

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

Petitioner written submission, 14 August 2024

We thank the Petitions Committee for the opportunity to respond to the most recent submissions by the National Trust for Scotland and Scottish Government.

[National Trust for Scotland submission \(PE2021/K\)](#)

The National Trust for Scotland state that the correspondence received from Scottish Government in 2009, 2020 and 2022 all confirm that the Soay sheep on St Kilda (no mention of the Boreray sheep again!) are, outwith periods while gathered, not covered by the Animal Health and Welfare (Scotland) Act 2006 (AHWA). Yet we must point out to the Committee that [the extract from the 2009 letter from the Cabinet Secretary for the Environment and Rural Affairs, quoted in submission PE2021/F](#), makes no mention of the AHWA and in light of the Trust's offer (in the same submission):

“we would be pleased to provide the Committee with further written or oral evidence as needed”

may we respectfully urge the Committee to request all their communications pertinent to the extract they quoted.

[Scottish Government submission \(PE2021/L\)](#)

We welcome the suggestion from Scottish Government that:

“...there could be a moral duty for the landowners or others to safeguard the welfare of the sheep...”

However, we should advise the Committee that we wrote to the National Trust for Scotland and the other signatories to the St Kilda Management Plan in January 2020 to ask them, specifically on moral grounds, to manage the sheep to reduce the suffering caused by starvation, but they refused to comply, offering instead their insistence that they are following Scottish Government legislation¹. Even if they were now to introduce humane management on ‘moral grounds’ it would not allay our concerns vis-à-vis Scottish Government's interpretation of the AHWA and its guidance. In any case, should not Government policy and advice be guided by moral direction?

To return this matter to the essence and spirit of what Parliamentary members were aspiring to build in 2005, it is worth looking back to stage 1 of the Animal Health and Welfare Bill, when Mike Radford, lecturer in Animal Welfare Law, stated:

¹ Skinner, S, CEO National Trust for Scotland: Letter 10 February 2020

“It is absolutely essential that the meaning of "protected animal" is clear. If it is not, those to whom the bill is addressed, the enforcement authorities and the courts will have difficulty.”²

It was recognised that the phrase “of a kind commonly domesticated in the British Islands” is vague and easily misinterpreted. This is why detailed guidance to the AHWA was provided and 532 words devoted to explaining exactly which animals (including feral sheep) are protected and why. The key requirement is that animals or their ‘progenitors’ have been domesticated for multiple generations. Like all breeds of sheep in the UK, the ancestors of the Boreray and Soay sheep have been subject to artificial selection by man for thousands of years. They have been feral and subject to (an ersatz version of) natural selection for 90 years; to expect them to revert to their ‘wild type’, if it ever were to happen or even be possible on a small oceanic island, may take hundreds of years.

It seems perverse that, of all people, it is the animal welfare division of the Scottish Government that would ignore their own guidance and manipulate the phrase to say that two breeds of domesticated sheep (*Ovis aries*):

“... through an accident of history can now be considered distinct kinds and not commonly domesticated in the British Islands.”³

Those charged with enforcing the Act: Police Scotland, the Local Authority and the SSPCA have all deferred to the Scottish Government position so that this interpretation of the law cannot be tested in court. Thus, any embarrassment to the National Trust for Scotland (as owners and managers of the sheep) from being prosecuted for causing unnecessary suffering has been avoided; but a precedent will have been set, with possible consequences both for rare breeds of sheep and for other feral livestock.

England’s Animal Welfare Act 2006 is very similar to Scotland’s Animal Health and Welfare Act. Their definition of ‘protected animal’ is the same, using the phrase “... of a kind commonly domesticated in the British Islands”. And yet in the opinion of the office of the UK’s Chief Veterinary Officer (CVO), Professor Middlemiss:

“...animals protected under the Act include “feral animals... on the basis that they originated from domestic stock.” We are not aware of any limits of time which, when passed, would mean these animals become treated as ‘wild’ rather than ‘feral’ and lose a level of their welfare protection afforded by the Animal Welfare Act.”⁴

Thus, the Soay sheep on the island of Lundy, feral since 1942 (just 7 years later than those on Hirta), are ‘protected animals’ under the Animal Welfare Act 2006. Incidentally, Lundy is owned by the National Trust and the sheep are censused every year and the sward measured, and the population is controlled by humane cull (with the meat sold for human consumption) to avoid overgrazing and consequent starvation.

² [Animal Health and Welfare \(Scotland\) Bill: Stage 1: Environment and Rural Development Committee 23 November 2005](#)

³ Voas, S, Chief Veterinary Officer Scotland: Letter 28 February 2020

⁴ Bagshaw, N: Letter written on behalf of Prof C Middlemiss, Chief Veterinary Officer UK. 4 July 2024

We realise that animal welfare is a devolved issue, but we would hope that MSPs would aspire to equal (or higher) animal welfare standards than their neighbours, not lower.

Scottish Government has distanced itself from the decision to exclude the St Kilda sheep from AHWA protection, maintaining that it was taken many years ago by the Scottish Executive, and yet no documents appear to exist to support this claim.

The scale of the starvation on St Kilda and the prolonged period that this has been allowed to continue is unprecedented for a domesticated ungulate, certainly in Western Europe and Scottish Government is complicit in allowing the suffering of the sheep to continue. At a recent meeting, the Minister for Agriculture and Connectivity made it very clear that he did not share our concerns and refused to countenance any review of government policy⁵. Yet pertinent questions remain unanswered:

- Where is the corroboration for the CVO(Scotland)'s 'understanding' that Scottish Government's 'position' was taken many years ago?
- Where is the evidence of any consultation with stakeholders?
- Why has there been no proper consideration of the guidance?
- Why does the Scottish Government still maintain that the St Kilda sheep are 'unowned', given the evidence from the St Kilda Bequest?
- Why is the interpretation of 'protected animal' by Scotland's CVO so very different to that of the UK CVO?

Given Scottish Government's intransigence in the face of so many unanswered questions, may we respectfully urge the Petitions Committee to refer this matter to the appropriate rural affairs committee so that MSPs, in consultation with experts in animal welfare law, can review the animal welfare division's interpretation of the legislation.

⁵ Fairle, J, Minister for Agriculture and Connectivity (Scotland): Meeting with petitioner 19 June 2024