



AGENDA
APGAW Meeting
19th April 5-6.30pm
Committee Room 16, House of Commons

PROTECTING WILDLIFE: The Law & Enforcement

In Attendance: Rebecca Pow MP, Henry Smith MP, Angela Smith MP, Rob Ffello MP, Lord Trees, Baroness Masham, Jim Fitzpatrick MP, Baroness Gale

- 1) THE DRAFT WILDLIFE BILL – Proposals for better wildlife protection and the sustainable management of our natural heritage.**

Speaker: Nicholas Paines QC – The Commissioner for Public Law

The Law Commission is a statutory body set up in 1965. It is led by our Chairman and four other Commissioners. It consists of a small team of around 50 people. We are tasked with reviewing the law and making recommendations for its reform alongside simplifications and modernisation. We are independent of the Government who cannot tell us what to recommend. However, we work closely with the responsible Department for the simple reason that we cannot tell them what Bills to lay before Parliament and it is a waste of time and effort if Bills do not get anywhere so we endeavor to keep the relevant Department on side. We only take on projects where the Department gives an assurance that it has a serious intent of legislating in that area.

We rely heavily on consultation so thank you to all the organisations who responded to this project. We pride ourselves on our reputation for open mindedness in the way we handle consultation responses, and will often review our conclusions in light of what we hear. This project was one Defra asked us to do five years ago in 2011. We produced a large consultation paper in 2012 and in 2013 there was a review point. Defra Ministers asked us to continue with the work so we issued an interim statement on provisional thinking in light of the consultation. We then moved onto producing the report and the final document in 2015 with a draft Bill. You can see the document at www.lawcom.gov.uk

The terms of reference are important to state here as our review excluded things like foxhunting and issues of level of protection and identity of protected species. We have steered clear of any attempt to formulate or revise policy. That was necessary as deciding on levels of protection is a mixture of value judgment and also technical judgment in what is effective in maintaining sustainability. We are not equipped to make judgments of this nature as we have not been elected and we are also not equipped to decide technical issues on protection of species.

We were able to concentrate on the actual technical quality of the law. As a result, we have modernised and simplified some frankly very messy law. We have produced a single statute to replace a dozen existing legislations some going back to 1828 containing numerous overlaps and inconsistencies. We have proposed a single licensing regime in place of the five that currently exist scattered across the legislation. We are proposing an obligation for the Secretary of State and the Welsh Minister to consult conservation bodies and an obligation to give reasons for granting or withholding licenses. We have maintained the existing framework of prohibited activities. We have proposed, and this caused some debate with stakeholders, the introduction of a measure of flexibility to change the detail of the law by regulations. This was a matter of concern to some because they feared we would make it too easy to relax or increase restrictions on activities. We listened carefully and it seemed to us the need to resort to primary legislation if you want to alter the dates of a closed season for example was simply too rigid. We added procedural safeguards extending the existing system of five yearly reviews to all of the technical schedules including those that contain protected species and closed season dates. We have proposed an obligation for the Minister to give reasons for making an amendment. The second thing we have done is oblige the Minister to consult an Advisory Body such as Natural England or Natural Resources Wales, on any proposed amendments and again a statutory obligation to explain making amendments that are contrary to their advice. Thirdly we have recommended an obligation to consult affected Local Authorities and interested groups, representatives of conservation and welfare interests, representatives of agricultural interests, hunting and shooting bodies, and broadly relevant groups. This is to ensure any proposed amendment to the schedules is subject to the greatest reasonable degree of consultation and scrutiny. In the field of poaching we have restated the existing offences but done so in much simpler language to capture the essence of the offences. That also applies to taking or damaging eggs of game birds and we are retaining the ancillary purposes of knowingly possessing or transporting, advertising for sale and for any poached animals or eggs.

The enforcement aspects of the legislation are another area where we thought some technical reform was going to produce improvements. We have proposed three reforms. The first is to make wildlife offences triable in the Crown Court by judge and jury as an alternative to the Magistrates Court where it currently rests. The Crown Court will be able to sentence those convicted of more serious wildlife crimes to up to two years in prison. We have done this because overwhelmingly stakeholders told us that the current maximum sentences had too limited a deterrent effect and they were so low that enforcing wildlife offences was a low priority. The current maximum of six months also looks odd sitting alongside other levels of penalty in the environmental field, such as trading in endangered species under COTES regulations which are subject to sentences of up to five years. At the other end of the spectrum, we have recommended a power for regulators to impose civil sanctions. The regulatory bodies would have a range of sanctions available as an alternative to prosecutions. In the less serious cases civil sanctions - such as obligation to take steps to prevent a recurrence of an offence or steps to restore a habitat that has been damaged - are more in the public interest than fines or prison sentences. The third reform is the creation of new offence of knowingly causing or permitting the commission of a wildlife offence. We have an eye here to those cases where a "nod and wink" is tipped by a landowner to the gamekeeper with the landowner formally saying 'you must not poison any raptures' but informally saying 'it is pity we are losing

so many pheasants to these birds of prey.’ The Scots have dealt with this by producing an offence of failure to take reasonable steps to prevent your employee committing the offence and a number of stakeholders urged us to take the same course in England. However, many other, including but Defra itself urged us not to. So we went down the middle road of creating a new offence based on causing or permitting rather than failing to take steps to prevent. We did this for reasons of principle and practicality; there are issues of principle in creating offences that say that A is guilty of a crime because B has done something and in practice we did not think the Scottish form of offence would be any more effective a way of achieving the aim than the causing or permitting offence we propose.

