

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

Petitioners written submission, 18 April 2024

We wish to inform the Committee of a development resulting from [the National Trust for Scotland's submission of 8 August 2023 to the Committee](#), in particular the statement:

“In June 2009 we received a letter from the Cabinet Secretary for Rural Affairs and the Environment, which stated:

‘From the veterinary and animal health perspective, the Rural Directorate has traditionally considered these animals to be effectively “wild”, that is, they have no owner, they are not situated on agricultural land, they are not considered to be either a domestic or captive population that is managed, they are not destined for the food chain, and they are not intended for intracommunity trade. On that basis, they have been considered to be exempt from almost all animal health and welfare legislation and the associated administrative responsibilities placed on farmers as ‘animal keepers.’”

This quotation from a letter is being used to support the National Trust for Scotland position that the sheep on St Kilda are not ‘protected animals’ under the Animal Health and Welfare (Scotland) Act 2006 (AHWA) (the subject of our petition). However, given the date of the letter, we suspect that it does not relate to the animal welfare legislation per se but rather to the Bluetongue regulations, which required all sheep on uninhabited offshore islands to be vaccinated against Bluetongue virus, with a deadline for completion of 30 June 2009. Considering the practical difficulty of vaccinating every sheep on the archipelago, we surmise that this letter was motivated by expediency—providing an exemption from the Bluetongue requirements—and does not represent a considered opinion on the status of the sheep under the AHWA.

We maintain that National Trust for Scotland does own the sheep on St Kilda ([see Dr A. Allan MSP submission](#)) yet Scottish Government appear to have accepted the National Trust for Scotland position that the sheep have no owners. On that premise it is true that the sheep are ‘... **exempt from almost all animal health and welfare legislation and the associated administrative responsibilities placed on farmers as ‘animal keepers’**’. Note the ‘**almost all**’: out of the more than 150 pieces of animal health and welfare legislation that affect livestock and farmers in Scotland at any given time, the AHWA is one of very few that would apply to feral sheep. Furthermore, given that this letter was written just three years after the enactment of the AHWA, with the guidance making it clear that feral sheep are protected animals, we do not believe that it is plausible that this letter relates to the animal welfare legislation.

The use of this passage from a 2009 letter raises a number of pertinent questions:

- Why, in 2017, did the National Trust for Scotland Senior Nature Advisor write a published letter to the editor of the Hebridean Naturalist journal conceding that the sheep were protected animals under the Animal Health and Welfare Act (while disputing our assertion that NTS had ‘responsibility’ for them – a differentiation that has significance under the AHWA) (1)?
- Why, in 2012, in a three-year DEFRA-funded study, were the Boreray and Soay sheep not included in the national database of non-native wild animals (2)?
- Why, until made aware of our letter to the Chief Veterinary Officer (Scotland) in 2020, did Scottish Natural Heritage believe the sheep to be livestock, not wild animals (3); and, by extension, why, between 2012 and 2020 did neither Edinburgh University Animal Welfare Ethical Review Body nor the Home Office alert the Soay Sheep Project of the requirement, under the Wildlife and Countryside Act, for a licence to release the sheep after capture?

The quoted passage from June 2009 may well be the premise for the ‘**consistent position**’ that the Cabinet Secretary for Rural Affairs and Islands referred to in a letter to Dr Alastair Allan MSP in 2022:

“...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. This has been the consistent position of the Scottish Government and the previous Scottish Executive for many years” (4).

When the Minister was asked by Angus MacNeil MP for documentary evidence of this ‘consistent position’ taken by Scottish Executive, none was forthcoming (5).

One has to question whether this is an instance of extraordinarily poor communication by the Scottish Executive 15 years ago or, possibly, a much more recent re-interpretation of the letter, prompted by our expressed opinion that the published National Trust for Scotland management plan for the St Kilda sheep of ‘non-intervention’ was incompatible with the Animal Health and Welfare Act.

The Scottish Government has withheld this “June 2009” letter from our Freedom of Information request (6) and National Trust for Scotland has refused to release the letter in full (7). We believe it is not in the public interest for the quoted passage from the June 2009 letter to be used to support the National Trust for Scotland and Scottish Government position but then for the public to be refused access to the full text.

May we urge the Petitions Committee to request access to the letter in full (and any associated communications) so that the quoted text may be viewed in its intended context.

References:

- (1) Luxmoore R. 2017 Letters to the Editor Hebridean Naturalist: Journal of Curracag Outer Hebrides Natural History Society, 17: pp 78-80

- (2) [Roy et al. 2012 - Defra project report - Non-native species in Great Britain.pdf](#)
- (3) Roseanna Cunningham MSP, Cabinet Secretary for Environment, Climate Change & Land Reform; June 2020 letter to Dr Alasdair Allan MSP; ref: 202000037834
- (4) Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs and Islands; 29 March 2022 letter to Dr Alasdair Allan MSP; ref: 202100203017
- (5) Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs and Islands; 22 April 2022 letter to Angus MacNeil MP; ref: 202200295930
- (6) [Scottish Government FOI release](#)
- (7) Philip Long; CEO, National Trust for Scotland; letter 27 February 2024