



The Associate Parliamentary Group for Animal Welfare

An all party group for members of both houses at Westminster formed to promote and further the cause of animal welfare by all means available to the Parliaments at Westminster and in Europe

Minutes of the Meeting on 3rd July 2012

WILDLIFE LAW REVIEW

Attendees: Peter Collins, Katie Baxter (ASSVAP), Barney White-Spunner (Countryside Alliance), Jim Barrington (Countryside Alliance/MWG), James Legge (Countryside Alliance), Jim Collins (Pet Care Trust), Chris Newman (Federation of British Herpetologists), Keith Davenport (OATA), Joy Lee (ALAW), Mark Jones (HSI), Brooke Aldrich (Wild Futures), Richard Ryder (RSPCA), Barbara Gardner (RSPCA), Andre Meneche (EDF), Dominika Flinott (ALAW), Gemma Glanville (Born Free Foundation), Colin Booty (RSPCA), Sylvia Tabor (DTA), Lord McNair (ECMA), Ian Know (MPS), Rachel Kent (WSPA), Joshua Kaile (WSPA), Jane Morford (Wildlife Crime Unit), Claire Lawson (RSPCA Cymru), Libby Anderson (OneKind), Liz Tyson (CAPS), Christina Dodkin (ADI), Anthony Roberts (RCVS), Jon Homex (Animals Count), Jessica Stark (World Horse Welfare), Mark Doshier (Bella Moss Foundation), Claire Robinson (RSPCA), Stacey Frier (RSPCA), Marisa Heath (APGAW), Tiffany Hemming (AWF BVA), Gavin Grant (RSPCA), (Simon Hart MP, Jim Fitzpatrick MP, Neil Parish MP

The Chairman announced the publication of the new dog breeding report available for members to view on the website and make comments. He thanked the organisations that had assisted in coming up with the recommendations.

Wildlife Law Review.

Frances Patterson QC – I am the public law commissioner at the Law Commission. Keith Vincent is the lawyer dedicated to the wildlife law project. The aim of this presentation is for us to give you a feel for where our project will go.

The Law Commission was established in 1965 to review law with a view for simplification and modernisation. It is chaired by a senior judge and four commissioners and then staffed by Government lawyers. My area is public law and so the wildlife law comes under that. As far as this project is concerned, it was proposed by DEFRA and will consist of a Consultation from July to November 2012. Conclusions of that consultation will come back to Defra by February 2013 with the Report and Bill aiming for Spring 2014.

We are meeting various stakeholders to understand any dissatisfaction with the operation of current systems and to get a feel for parts of the system which are working well. We are drawing up consultation papers to go out in July. There will be many events which we would welcome help with and if you want to organise them we would be happy with that. This is a project suggested and supported by Defra so there is every chance there will be a slot in this parliament for legislation.

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The review covers species protection, welfare exploitation, control of invasive non-native species and enforcement/procedure. It expressly does not include the Hunting Act 2004. We will not make species protection judgements as we are looking at legal frameworks and are not experts in species protection which should be left to ecologists. There is the possibility of different outcomes in England and Wales. In Wales they are embarking upon a radical approach to environmental frameworks and it is a thought out project which will slot into the Review. In England it is likely to be free-standing bill.

There are potential problems such as the complicated nature of the current regime, including the number of Acts involved. Other problems may include the approach to transposition of EU Directives, inflexibility of the current regime, lack of clarity and inconsistencies in the current regime and, as part of that, the various gaps in the current regime.

What are we proposing to do could include a single Act or the inclusion of all species or perhaps prohibit activity generally whilst permitting certain exceptions with a role for licensing in relation to the species.

Biodiversity, conservation of species, economic and social factors and animal welfare will all be looked at during the Review. There will be a balancing exercise to be done in certain areas. There is no single act with all the principles set out so the consultation will seek to ask should there be principles and secondly what should they be?