We have not yet had a formal response from Defra but it is due shortly. There are two possibilities; the Government could either introduce our Bill as it is drafted, or they could consider further streamlining which we were not able to do as we did not want to alter levels of protection. For example, our Bill preserves the current offence of killing hares on a Sunday and Christmas day which you may think it is not a very logical offence. We know that some people are asking for a closed season for hares – we could not ourselves propose the alteration of this provision without setting ourselves down the slippery slope to reviewing levels of protection which is a matter of policy. Nonetheless now, for the first time, it is possible to see in one place what the current wildlife law says about levels of protection and more easily consider what tweaking of levels of protection might be desirable to further simplify the legislation beyond what we were able to do. It might be attractive to Defra to lay our Bill before Parliament with a view to using the alteration making powers accompanied by all the safeguards I have mentioned to review levels of protection in the Bill once it is on the statute book.

Rebecca Pow MP – Will Defra consult again?

Nicholas Paines QC – It will be up to Defra. The ball is in the Government’s court as to whether it introduces the Bill into Parliament and chooses to consult again before doing so.

Angela Smith MP – Have you heard that the initial response from the Government could be delayed until after June 23rd. I think it is highly likely it will be.

Nicholas Paines QC – I do not think we have had any communication along these lines. They do not always arrive on the due date it is fair to say.

Henry Smith MP – Last month I raised this on the floor of the House asking when a Wildlife Bill would be brought forward and there was no definitive response. We need to continue to press Defra to pursue this.

Baroness Masham – Does this Bill take over the Countryside and Wildlife Act fully?

Nicholas Paines QC – It takes over part one, which deals with protection of species and it also replaces the Conservation of Habitats and Species Regulations which implement the Habitats Directive. And a lot of overlaps occur between that and part one of the Countryside and Wildlife

Act. You can get a licence under one bit of legislation and then find it has not insulated you from liability under the other all of which we are aiming to sort out.

Rebecca Pow MP – Would you consider that it would be much better for the conservation and welfare of UK wildlife and environment if we do have this updated legislation?

Nicholas Paines QC – It will make it much easier to regulate it and much easier to adapt it. The enforcement tools we think could help a lot to address inadequate penalties for the worst offences, such as no power to get people who have offended inadvertently to clean up and dealing with modest magistrate's court fines which are not protecting wildlife.

Elaine Toland (Animal Protection Agency) Will this be looked at separately by the Welsh and English Parliament?

Nicholas Paines QC - Wildlife legislation is a completely devolved matter in England and in Wales. We did not take the view as to whether this should be an England and Wales Bill or whether it should be Welsh only and England only Bill. We have not heard from the Welsh Government so I am unable to say what they think about it. There may be an interest in passing it just as Welsh legislation. We have drafted the Bill in way that can be easily separated and adopted by each or both.

David Cowdry (IFAW) – It was a very informative presentation. You mentioned the COTES having a five-year sentence and wildlife crime having two years. Are you recommending reducing the COTES sentencing down to two years?

Nicholas Paines QC - No we are proposing raising the current sentence on wildlife only which is currently six months in the magistrate's court to two years in the Crown court.

2) WILDLIFE CRIME: Prevention and enforcement

Speaker: Chief Inspector MARTIN SIMS (NWCUC) Head of of the Unit

I have served for 29 years police service. I am a wildlife and animal enthusiast and I feel very privileged to have this role. I am grateful to the support from many of you in the room for the lobbying which has kept the NWCUC going. The unit was formed in 2006 and has twelve staff. That is the minimum staff level which we need to function. We are funded for ten full-timers and so I am still seeking funding to keep that twelve. The split is 4/3/3/1 with me on the side as the head. The four is the investigative support officers who are scattered around who support the police forces, particularly on CITES issues. The three in intelligence work in Old Livingstone Police Station. The unit has a base in Scotland which is historic but the condition of the building is poor. Then we have three members of staff in analysis also working in Old Livingstone. Last year when dismantling a large poaching group in the South West we relied a lot on the intelligence staff who sit with bodies like Trading Standards, Customs and the Crime Agency to get results alongside our own staff and managed to produce a product despite working from different systems. Wildlife is a commodity and if it pays people will do it and it often links to other crimes. We support police forces in their wider work

because of this. We process 3500 intelligence roles a year and our own investigative support researchers find that online research generates a lot of work and leads to CITES and COTES cases. Since January 2015 our officers have been involved in 238 CITES enquiries. From the start of Operation Cobra we have got to the point of understanding that the UK is serious trading hub. There are court cases this year which will show links between serious traders primarily around dead animals linked from around the world trading to people in the UK including primate's skulls and skins.

