

Cases, Updates & Materials

Hunting Updates

Mark Hankinson's Conviction

R v Hankinson 2021 (Judgment: https://www.judiciary.uk/judgments/r-v-hankinson/?fbclid=IwARoBTO-nXgS5FyhV-joeglgsfHfTlwXNob8P-8koggS_4Z-iNdPsddNk1B9M)

Mark Hankinson, director of the Masters of Foxhounds Association, on 15 October 2021 was found guilty at Westminster Magistrates' Court of encouraging or assisting others to commit an offence under the Hunting Act 2004.

Facts

Mark Hankinson was the director of the Masters of Foxhounds Association, one of the governing bodies for hunting in the UK. On 11 and 13 August 2020, Hankinson spoke at webinars organised by the Hunting Office (which runs the administrative, advisory and supervisory functions of the Hunting Associations) and attended by over 100 hunt masters.

Other speakers at the webinars, obtained by the Hunt Saboteurs Association and made available online in November 2020, included:

- Lord Mancroft – Conservative Peer, Chair of the Masters of Foxhounds Association and former Chair of the Countryside Alliance.
- Phil Davies – ex-Police Inspector and Police Liaison Consultant to the Countryside Alliance.
- Richard Tyacke – Chairman of the Association of Masters of Harriers and Beagles, Hunting Office Executive Director and former Master and Huntsman of the Wynnstey Hunt.

- Paul Jelley – Master of the Chilmark and Clifton Foot Beagles from 1990-2013 and a police officer for 30 years.
- Richard Gurney – former Master of the Old Surrey and Burstow Hunt

Fox hunting was banned in 2005, when the Hunting Act 2004 (the "Hunting Act") came into force. Traditionally, fox hunting involves the use of a pack of around 30-40 hounds who, under the control of the huntsman, seek out, chase, and kill foxes. The huntsman and hounds are usually accompanied by members of hunt staff, hunt masters, and riders who pay to attend for the day. Trail hunting, which started after the Hunting Act came into effect, involves the use of an artificial trail, usually fox-based, which the huntsman and hounds seek out and follow. Anti-hunt activists claim that trail hunting does not exist, and that it was invented to subvert the Hunting Act. The argument is that by using a fox-based scent, it is possible for the hounds to chase and kill a real fox, meanwhile the hunt can claim that it was an "accident" and avoid prosecution.

At Hankinson's trial, the prosecution argued that, during the course of the webinars, the defendant offered advice on how to hunt illegally, behind a smokescreen of trail hunting. They said that his advice was aimed at making it difficult for anyone watching, or filming, to know whether they were witnessing a trail hunt or an illegal fox hunt, and therefore to reduce the likelihood that a member of the hunt would be prosecuted, or convicted, of illegal hunting.

In particular, during the webinars Hankinson made the following statements, among others (emphasis added):

"...it's a lot easier to create a smoke screen if you've got more than 1 trail layer operating, um, and that



is what it's all about, trying to portray um, to the people watching that you're going about your legitimate business."

"...I think the most important thing that, that we need to bear in mind is that if you've got saboteurs out with you in any shape or form, we need to have clear, visible, plausible trail laying done throughout the day."

"Um, it's probably just as well to have something pretty foul smelling on the end of their, end of their drag just in case an anti leaps out from behind a gateway and grabs hold of it and says this is just a clean silk hanky or something."

"Um, a lot of people in the past have tried to say oh we laid trails earlier, or we lay them the day before. In a situation where you've got saboteurs out, or antis or whatever, that's not really going to work too well. We need to have clear and visible trail laying going on, on the day, and it needs to be as plausible as possible."

"Um, I always love Will Day who might be joining

us on Thursday, when he lays trails for the New Forest he has emblazoned on the back of his sweatshirt 'TRAIL LAYER NO. 3'."

"Some people say well what's the point in laying trails? Well I think it's fairly self-explanatory. Er, if you haven't you're not going to be covered by the insurance."

"Um, obviously we also need it um, if we're going to get any support from the Police, particularly when they're dealing with saboteurs and the like, if you haven't got any viable trail laying evidence, how on earth are we going to refute these allegations?"

