

Citizen Participation and Public Petitions Committee

11th Meeting, 2023 (Session 6), Wednesday
28 June 2023

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

Petitioner	David Peter Buckland and Graham Charlesworth
Petition summary	Calling on the Scottish Parliament 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.
Webpage	https://petitions.parliament.scot/petitions/PE2021

Introduction

1. This is a new petition that was lodged on 12 April 2023.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. Every petition can collect signatures while it remains under consideration. At the time of writing, 1,729 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.
6. A submission has been provided by the petitioner. This is included at **Annexe D**.

7. The Committee has also received a submission from Alasdair Allan MSP, which is included at **Annexe E**.
8. The Committee has received requests from the National Trust for Scotland (NTS), members of the St Kilda Soay Sheep Research Project, and the animal welfare charity, OneKind to provide submissions in relation to this petition.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

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

Petitioner

David Peter Buckland and Graham Charlesworth

Date lodged

12 April 2023

Petition summary

Calling on the Scottish Parliament 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.

Previous action

We have written to and received responses from the Minister for Rural Affairs and Natural Environment and the Chief Veterinary Officer, which state that the sheep are not protected by the 2006 Act and that the Scottish Government's position on this has been consistent for many years.

We have also received a response from Roseanna Cunningham, then Cabinet Secretary for Environment, Climate Change and Land Reform, which confirmed that NatureScot view sheep as livestock but would defer to advice provided by the Chief Veterinary Officer.

We also contacted Mark Ruskell MSP and Alasdair Allan MSP who have raised parliamentary questions on this matter. We are now raising this petition following advice from Dr Allan.

Angus MacNeil MP has also written to the Minister for Rural Affairs and Natural Environment, but it remains unclear why the Scottish Government are ignoring the guidance accompanying the 2006 Act.

We have also received a letter from the National Trust for Scotland (NTS) noting their refusal to manage the sheep on St Kilda.

Background information

The St Kilda sheep have been feral since 1930, but millennia of domestication have altered their physiology, making them unsuited to life unmanaged.

Information suggests overpopulation contributes to a yearly average of 600 sheep dying of starvation each winter on Hirta alone.

NatureScot and NTS were unaware of the Scottish Government's position that the sheep are not protected under the 2006 Act, and had, before May 2020, viewed the sheep as livestock. This confusion means researchers have potentially committed multiple offences under the Wildlife and Natural Environment (Scotland) Act 2011 by releasing non-native "wild" animals without a licence between 2012 and 2020.

The Scottish Government position appears contrary to its own guidance on the Act, which includes all feral sheep as protected animals because domestication has left them reliant on man.

The consequence of allowing this confusion to persist will be to weaken the Act and allow unnecessary suffering, not only on St Kilda but potentially elsewhere in Scotland.

Annexe B


 SPICe

 The Information Centre
 An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee 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**, lodged by David Peter Buckland and Graham Charlesworth

This petition concerns the welfare and legal status of feral sheep on St Kilda in relation to Scottish animal welfare and wildlife legislation.

Brief overview of issues raised by the petition

History of the feral sheep on St Kilda

- This petition concerns a population of feral (i.e. living in a wild state) sheep in the St Kilda archipelago off the west coast of Scotland. St Kilda is comprised of four islands – Soay, Hirta, Boreray, and Dun. Hirta was inhabited until 1930, [when its last remaining residents left the island](#).
- There are three populations of feral sheep on St Kilda. There are two populations of Soay sheep – a breed originating from the island of Soay ([the name 'Soay' is thought to be derived from old Norse for 'sheep island'](#)) – on Hirta and on Soay itself. There is also a population of Boreray sheep on Boreray. [According to the Rare Breeds Survival Trust](#), the Boreray breed “originated in the late 19th century from a cross between the Blackface and a variety of the old Scottish tan-faced group”. The Rare Breeds Survival Trust describe both breeds as “very” or “[exceptionally](#)” hardy, “primitive” breeds. There are some small populations of Soay sheep living ferally in other parts of the UK, [such as on Holy Isle, near Arran](#).

- Most of the discussion and available information concerns the Soay sheep population, notably because they have been the subject of a long-running study.
- Research suggests that sheep have been living on Soay [since the Bronze age](#) and the population has been feral for many centuries. [In an account of the 'back-story' of the Soay sheep, Fleming \(2021\)](#) states that “The presence of ‘feral’ sheep at St Kilda was first mentioned in the late fourteenth century”. Sixteenth century accounts describe an “uninhabitable island” with animals “by no means unlike sheep in shape, but wild and they cannot be caught except by surrounding them”.¹
- [Fleming \(2021\) explains that when St Kilda was still inhabited](#) in more modern times, the Soay sheep were not actively managed but the local community made annual trips to Soay to harvest wool and hunt sheep for food, for which they paid the laird.
- Fleming also noted that the people of St Kilda on Hirta had other “more modern” breeds of sheep as livestock. These were evacuated along with the residents in 1930, leaving behind the feral breeds.
- After the evacuation of the remaining inhabitants, the landowner had 107 Soay sheep captured and transferred from Soay to Hirta in the mid-1930s, [in an attempt to start a weaving business, which largely did not come to fruition](#). This is the basis for the population of Soay sheep on Hirta today.
- The archipelago was [sold by the existing owner to the Marquess of Bute in 1931](#), who then [bequeathed it to the National Trust for Scotland in 1957](#).
- The archipelago has been [a UNESCO World Heritage Site since 1986](#). Keeping sheep in general (i.e. not mentioning the feral breeds) is mentioned against the selection criteria for world heritage site status, as a facet of the “cultural landscape of St Kilda”. The Soay sheep specifically are mentioned as an example of the archipelago’s conservation value: “The feral Soay sheep are