Defra did provide us with funding at £136,000 each and Defra gave an extra £29,000 for CITES work but the Home Office did not match this to allow a dedicated post into the internet research. As it stands, we will continue as the funding is for four years. Scottish Natural Heritage will continue funding for three years and Scottish Government have committed to their usual level of yearly funding. The National Police Chief Council have committed to their funding and increased it by £5,000. Northern Ireland also provide a small contribution and we support their police services. Normally the Northern Ireland Minister chairs our meetings as does the Scottish Minister which sharpens the mind for policing as the Minister asks what they are doing. England does not do this.

The national co-ordination and strategic assessment which goes to JNCC works around six priorities; badgers, bats, poaching (including hares, fish and Deer), Freshwater Pearl Mussels, Raptors and CITES. That is up for review on 24th May. A member of Defra is giving a presentation for non-native invasive species to be added to the priorities as an intelligence requirement chaired by Chief Constable Prince who is due to retire this summer so we will see who takes over. Each priority has a delivery group which works under the PIE model =prevention, intelligence and enforcement. In the 19 months I have been in post each region has a regional enforcement group so all police forces come together. We have points of contact within each individual Police Force. The regional enforcement groups look at the issues in their area. They should not be just a, "talking shop" so it important they set out action plans. Enforcement bodies like the Environmental Agency and Natural England should be involved in our work and we should share information and I am looking to ensure that they are on each regional group. We also need to be accountable to NGOs on what we are doing to tackle wildlife crime and we are open to ideas on that so I hope that this is what the next national PAW seminar will look like.

It would be lovely from an accountability point of view to get to where Scotland is, that is the challenge with the 43 polices in England forces in terms of trying to get that together. We need a focus of mind at national level to ensure it is important in police priorities. 29 years ago I had training and exams on things like the Wildlife & Countryside Act and now the majority of forces are doing nothing on this. That is why the NWCUs are a cheap and necessary resource for police in the UK. The resources are the bare minimum and it is vital we work with other enforcement agencies and address the need to share information and get agreements with those like the APHA and the Environment Agency.

Rebecca Pow MP – Do you think we need enforcement and penalties addressed and will the suggestions made by the Law Commission give you better tools?

Chief Inspector Martin Sims – It will focus the mind of individuals if they see there is gravity to the act. If we take COTES as an example, the cases invariably end up in the Crown Court and the CPS comes up against barristers which focuses the mind. Our officers assist the court with that and we have judges asking us to talk them through the legislation. When potential suspects realize wildlife crime in the UK carries two years and COTES carries five years it may focus the mind. Prevention is key, for example with building companies they see small fines as trivial but with the potential of two years in custody they would take it more seriously.

Rebecca Pow MP – What sort of scale of wildlife crime is there? What about internet crime?

Chief Inspector Martin Simms – COTES is global. The work we have done with UK Border Force have shown we are a trading centre on endangered species. When you see cases go to court we are talking about animals from places like Africa coming here as ornaments and that is rife. If you look at levels of poaching it is significant but they are not recordable. Most of our COTES work comes from the internet trade and that is how we pick it up. We start on one offence and that often leads onto the next and the next. We have one job in Scotland which led to a dozen jobs leading off it. That is analogy of the can of worms which comes from starting on one.

Paul Berry (Network for Animals) – If there any opportunity for NGOs to fund the Unit?

Chief Inspector Martin Sims – Yes there is no issue with NGOs funding.

David Cowdry (IFAW) One of things you spoke about was prosecutions - with COTES regulations and sanctions being discussed do you think that will help?

Chief Inspector Martin Sims – The current sentence carries five years. I am involved in the Working Groups discussing this in relation to civil sanctions under the Statutory Instrument. I have a view that if the law is clear where for example the offence is, “knowingly makes a false statement to obtain an import permit” I am not sure civil sanctions are the most appropriate measure because of the criminal intent through mens rea but if someone really does an offence by accident maybe there is a role for them.

Keith Davenport (OATA) I come from Trade Association and we support the work and will provide information and write to the Courts asking them to take these offences very seriously. Trade association do provide information and want to stop illegal trade in wild animals.

Joshua Kaile (World Animal Protection) Fantastic news about the funding. Additional funding from Defra needs to be match funded and it is shame the Home Office has not delivered. In light of the elections next month what do you think Police & Crime Commissioners could do to help?

Chief Inspector Martin Sims- I would like to mention World Animal Protection have supported the Unit with the APP Guidance and that was really helpful. I did a talk last year and there were a number of Commissioners in attendance who were supportive and it would help to continue to raise awareness with them.

Rebecca Pow MP – The APGAW chairs will send a letter of support to Defra for the Commission’s work on the draft Wildlife Bill. We fully support the National Wildlife Crime Unit and will continue to raises its work and profile as well as seeking potential funding. Please contact us if you need any political support.

3) Date of Next Meeting: 12th July 2016 5pm

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