"Um, so coming back to the, to the sort of modus operandi of the day, um, the trail layers, in my view, you need to have at least 1 trail layer out there, particularly if you've got the presence of undesirables."

Held

In giving judgment, Deputy Chief Magistrate, Judge Tan found Hankinson guilty of an offence

under section 44 of the Serious Crime Act 2007, namely committing an act capable of encouraging the commission of the offence of hunting a wild mammal with a dog, and that he intended to encourage its commission.

Judge Tan rejected the defence's suggestion that Hankinson's choice of words was "bad language" or "clumsy".

In reference to Hankinson's repeated statements about trail laying needing to be "plausible" or "credible", the court's position was "Why would you need to try to portray anything as legitimate if you were in fact engaged in legitimate business?"

In relation to Hankinson's statement that laying trails is required so that the hunting is covered by insurance, the court held that "Trail laying is essential if that is what is genuinely going on. It is a simple answer and an unnecessary question. This was clearly a warning of the risk to those watching on if they could not show trail laying going on. It was a clear statement that in order to hunt illegally, there would have to be trail laying as a cover or smoke screen to be protected through insurance".

In relation to Hankinson's statement that "you need to have at least 1 trail layer out there", the court held that "If it were genuine trail hunting, it goes without saying that there would be at least 1 trail layer for it simply couldn't happen with one. There would be no need to suggest one was necessary unless it were a sham and a smoke screen."

In concluding, the court held:

"I am sure that the Defendant through his words was giving advice on how to illegally hunt. This was through the pretence of laying trails which it could be said the hounds were following. As he himself said, he was speaking to 'like-minded people' and could therefore speak freely. He did not expect his words to be recorded and released into the public domain. It was clearly advice and encouragement to commit the offence of hunting a wild mammal with a dog. I am sure he intended to encourage the commission of that offence."

Hankinson was fined £1,000 and ordered to pay £2,500 as a contribution towards costs.

Commentary

The conviction has been met with celebration and relief from members of the anti-hunt community, who for many years have sought to expose trail hunting as a smokescreen for illegal hunting, which has continued despite the ban.

As director of the Masters of Foxhounds Association, Hankinson is a senior figure in the hunting world; there are 170 packs registered with the Masters of Foxhounds Association in total. The other speakers were similarly senior figures in the hunting fraternity. The webinars were attended by over 100 hunt masters from across the country. The webinars ran for several hours across multiple days, with no one attempting to question or correct any implication that illegal hunting could take place.

Following this conviction and the damning conclusions of the court, one would struggle to conclude anything other than that trail hunting is used as a smokescreen to cover for illegal hunting.

If it is true that trail hunting has been used as a smokescreen for illegal hunting since the ban, it begs questions about how many other criminal offences have been committed during that time.

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Hunt master of the Western Hunt convicted after death of cat

On 10 December 2021 at Truro Magistrates' Court, John Sampson, hunt master of the Western Hunt, was found guilty of being in charge of a dog that mauled a pet cat called Mini to death. Sampson, his son Edward and his girlfriend were exercising a pack of hounds on 6 March 2021. The first charge was that Sampson without lawful excuse destroyed the cat intending to destroy or being reckless as to whether property would be destroyed or damaged. The second was that Sampson was in charge of a dangerous animal, one or more of at least six hunting dogs, which was dangerously out of control. Sampson pleaded not guilty to both charges.

The first charge was dismissed by the magistrates on hearing the evidence. The magistrates found Sampson guilty of the second charge under the Dangerous Dogs Act based solely on the death of the cat. Sampson was fined £480 and ordered to pay the owner of the cat £350 in compensation.

The tragic incident took place in a cul de sac of a housing estate in West Cornwall. It was filmed by a neighbour of Carly Jose (Mini's owner) who heard a cat cry and a commotion outside. The footage showed six hounds converging on Mini. After a hound dropped the cat Sampson's son Edward was videoed throwing her body over a garden wall.

A veterinary pathologist reported that Mini died as a result of being grabbed and crushed by at least one dog.