Keith Vincent - With protected species, EU Directives require a certain level of protection. The wild bird directive specifically allowed for the hunting of wild birds under Article 7. This only relates to EU protected species so there is an issue to what extent do you extend it to species which are solely protected under national law? Additionally, the Game Acts are nearing the end of their lives which could involve removing the Poaching Act. We need to look at whether there is a necessity for having such an Act and, if you are going to create it as an offence, how that is done? Would that require trespass as part of the offence for example?

Other issues include the control of invasive species. Whilst there is a potential EU Directive on this, it is suggested it might be put back until 2013. This is a problem as there are complaints with the current regime here. The law in England and Wales is different to that in Scotland which has seen recent reform in their Wildlife and Natural Environment Act. There could be requirement for powers here in that the state may need to do something which needs more than prohibitions. The threat of non-native species needs to be understood and any system put forward must have a detailed and flexible toolkit that will move into the future. It is not our job to set policy but we need to provide legal framework to allow it to be carried out.

We see scope for reforming criminal offences procedure as one of the problems with criminal law is the regulatory regime which underpins it is compacted. Some of the drafting is Victorian and is not helpful to the police officer or magistrate. The review could look at expanding existing offences, reversing burdens and involving vicarious liability, for example a new offence in Scotland is that if someone has employed an individual who commits a conservation offence then they can be held liable. If you are a landowner you need to tell people employed that they should not be doing certain activities and then once you have informed people what their duties are then you are not liable. The offence is new in Scotland and no prosecutions have occurred yet but this is an example of an area we will explore to see whether it is useful to England and Wales. Greater use of civil

sanctions which use a whole range of tools as part of the regulatory regime will be looked at. A lot of the time it is useful to encourage better behaviour and so it may be more appropriate to advise people on their range of actions. At the high end you can prohibit some people from carrying out particular activities such as shooting or holding certain events.

There are other areas to consider; appeals and challenges, wildlife licenses, the role of the Aarhus Convention and recent Court of Justice case law. Wildlife licences would go to the Planning Inspectorate potentially. Prescriptive orders and civil sanctions would remain with the First tier Tribunal (Environment).

Neil Parish MP – You talked about an EU Directive coming about – would it be wise to wait for that to happen before you finalise your views?

Frances Patterson QC – In regards to the EU Directive, it would be nice to feel we are running in parallel but we are not in the ideal world. Originally the Directive was due out this summer but it has slipped back and may slip back again. We need to be pragmatic and carry on with our work. We will take into account as much of the EU developments as it proceeds but Defra have set out our timescale which also constrains us. We are hoping to come out with a framework which will be robust and future proof and take into account EU directives. That is our objective.

Neil Parish MP - You have liaised with Defra but are you also linking into the Home Office to work out enforcement of the law?

Keith Vincent – The main part of our meetings have been with Defra and the Welsh Government. Given the way we are proposing things relating to criminal offences and civil sanctions we will need to correspond with the Ministry of Justice as well as BIS and DCLG owing to references to the Planning Inspectorate.

Neil Parish MP – On the Planning Inspectorate, do you feel they will have the right expertise to deal with this?

Frances Patterson QC - They are used to dealing with environmental matters and they do have a system for developing panels with particular expertise so there is no reason to think they could not but we will need to meet them and explore this. What we do envisage is the decisions will be made locally or regionally involving English Nature.

Neil Parish MP – In past APGAW meetings, we have been talking about a closed season for hares – there is one coming about in Scotland. Is there any scope to include something like that in your review?

Frances Patterson QC - Indeed we are looking at extending closed seasons and making them more flexible.

Keith Vincent - We are looking at the power to create closed seasons and amend existing seasons without need for primary legislation which could include hares.

Simons Hart MP – There could be conflict between policy and your work. Is the thrust of your work to create law to create better protection or deal with obvious threats to animals? What are you

trying to do and where does that hit the policy line? For example there is a big discussion to be had on closed seasons as it is a huge policy argument.

Frances Patterson QC – There is a distinction between policy and law reform. Our business is law reform and we are there to produce legal framework which is robust. We are not looking to increase levels of framework.

