

Alasdair Allan MSP submission of 6 June 2023

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

Dear committee members,

I would like to thank the Citizen Participation and Public Petitions Committee for this opportunity to provide a written submission on petition "[PE2021: Ensure the definition of protected animals in the Animal Health and Welfare \(Scotland\) Act 2006 applies to the sheep on St Kilda](#)".

I am responding in my capacity as the Member of Scottish Parliament for Na h-Eileanan an Iar constituency. My principal connection in this issue has been through my involvement with the petitioners as their constituency MSP. However, I have had several crofters express their unease about NTS's position leading to unnecessary suffering for the sheep

Previous Actions

I have raised this issue in writing on behalf of the petitioners with Scottish Ministers and NatureScot between January 2020 and January 2023. I also submitted a written question ([S6W-08737](#)) in May 2022 concerning the legal status of the Soay breed of sheep in St Kilda vis-à-vis the Animal Health and Welfare (Scotland) Act 2006.

The majority of the following points that I will outline in this submission were previously raised in written letters with the Scottish Government.

Scottish Government Position

In the most recent letter from the Scottish Ministers dated 1 June 2022, Mairi Gougeon MSP, the Cabinet Secretary for Rural Affairs and Islands, confirmed the Government's position the sheep on St Kilda, for the purposes of welfare legislation, should be regarded in the same way as an unowned and unmanaged population of wild deer or other wild animals.

The foundation for this view, restated in the government's submission to

this committee, was detailed in a letter of 29 March 2022.

Animals protected under 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.*

Our 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 adaptation to life on St Kilda without management over many generations could 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 purpose – otherwise they are not under human control; and*
- (c) does not apply as the sheep are “living in a wild state”.*

Domestication

The government views the Soay sheep on St Kilda as being of a different ‘kind’ of sheep than those commonly domesticated in the British Isles, due to their unique history and minimal human intervention. This, they argue, is an exception to their guidance for the Animal Health and Welfare (Scotland) Act 2006, which states that “when man has made an animal dependent on him, then the animal should continue to be protected.”¹

Messrs Buckland and Charlesworth have argued previously that despite the sheep’s current situation, they retain several characteristics of domesticity brought about by human control. As they detailed in a letter

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2018/11/animal-health-and-welfare-scotland-act-2006-guidance/documents/animal-health-and-welfare-scotland-act-2006-guidance/animal-health-and-welfare-scotland-act-2006-guidance/govscot%3Adocument/Animal%2BHealth%2Band%2BWelfare%2B%2528Scotland%2529%2BAct%2B2006%2B-%2BGuidance%2B.pdf>

on 30 March 2021, research² into the Soay sheep on St Kilda described the differences between feral livestock and wild animals:

The small size, early weaning ages and age at first breeding of Soay sheep are all typical of animals that have been subjected to artificial selection. In most wild sheep, mothers suckle lambs through the summer and females usually breed for the first time in their second or third year of life. As we have argued, it is likely that early weaning age of Soays is responsible for the lack of density dependence in fecundity and together with the capacity to become pregnant in their first year, is responsible for their unusually high rate of population growth. (Clutton-Brock 2004: 304)

Not only do these characteristics of domestication in Soay sheep, such as the reproductive traits of lambs, point to the breed as being domesticated, the petitioners are concerned that they are responsible for the rapid population growth that, in the absence of predators, competing grazers or ability to disperse, leads to frequent mass starvation events every year.

Furthermore, there exist commonly in the British Isles numerous domesticated Soay breed flocks, under the aegis of the Rare Breeds Survival Trust.

Messrs Buckland and Charlesworth have also questioned the implications for the government's view for other populations of feral ungulates, such as the feral goats in the Isle of Rùm.

Control of Man

The government views the Soay breed of sheep on St Kilda as not under the control of man, except on a temporary basis when they are gathered up for a particular purpose, such as the triannual catch and release by the St Kilda Soay Sheep Project for the purposes of data collection³.

Messrs Buckland and Charlesworth have attested previously that the sheep of St Kilda were explicitly entrusted to the National Trust for Scotland within the bequeathal of the Marquess of Bute. The document is available from the National Records of Scotland in Volume SC8/35/81:

² <https://www.cambridge.org/core/books/soay-sheep/4FFADF6889E712E0B022D7E03B7AFBAB>

³ <https://soaysheep.bio.ed.ac.uk/data-collection>

Extract Records Wills and Confirmations No.74 1957, page 240, under the title “Extract Registered Trust Disposition and Settlement by the Most Honourable John Crichton-Stuart, Fifth Marquess of Bute, Died 14th August 1956, Recorded 2nd April 1957”.

It states:

(Fourth) I direct my Trustees to offer to convey the Islands and Stacs of St Kilda (Hirta), Soay, Borreray, Levinish and Dun and all the other Islands and Stacs belonging to me and forming the St Kilda group, together with all animals and things which may be on any of such Islands or Stacs at the date of my death, to the National Trust for Scotland if it will accept them.

The bequeathing of the animals, including the St Kilda sheep, by the Marquess of Bute in 1957 to the National Trust for Scotland (NTS) suggests that the population may be owned and that the Trust may be responsible for them under the Animal Health and Welfare (Scotland) Act 2006. The NTS, however, regard the sheep as an unowned and unmanaged population and therefore may not be responsible for the sheep in terms of the Animal Health and Welfare (Scotland) Act 2006.

Population Management

In any event, Scottish Natural Heritage, now NatureScot, wrote to Messrs Buckland and Charlesworth on 6 July 2020 to clarify that the St Kilda sheep would be regarded as non-native animals under The Wildlife and Natural Environment (Scotland) Act 2011. Section 14 of this legislation makes it an offense to “release any animal outwith its native range.” As is referenced within the petition before the committee, the petitioners are concerned that this interpretation means that researchers may have committed numerous offenses during the course of the St Kilda Soay Sheep project’s triannual capture and release of wild animals.

Furthermore, as I wrote previously to the Scottish Ministers on 2 May 2022, Messrs Buckland and Charlesworth reaffirmed their view that the circumstances of large annual starvation in the Soay sheep population on St Kilda contradicts similar codes of practice for wild animals. The Code of Practice on Deer Management, for example, stipulates that deer are managed to reduce their numbers and safeguard their health and wellbeing following the guidance of the Wildlife Management Framework

(WMF). Were the sheep protected under the Wild Mammals (Protection) Act 1996, as the government suggested in its letter to the petitioners on 29 March 2022, the act still requires consideration of their welfare with appropriate action and management plans.

Despite this, NatureScot detailed in a letter of 27 January that the NTS maintained a presumption against intervention, except in exceptional circumstances. NatureScot was therefore of the view that the sheep were being treated in the same way as other feral/wild animals in Scotland.

Yet a briefing document produced by the Scottish Parliament Information Centre (SPICe) in 2013⁴ commented that wild deer in Scotland, due to a lack of natural predators, should be managed by man. It stated: “It is considered publically [sic] and morally unacceptable to allow deer numbers to increase to such levels that they are subject to large natural mortalities in winter.”

In summation, the policy towards St Kilda Soay sheep does not reflect best practice for the management of other animals in Scotland. If the Scottish Government position is to be accepted, and the sheep are to be treated as other wild animals, there may be both a legal and moral duty to manage the Soay population in St Kilda to avoid mass starvation events.

I hope this letter is helpful to the Committee’s consideration of the petition.

Yours sincerely,

Alasdair Allan MSP

⁴ https://archive2021.parliament.scot/ResearchBriefingsAndFactsheets/S4/SB_13-74.pdf