The incident has sparked a campaign for 'Mini's Law' "to prohibit any activity involving hunting hounds, such as trail hunts and hound exercise, taking place in a residential area or in any other public place." Campaigners cited an "average one reported incident every two weeks". A parliamentary petition in support of the campaign in 2021 reached over 100,000 signatures - [Mini's law - Protect the public and animals from hunting activities - Petitions \(parliament.uk\)](#).

The government's response (which can be read in full on the Petitions page) includes that "The police can take action under the Dogs Act 1871 where dogs are out of control and dangerous to other animals. This Government will not amend the Hunting Act."

Sampson is appealing his conviction. UPDATE: Sampson's appeal was unsuccessful.

National Trust

National Trust members voted by 76,816 to 38,184 in favour of banning trail hunting on Trust land. On 25 November 2021 the board of trustees announced that the NT will no longer issue licences for trail hunting on Trust Land. The National Trust commented:

"This activity (trail hunting) has been suspended on Trust land since November 2020 follow-

ing a police investigation into webinars involving hunts people discussing the practice.

In October, the then director of the Masters of the Fox Hounds Association (MFHA) was found guilty of encouraging the use of legal trail hunting as a screen to carry out the unlawful chasing and killing of animals.

Harry Bowell, Director of Land and Nature said

"The board of trustees has carefully considered this issue. Its decision to issue no further licences for trail hunting is based on a wide range of considerations. These include - but are not limited to - a loss of trust and confidence in the MFHA, which governs trail hunting, the vote by National Trust members at our recent AGM, the considerable resources needed to facilitate trail hunting and the reputational risk of this activity continuing on our land."

Wales

Natural Resources Wales (NRW) has banned trail hunting on its land. NRW manages 362,456 acres (146,681 hectares) of land. It suspended trail hunting in November 2020 following a police investigation into the Hunting Office's webinar discussing the practice in August. The move comes after the conviction of MFHA director Mark Hankinson

Northern Ireland

Northern Ireland is the only part of the UK without a ban on hunting wild animals with dogs. The Hunting of Wild Mammals (Northern Ireland) private members bill brought by Alliance MLA John Blair aimed to bring Northern Ireland into line with the rest of the UK. It was defeated at the second stage by 45 to 38 at an MLA vote on 6 December 2021.

Extending scope of Animal Welfare (Sentience) Bill to include cephalopod molluscs and decapod crustaceans

The scope of the Animal Welfare (Sentience) Bill

has been widened to include lobsters, crabs, octopus and other decapod crustaceans and cephalopod molluscs in recognition of their sentience. This follows on from the findings of an independent government-commissioned review¹ published November 2021.

The review conducted by the London School of Economics and Political Science (LSE) concluded that there is strong evidence to suggest that these animals, with their complex central nervous systems, are sentient. The review defined sentience as the capacity to have feelings including the ability not only to experience pain, fear and distress but also positive feelings such as pleasure.

The Animal Welfare (Sentience) Bill already recognises vertebrates (animals with a backbone) as sentient beings.

The inclusion of invertebrates (animals without a backbone) as sentient is a welcome step forward as consideration of animal welfare will need to take place in relation to future decision-making. However, inclusion in the Bill will not affect existing legislation or impact current industry practice in fishing and restaurants. This means that extreme methods of slaughter such as live boiling, declawing, eyestalk ablation (removing eye stalks of a living animal) and the sale of live crustaceans to untrained handlers is set to continue.

Listen to A-LAW's recent Talking Animal Law podcast with Claire Howard here.

The Glue Traps (Offences) Bill

The Glue Traps (Offences) Bill, sponsored by Jane Stevenson MP (Conservative) has reached second stage reading in the House of Commons. The Private Members Bill proposes to make certain uses of glue traps in England an offence punishable by fines and/or a period of imprisonment not exceeding 51 weeks. Specifically, the use of a glue trap by a member of the

¹ Review of the Evidence of Sentience in Cephalopod Molluscs and Decapod Crustaceans Jonathan Birch, Charlotte Burn, Alexandra Schnell, Heather Browning and Andrew Crump November 2021 accessed 13/12/21

public to catch rodents would be prohibited and its use by pest controllers regulated by licence. Minister of State Lord Zac Goldsmith commented in June 2021:

Glue traps cause slow and unimaginably painful deaths...I am delighted we are able to back Jane Stevenson MP's important Private Member's Bill today. We will do all we can to help her get this new law onto the statute books.

