPFS on this area of the report. We were concerned to hear that although there is information¹⁵ asserting a prevalence of breaches of the

¹⁰ Wildlife Crime Penalties Review Group [Report](#), November 2015

¹¹ Wildlife Crime Penalties Review Group [Report](#), November 2015, Page 32, Para 70

¹² Letter from Minister for Environment, Climate Change and Land Reform on the publication of the Wildlife Crime Penalties Report, 19 November 2015:

http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20151119_Minister_on_Wildlife_Crime_Penalties_Report_WEB.pdf

¹³ Letter from the Minister for Environment, Climate Change and Land Reform on the Wildlife Crime in Scotland Annual Report 2013:

http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.12.17_-_Minister_meeting_follow_up.pdf

¹⁴ Letter from the Minister for Environment, Climate Change and Land Reform on fox hunting:

http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/20150901_Minister_on_Fox_hunting.pdf

¹⁵ League Against Cruel Sports, *Scottish Fox Hunts Expose*, 26 May 2015:

<https://www.youtube.com/watch?v=H2Pj5TsxFvE>

Protection of Wild Mammals (Scotland) Act 2002 by hunts in Scotland this information has proved to be insufficient in establishing the occurrence of a crime. Police Scotland indicated support for the Review of the Protection of Wild Mammals (Scotland) Act 2002¹⁶, suggesting the legislation may not be as effective as it could be.

The Committee welcomes the review¹⁷, led by Lord Bonomy¹⁸, and intends to present the Official Report of its evidence session with Police Scotland and COPFS on 13 January 2016 by way of a formal submission to the review. As the review is due to submit a report to Ministers by the end of summer recess 2016, the Committee will also highlight the issue to its successor committee(s) via its legacy report.

Vicarious liability

The topic of landowner consent for use of their lands for fox hunts was raised by the Committee during the evidence session. We feel it important this issue be brought to the attention of Lord Bonomy's review. Having heard evidence on the issue of vicarious liability, the Committee questioned whether landowners who consent to hunts which engage in illegal practices could be culpable for such actions. The Committee also considered whether such a responsibility might increase the pressure on hunts to ensure their activities adhere strictly to the law. **The Committee will include this evidence in its submission to the Bonomy review and urges the Scottish Government to consider this, in due course, as part of its deliberations on the findings of the review.**

The Committee was heartened to hear of ongoing work by Police Scotland with landowners and organisations representing landowners as examples of partnership work undertaken to help prevent wildlife crime. However, when probing witnesses as to the effectiveness of vicarious liability as a tool, the Committee was concerned to note the difficulties that could be involved in establishing vicarious liability due to the lack of information on who owns certain land and property rights in Scotland. Given the Committee's extensive experience and knowledge of this issue, developed through consideration of the Land Reform (Scotland) Bill, the Committee found it useful to hear further direct evidence in another context in favour of making land ownership more transparent. **The Committee calls on the Scottish Government to consider inclusion of a section on the impact of land reform legislation in future annual reports on wildlife crime.**

Mapping

Last year you wrote to the Committee indicating you would look into mapping of locations of illegally placed poisons and traps, as well as the points of discovery of raptor carcasses. Police Scotland indicated they were aware of

¹⁶ The Review of the Protection of Wild Mammals (Scotland) Act 2002:

<http://www.gov.scot/About/Review/protection-wild-mammals>

¹⁷ Remit of the review can be found here: <http://www.gov.scot/About/Review/protection-wild-mammals/remit>

¹⁸ Scottish Government News Release Announcing Lord Bonomy to lead review:

<http://news.scotland.gov.uk/News/Fox-hunting-laws-20d4.aspx>

hotspots in response to questions on whether vicarious liability, utilised with map-based evidence of a concentration of criminal bird poisonings, would be a priority for investigation.

The Committee welcomes the publication in March 2015¹⁹ of the Partnership for Action Against Wildlife Crime Scotland (PAWS) Bird of Prey Crime Hotspot Maps 2010-2014. However, the Committee seeks assurances as to the use and effectiveness of this tool in securing convictions and sentences.

Partnership for Action Against Wildlife Crime Scotland

The Committee explored the importance of local partnerships to Police Scotland operations and heard of the good working relationships the organisation has with stakeholder groups at a community and national level (through memberships of PAWS). However, we were surprised by the dichotomy between the findings of the Scottish Environment Link reports²⁰ on the enforcement of wildlife crime in Scotland and the outlook of Police Scotland. The Committee was also puzzled by Police Scotland's comments that the NFUS was not a member of PAWS, when your correspondence of 17 December 2014 notified the Committee of the organisation's involvement.

The Committee considers effective partnerships between statutory agencies and the voluntary sector to be a key factor in the prevention of wildlife crime. There appears to be a difference of opinion on progress made in eradicating criminal practices and in the implementation of legislation in this area, which cannot be helpful. The Committee seeks your commitment to the effective operation of PAWS and engagement with the wider stakeholder community in the pursuit of reducing criminal activity in relation to wildlife.

The Committee requests a response to its queries by 26 February 2016, in order to include information on this important topic in its report to successor committee(s).

Yours sincerely



Rob Gibson

Convener

Rural Affairs, Climate Change and Environment Committee

¹⁹ Scottish Government Press Release: Bird of Prey Crime Maps, 31st March 2015: <http://news.scotland.gov.uk/News/Bird-of-prey-crime-maps-1813.aspx>

²⁰ Scottish Environment Link: Natural Injustice [Paper 1](#) and [Paper 2](#), February 2015.