

Scottish Government submission of 9 May 2023

PE2021/A: Ensure the definition of protected animals in the Animal Health and Welfare (Scotland) Act 2006 applies to the sheep on St Kilda

Thank you for your email of 12 April 2023 seeking information from the Scottish Government concerning Petition PE2021 lodged by David Peter Buckland and Graham Charlesworth.

The petition seeks to “urge the Scottish Government to clarify the definition of protected animals contained in the Animal Health and Welfare (Scotland) Act 2006, and associated guidance, to ensure the feral sheep on St Kilda are covered by this legislation, enabling interventions to reduce the risk of winter starvation and the consequential suffering of the sheep.”

The Scottish Government’s established position for many years has been that, for the purposes of welfare legislation, the St Kilda sheep should be regarded in the same way as an unowned and unmanaged population of wild deer or other wild animals. As such, they would be protected animals during any time that they are brought under the control of man, and are protected at other times by the Wild Mammals (Protection) Act 1996. As with other wild animals, or protected animals for which no-one is responsible, there are no positive obligations on any person to act to prevent unnecessary suffering or to ensure the welfare of the animals.

Animals protected under section 17 of the Animal Health and Welfare (Scotland) Act 2006 are defined as those that are:

- (a) of a kind which is commonly domesticated in the British Islands;
- (b) under the control of man on a permanent or temporary basis; or
- (c) not living in a wild state.

The Scottish Government's view of these definitions in relation to the St Kilda sheep is:

- (a) can be considered not to apply as, although sheep as a species are commonly domesticated in the British Islands, the current populations of sheep on St Kilda, due to their unique history of adaption to life without management over many generations, can now be considered as distinct kinds that are not "commonly domesticated" in the British Islands;
- (b) would only apply if and when sheep are gathered up for a particular procedure -otherwise they are not under control as they are free to move anywhere; and
- (c) does not apply as the sheep are "living in a wild state".

Regarding the question of whether the sheep on St Kilda could be considered as "commonly domesticated" for the purposes of the Animal Health and Welfare (Scotland) Act 2006, this would be consistent with our guidance to the Act which states that protected animals include "the kinds of animals whose collective behaviour, life cycle, or physiology has been altered as a result of their breeding and living conditions being under human control for multiple generations. Livestock, poultry, horses, cats and dogs are all protected animals whether they are in captivity or living wild as "feral" animals. Thus feral cats, sheep, goats or ponies are "protected animals" for the purpose of the Act. Other animals living in the wild which have not had their behaviour, life cycle or physiology altered by being under human control, such as pheasants or deer, are not classed as protected animals. When man has made an animal dependent on him, then the animal should continue to be protected." The guidance goes on to explain that there can be domesticated and non-domesticated "kinds" of animals of the same species.

However, our view has been that the sheep on St Kilda can be considered an exception to this general guidance, as their ancestors have adapted to live on St Kilda over many generations, so are not dependent on humans in the same way that more recently escaped or released domesticated animals would be. The Soay sheep on Hirta are descended from animals introduced in the 1930s from Soay where the population of sheep is believed to have survived previously for hundreds

of years with minimal human intervention, although originally kept as domesticated animals.

The unique history and non-domesticated state of the St. Kilda sheep has enabled the populations to be monitored as part of the Soay Sheep Research Project run, since 1985, by the University of Edinburgh to record information on the population of the St Kilda sheep over a number of years. Understanding the relationships between the different factors responsible for these natural fluctuations in population size and the effect on genetic traits of the sheep have been key research questions because the population has not been managed in any way other than by natural selection.

The Scottish Government considers that the St Kilda sheep are generally protected by the Wild Mammals (Protection) Act 1996 as this applies to mammals that are not protected animals within the meaning of section 17 of the [Animal Health and Welfare \(Scotland\) Act 2006](https://www.legislation.gov.uk) ([legislation.gov.uk](https://www.legislation.gov.uk)). It is an offence for a person to mutilate, kick, beat, nail or otherwise impale, stab, burn, stone, crush, drown, drag or asphyxiate with intent to inflict unnecessary suffering such animals.

Even if the St Kilda sheep were to be considered animals of a kind commonly domesticated in the British Islands, then the protection provided against actions which cause them suffering is broadly similar. The Animal Health and Welfare (Scotland) Act 2006 distinguishes between the duties owed to a protected animal by persons generally and the duties owed by persons who are responsible for a protected animal, with the duties of a person responsible for a protected animal being greater. It is an offence for any person to cause a protected animal unnecessary suffering by an act, or to mutilate it, perform a cruel operation on it or administer a poison to it under sections 19(1), 20(1), 21 or 22 of the Animal Health and Welfare (Scotland) Act 2006. Where no-one is responsible for a protected animal however, because the animal is ownerless and no person is in charge of it, there is, as with wild animals, no obligation on any person to take positive acts to prevent unnecessary suffering by such an animal or to ensure its welfare, for example, to intervene to prevent starvation. Our understanding is that the National Trust for Scotland, as the owners of St Kilda, regard the sheep as an unowned and unmanaged population, and are not

responsible for the sheep on St. Kilda in terms of the Animal Health and Welfare (Scotland) Act 2006.

If and when any sheep on St Kilda are brought under the control of man, for example by being gathered for a particular procedure, then they would at that time be protected animals and a person in charge of them may have additional duties to the animal during that time.

I hope this reply is helpful to the Committee's consideration of the petition.