Glue traps are easily purchased online or in stores for a few pounds. They are sold to trap rodents. A glue trap consists of a sheet made of plastic, cardboard or wood coated with a strong non-drying adhesive. Animals are caught by sticking to the adhesive if they come in contact with the trap. The adhesive is so strong that escape is virtually impossible.

The Humane Society International's report, IN-HUMANE INDISCRIMINATE INDEFENSIBLE: THE CASE FOR A UK BAN ON RODENT GLUE TRAPS² sets out the widespread concerns about their use including the duration of suffering (they are not meant to kill outright but rely on a human despatching the trapped animal), the humaneness of the death and the indiscriminatory nature of the traps citing birds, hedgehogs and even kittens as victims.

In general, the use of glue traps to trap rodents is not illegal. A person using a glue trap and failing to release or kill the animal in an appropriate manner may have committed an offence under section 4 of the Animal Welfare Act 2006 where an animal becomes a 'protected animal' if under the control of man either on a permanent or temporary basis. Under section 5(1)(a) and (b) of the Wildlife and Countryside Act 1981 it is an offence to either set in position or use an article which is of a nature and is calculated to either cause bodily injury to, or to kill or take alive, any wild bird coming into contact with it. This includes the use of baited boards and the sticky substance known as bird lime.

Other jurisdictions have placed restrictions on the use of glue traps. New Zealand's Animal Welfare (Glueboard Traps) Order 2009 declares glue board traps to be restricted traps under section 32 of the Animal Welfare Act 1999 and

² hsi-glue-trap-report.pdf accessed 13/12/2021

imposes restrictions on their sale and use. In Australia, the Australian Capital Territory, Tasmania and Victoria have similarly restricted the use of glue traps.

UPDATE: The Glue Traps (Offences) Bill received unanimous support during its third and final reading in the House of Lords in April.

For further information, A-LAW's Wildlife Law Co-Chair, Rob Espin, discusses the use of glue traps, including the Glue Traps (Offences) Bill on this episode of the Talking Animal Law podcast - Talking Animal Law: Glue traps - problems and legal solutions on Apple Podcasts.

Geronimo

On 31 August 2021, Geronimo was dragged screaming from his farm to slaughter by Animal and Plant Health Agency officials following two positive tests for bovine tuberculosis (bTB) using a disputed method for camelids, the Enferplex test.

His owner, Helen McDonald, claims the Enferplex test used by Defra is flawed arguing that a positive test resulted because the alpaca was primed with tuberculin (a purified protein derivative of the bTB bacteria) as part of the testing process. This view is supported by the British Alpaca Society (BAS), the industry's main representative body in the UK.

Ms McDonald mounted several High Court challenges to save Geronimo. She sought permission from Defra to have Geronimo retested using what is claimed to be the more reliable phage PCR blood test, however, this was refused.

Following Geronimo's removal, BAS formally complained to George Eustace regarding his handling including the use of a halter which BAS believed could have hampered his ability to breathe. Geronimo was witnessed gasping for breath.

Ms McDonald or an independent observer were refused attendance at Geronimo's post mortem despite requests to do so.

Defra reported that Geronimo had "TB-like" le-

sions but said that it was not possible to culture bacteria from tissue samples and therefore not possible to determine how the alpaca contracted the disease.

Ms McDonald's team insists that the reason bacteria could not be cultured from tissue samples was that the alpaca was disease-free. Vet Times reported Geronimo's vet Bob Broadbent:

"He arrived from a TB free farm in New Zealand having passed the pre-export testing and then failed a non-validated test in the UK.