¹ Quote from Clutton-Brock *et al.* ‘The Sheep of St Kilda’, in Clutton-Brock and Pemberton eds. (2004), [Soay sheep: dynamics and selection in an island population](#), p. 24

also an interesting rare breed of potential genetic resource significance”.

- The Soay sheep on Hirta have been studied by researchers since the 1950s. [The project in its current form has been running since 1985 by the University of Edinburgh and Imperial College London in collaboration with other universities](#), studying population dynamics, evolution and genetics, ageing, and parasite infection.

Population dynamics of the Soay sheep

- The [university researchers note that](#) “the Soay sheep population is unusual in that it fluctuates dramatically in size with time”, with populations rising markedly in some years, [followed by a population crash by up to 70%](#). One of the objectives of the research has been to find out why this is.
- This cycle, with high mortality rates in some years, is of concern to the petitioners. The petitioners suggest in [the background information to the petition](#) that this is due to overpopulation, contributing “to a yearly average of 600 sheep dying of starvation each winter”, and that “millennia of domestication have altered their physiology, making them unsuited to life unmanaged”.
- However, in [an article on the issue related to the welfare of the sheep, a spokesperson from the University of Edinburgh told *The Herald*](#) in February 2023 that:
 - “In the study area, which covers one third of the island, it is extremely rare for mortality to reach 70% in any year and this level has not been seen for many years.
 - “In common with most wild species that are not managed, for example the puffins of St Kilda, mortality is highly variable from year to year and falls mainly on juveniles.
 - “Many Soay sheep on St Kilda live much longer lives than farmed domestic sheep.”
- Both the petitioners and researchers from the Soay Sheep Project have expanded on their views in recent letters to [the journal *Vet Record*](#). The petitioners – both vets – explain why they believe that the sheep are “unsuited to life unmanaged”. They point to accounts

of an annual harvest of sheep by the St Kildans and suggest that “domestication has left sheep ‘reliant on man’ for population control.” They support their view with the following quote from Clutton-Brock in [*Soay sheep: Dynamics and Selection in an Island Population*](#) (2004):

“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 the 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.” (p.304)

- The researchers, on the other hand, underscore that the sheep had been living unmanaged for thousands of years and that they came to St Kilda “long before the agricultural revolution when modern breeds were developed.” They state that the sheep are “genetically distinct” from more modern sheep breeds. The researchers note:

“Genetically and in appearance, Soay sheep are more similar to wild sheep than they are to any modern breed of domestic sheep [...].

“Consistent with millennia of isolation and adaptation to their local environment, they have many characteristics that are different from domestic sheep, including small size, agility, lack of flocking, self-shedding fleeces and minimal problems with hooves, teeth and parturition [birthing].

“In these respects, they are not ‘reliant on man’. Whether their fecundity is a legacy of artificial or natural selection is debatable – it is within the range for other similar-sized wild ungulates [a group of mammals with hooves].

“Any report of deaths of large numbers of animals should be taken seriously and considered logically. Large numbers of wild animals die every year in the UK as a result of natural processes including starvation, predation, ageing and

infection. Sheep mortality on St Kilda is no different. It is the result of the same processes and shows comparable numbers and patterns to those observed in other wild populations of birds and mammals.”

Legal status of the sheep

- The petition concerns the legal status of the sheep in relation to Scottish animal welfare and wildlife legislation. The petitioners wish for the legislation and guidance to be clarified, to ensure that the sheep on St Kilda are covered by Scotland’s animal welfare legislation “enabling interventions to reduce the risk of winter starvation and the consequential suffering of the sheep”.
- The main legislation in Scotland governing animal health and welfare in domesticated animals is the [Animal Health and Welfare \(Scotland\) Act 2006](#) (‘the 2006 Act’). The 2006 Act sets out a number of responsibilities to provide for animals’ welfare, which includes certain obligations to prevent harm either by an act or omission and promote welfare through e.g. suitable food and shelter. This applies in relation to the welfare of ‘protected animals’. Section 17 of that act defines ‘protected animals’:

“(1) In this Part, an animal is a “protected animal” if it is—

 - “(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 obligations towards animals’ welfare differ depending on whether or not someone is “responsible for an animal”. It is an offence for any person to cause a “protected animal” (as defined above) “unnecessary suffering by an act”, but in the case of a person who is “responsible for an animal” it is an offence for that person to cause a “protected animal” “unnecessary suffering by an act *or omission*” (Section 19, emphasis added). In the legislation, a person is “responsible for an animal” if they are responsible for it on a permanent or temporary basis or in charge of it, and “a person who owns an animal is always to be regarded as being a

person who is responsible for it". In the case of animals for which someone is responsible, there are also obligations to ensure their welfare (e.g. to provide suitable food and environment); it is an offence not to "take such steps as are reasonable in the circumstances to ensure that the needs of an animal for which the person is responsible are met to the extent required by good practice" (Section 24).

