

## Petitioners submission of 14 June 2023

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

#### Comments on [Scottish Government submission](#) of 9 May 2023

The Scottish Government '**established position for years**' (paragraph 3):

- Via our MP, we have asked, in vain, for details of when this position was established and what rationale and consultations informed it.
- Freedom of Information has revealed no documents related to the welfare status of the sheep until our letter to the Chief Vet in January 2020.
- None of the major stakeholders were aware of this position and NatureScot viewed the sheep to be 'feral livestock' (and even 'owned'). They refer to the change as 'the Chief Vet's decision in 2020'. This confusion has led to the Soay Sheep Project committing an offence under the Wildlife and Natural Environment (Scotland) Act 2011, as confirmed by Police Scotland and NatureScot.

The **definition of 'protected animals'** in the [Guidance](#) states:

*For an animal to be classed as a "protected animal" it needs to satisfy just one of the following conditions:*

- *it is of a kind commonly domesticated in the British Islands (Animals that are of a kind commonly domesticated in the British Islands include feral domestic animals such cats, sheep, goats and ponies)...etc*

Scottish Government (paragraph 4) has omitted the pertinent parenthesised sentence.

Scottish Government has introduced a new concept not mentioned in the Act or Guidance,: '*..they are not under control as they are **free to move anywhere***' (paragraph 5). All three flocks are on small islands, with Boreray and Soay only 77 and 99 hectares in area respectively. As

grazing animals, are they really free to move anywhere as population size increases?

Scottish Government singles out: ‘... *the guidance goes on to explain that there can be **domesticated and non-domesticated “kinds” of animals of the same species***’ (paragraph 6) but fails to explain the point being made. The full sentence Scottish Government are referring to in the Guidance states:

*The domestic rabbit, mouse and rat is quite different to the wild kind, and the fact that some kinds of animals can be domesticated, does not mean that all such animals are then “protected”.*

Rabbits, mice and rats are being used by the Guidance as an example to illustrate well the clear difference between an altered (and thus protected) ‘kind’ of animal and the wild ‘kind’. The Guidance is **not** explaining that ‘kinds’ clearly altered by previous domestication (such as the Boreray and Soay sheep) can now be viewed as ‘non-domesticated’.

Scottish Government has created ‘**an exception**’ to the Guidance (paragraph 7) on the basis that the sheep are ‘*not dependent on humans in the same way as recently released domesticated animals would be*’. This clearly contradicts the Guidance, quoted in their previous paragraph: ‘*When man has made an animal dependent on him, then the animal should continue to be protected*’ (paragraph 6). Historian Professor Andrew Fleming’s research shows that, for the St Kildans, trips to Boreray and Soay were part of the annual calendar, combining fowling with ‘sheep management’. Sheep were domesticated 10,000 years ago and have been feral on St Kilda for less than 100 years. If protection for feral animals is now time-limited, what is that limit?

The paragraph on the **Research Project** (paragraph 8) is not relevant to the welfare status of the sheep, which should be defined by parliamentary legislation rather than by university research.

The paragraph listing the offences under the **Wild Mammals (Protection) Act** (paragraph 9) is not relevant. These are all acts of ‘commission’. Our concern is the unnecessary suffering associated with starvation, an act of ‘omission’, for which only the Animal Health and Welfare (Scotland) Act 2006 offers protection.

The '**Even if...**' paragraph (paragraph 10) would imply the Scottish Government is not entirely sure of its 'consistent position'. In fact, the Guidance makes it clear that ownership is not the sole criterion for 'responsibility' under the Act. The National Trust for Scotland own and manage St Kilda and have a published management plan for the sheep and could, consequently, be deemed to have 'responsibility'. Furthermore, there is a long-recorded history of ownership and financial transactions relating to the sheep and the St Kilda Bequest indicates that the sheep were left to the Trust by the Marquess of Bute, along with the islands, raising the question: when and how did ownership cease?

### **Summary:**

If MSPs reject this petition, the sheep on St Kilda will continue to be '*not managed in any other way than by natural selection*' with starvation on a large scale (with a yearly average of not far off a thousand dying in this way across the three flocks). To prevent such suffering from natural selection is precisely why the 2006 Act introduced 'a duty of care' and it is not clear why the Scottish Government has chosen to go out of its way to undermine its own Guidance and create exceptions in order to exclude the sheep from protection.

If the status quo is maintained, not only will the suffering continue, but the Guidance will require to be comprehensively re-drafted to incorporate the new Scottish Government interpretations.