Mark Jones (HIS) - How do you envisage applying welfare provisions within the Review?

Frances Patterson - We are using the existing welfare provision unless we are told otherwise during consultation. The Animal Welfare Act will remain as the basis for our approach.

Jessica Stark (World Horse Welfare) - Invasive species should be given more of a power platform for people to take action such as the power for ragwort to be removed. Will that happen?

Keith Vincent – We are seeking to create a toolkit which allows possible model of escalation. The Species Control Orders came into force in Scotland which we are looking at as an example.

James Legge (Countryside Alliance) - Reference was made to the Animal Welfare Act 2006, how do you see any of the offences in that Act relating to Wildlife Management and to wild animals? Who will make the judgement on the unnecessary suffering component of this?

Frances Patterson QC – That would be a matter for the enforcing authority. We are not proposing there is a whole new suite of offences under the Act. There will be some revision of existing offences under different legislation.

Keith Vincent– We are not going to touch the Animal Welfare Act. The police or RSPCA would be the ones deciding on suffering. The Wild Animals Protection Act may be looked at.

Neil Parish MP – it would be very useful if you were to come back in a year to update us again on the result of the consultation and progress. Members will be kept informed of the consultation so that they can respond and APGAW may do some further work on this next year.

Primates as Pets

Brooke Aldrich - Wild Futures have been looking at the existing legislation currently protecting primates in UK. The Government position is that it is sufficient but I want to propose the idea that it is not. This is based on extensive experience working with rescued primates and studying the UK pet trade intensively. The idea that primates should not be kept as pets is supported by a range of organisations and welfare scientists. A survey of the public in 2006 revealed that the majority believed it should not be legal to keep primates as pets.

The Pet Animals Act should monitor the commercial sales of primates and also the Dangerous Wild Animals Act is meant to be used to monitor the trade but it only covers a certain number of species. It is not joined up with the Animal Welfare Act and there is no actual requirement that Act is being satisfied in this area. The Code of Practice for Primates 2010 was supposed to act as a guide with steps a keeper of primates must take. The stated purpose was to restrict the keeping of primates to specialist keepers as the Government did acknowledge that it was problematic to have inexperienced owners keeping primates as pets.

The numbers of primates has risen as numbers of licenses went up 17.5% between 2009 and 2011. Rather than reducing it seems to be growing and significantly Lemur ownership has risen by 40%. The trade is dangerous to people and there is a lot of evidence that not only is it detrimental to conservation but is more importantly a very serious welfare implications for primates. They are social animals and in the majority of cases are kept alone. They need to live in proper social groups and need vast complex environments that cannot be reproduced in houses and gardens. The Pet Animals Act does not cover sale of primates and lots of habitual breeders are not licenced. The code of practice is a good document seeking to help educate people on what they need to provide but there are quite a few problems with it. For example, it does not talk about species specifics and there are a lot of differences in care needs for different species which are very diverse. The local authorities do not know what the current legislation is and do not have the resources and specialism to do it. Legislation cannot be enforced unless there was to be big investment. We think that there needs to be a ban on private keeping of primates as pets.

Jim Collins (Pet Care Trust) – Prohibition on the keeping of primates will not be enforceable. There is no conservation benefit to your suggestion as there was a ban on imports of wild primates. I sat on both Defra Commissioned Primate Working Groups so understand the subject well. We have a Code of Practice and it is working well. The ex chief vet of the RSPCA agreed that there was no significant problem arising from primate keeping by private individuals. Of course we are against pet keeping of primates when it is a single animal kept in a cage but there are a minuscule number of those. It is not pet keeping as the vast majority of primates are kept in the same situation as zoos. It needs to be clear that this is not about pets.

Neil Parish MP – I think the best thing I can do is to ask some parliamentary questions on how many are being kept and if there is enough resource to check on their welfare. We will review the evidence. I do believe that the keeping primates as pets is not right but we need to be clear on what is going on before we decide how to move forward.

END OF MEETING