- Other legislation, for example the [Wild Mammals \(Protection\) Act 1996](#), protects non-domesticated animals from human actions which cause unnecessary suffering (e.g. mutilation, drowning, asphyxiation), but does not create 'positive' obligations to prevent unnecessary suffering or provide for their welfare (e.g. to feed or provide them with a suitable environment).
- What obligations are owed to a certain animal therefore depends on whether or not it is considered a "protected animal", and whether or not it is considered that a person is "responsible for an animal".
- While the archipelago is owned by the National Trust for Scotland, the Scottish Government does not consider anyone to be responsible for the sheep themselves, and has stated that it does not consider the sheep population on St Kilda to be covered by the protections of the 2006 Act. In [correspondence with the Citizen Participation and Public Petitions \(CPPP\) Committee](#), the Scottish Government stated that:

"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."

- The letter to the CPPP Committee explains the Scottish Government's position in relation to the definition of 'protected animal' set out above:
 - (a) "[the criteria that a protected animal is of a kind which is commonly domesticated in the British Islands] 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) "[the criteria that a protected animal is under the control of man on a permanent or temporary basis] 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) "[the criteria that a protected animal is an animal not living in a wild state] does not apply as the sheep are "living in a wild state".
- The Scottish Government further clarified its view in the same letter, that even if the St Kilda sheep were considered "animals of a kind commonly domesticated in the British Islands", the protection provided for them would be broadly similar to the protections for wild mammals because nobody is responsible for them:

"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.”

- The National Trust for Scotland, which owns St Kilda, has not actively managed the sheep since it was bequeathed the archipelago. In its [2022-23 St Kilda World Heritage Site Management Plan](#), the Trust stated that:

“Across the archipelago, the sheep will continue to be treated as feral animals with a presumption against intervention, except in exceptional circumstances (e.g. a serious outbreak of disease that threatens the sheep populations). The sheep were confirmed by the Scottish Government as non-native species in 2020. The Trust will continue to comply with Scottish Government legislation relating to St Kilda’s sheep populations.”
- In a 2020 letter ([set out in a 2021 Freedom of Information release](#)) the National Trust for Scotland stated that they feel confident that their “current approach is consistent with legislation”. They further note that:

“We understand there are moral and ethical issues too, and we consider these in the context of other wild and feral animals such as deer and goats that inhabit Trust properties. Other than for habitat management purposes we adopt a policy of least intervention.”
- The petitioners note that [the Scottish Government’s guidance on the 2006 Act](#), though it does not specifically refer to the sheep on St Kilda, states that feral sheep could be considered protected animals “of a kind commonly domesticated in the British Isles”. The guidance states:

“Animals that are of a kind commonly domesticated in the British Islands include feral domestic animals such cats, sheep, goats and ponies”

- The Scottish Government has stated in correspondence with the CPPP Committee that they consider the sheep on St Kilda to be an exception to the feral animals referred to in the guidance. The Scottish Government states:

“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.” (italics added for clarity)

- The petitioners also suggest in the background to the petition that there has previously been some confusion about the legal status of the sheep. In capturing and releasing the sheep for research purposes, researchers and NatureScot had treated the sheep as

livestock, and therefore, releasing the sheep following capture and tagging would not require a licence.

- However, with the Scottish Government clarifying that they consider the sheep to be essentially wild, this changes the requirements around the release of the sheep as part of the research project. It is not permitted to release a species outwith its native range, as per [section 14 of the Wildlife and Countryside Act 1981](#), as amended. To do so, a licence must be obtained from NatureScot, under [Section 16\(4\)\(c\)](#) of the same act.
- [A Freedom of Information release](#) suggests that, following clarification of the legal status of the sheep from the Scottish Government, NatureScot is now requiring a licence to release the sheep following capture and tagging.

Anna Brand
Senior Researcher
12 June 2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

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.

Annexe D

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.

Annexe E

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 that 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.”²

Messrs Buckland and Charlesworth have argued previously that despite the sheep's current situation, they retain several characteristics of

² <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>

domesticity brought about by human control. As they detailed in a letter on 30 March 2021, research³ 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 collection⁴.

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

³ <https://www.cambridge.org/core/books/soay-sheep/4FFADF6889E712E0B022D7E03B7AFBAB>

⁴ <https://soaysheep.bio.ed.ac.uk/data-collection>

is available from the National Records of Scotland in Volume SC8/35/81: 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 offence 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 offences 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 2013⁵ 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

⁵ https://archive2021.parliament.scot/ResearchBriefingsAndFactsheets/S4/SB_13-74.pdf