"Geronimo never failed a validated test. He remained clinically and physically very fit and well."³ Ms McDonald is calling for a public inquiry into how bTB investigations are handled in the UK.

Wales Animal health and welfare framework: Implementation plan 2022 to 2024

The implementation plan for 2022-24 launched on 4 January 2022 under the Wales Animal Health and Welfare Framework 2014-24 ("the Framework") and covers the final two years of the Framework.

The Framework itself is a ten year strategic document which aims to improve the health and welfare of kept animals as well as protecting public health, the rural economy and the environment.

It covers the health and welfare of all kept animals, including farm animals, companion animals, zoo animals, animals used in sport and those used in apiculture and aquaculture. Wild animals are also considered where human actions affect their health and welfare or where there is a risk of wildlife transmitting disease to other animals or humans.

Oversight of the implementation plan is the responsibility of the Wales Animal Health and Welfare Framework Group which consists of industry representatives, farming unions, the

³ Silverwood, J Vet Times 7 January 2022 accessed at <https://www.vettimes.co.uk/news/calls-for-an-apology-as-geronimo-postmortem-finds-no-tb/>



veterinarian profession and animal welfare organisations.

Link to plan: Wales Animal Health and Welfare Framework Implementation Plan 2022-24 (gov.wales)

Two members of A-LAW involved in legal challenge

Trees for Life a rewilding charity, launched a judicial review in the Court of Session arguing that NatureScot issued too many licences to kill beavers and that this was unlawful under EU law where the killing of a protected species should only occur as a last resort.

Judge Lady Carmichael ruled that NatureScot's failure to publish its reasons for issuing licences to kill beavers was unlawful and that until this situation is rectified all current lethal permits must be halted.

However, four of Trees for Life's other com-

plaints were dismissed including that the Habitats Directive was incorrectly interpreted; that there was a failure to consider the individual circumstances of each application, and where prime agricultural land was involved NatureScot had a blanket policy of authorising lethal control.

While the challenge was only partially successful many conservationists see the ruling as a positive step forward as NatureScot now needs to clearly demonstrate full consideration of the issues when authorising lethal control with culling as a last resort. The ruling also has wider implications for other protected species subject to lethal control measures.

A-Law members Advocate Scott Blair was a member of Trees for Life's legal team with Rob Espin helping to support the challenge.

NFU Scotland and Scottish Land Estates Ltd were listed as third and fourth respondents.

Link to judgment [2021csoh108.pdf](#) ([scot-](#)

Legislation and policy in Scotland - snapshot 2021 - 2022

The Scottish Government has continued to work through its animal welfare policy and legislation agenda since the elections in May 2021. As in other UK administrations, additional workload to finalise Brexit-related regulations has combined over the last two years with the constraints of the pandemic to delay many matters, but most recent legislative commitments on animal welfare remain active.

Almost all animal welfare legislation is devolved to the Scottish Parliament, unless it is a specifically reserved matter (such as the regulation of scientific procedures) or otherwise cuts across reserved matters. One of these is trade and the Scottish Government has stated that it will work with other administrations towards ending the export of livestock for slaughter or fattening, as provided by the Westminster Animal Welfare (Kept Animals) Bill. Similarly, the provisions on zoos under that Bill will also extend to Scotland. (Legislative consent is not necessarily a "given", however: in October 2020, the Scottish Parliament withheld consent for the Internal Market Act on the grounds that it would reduce standards, including animal welfare standards.)

In the devolved areas, last year saw the commencement of outstanding measures under the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 as well as a new Act on the protection of livestock from dog attacks. Regulations were also passed to provide for the licensing of activities involving animals in Scotland.

Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020

While most of this wide-ranging Act came into effect on 30 November 2020, a number of provisions remained to be carried over to 2021. The Act was introduced to increase penalties for serious offences to animal welfare, health and wildlife crime, building on commitments in the

Scottish Programme for Government 2016-2017. (See ALAW Journal date ... for a more detailed description of the legislation.)

The Act amends the Animal Health and Welfare (Scotland) Act 2006 as well as several pieces of wildlife legislation. It increases maximum penalties for the most serious offences to a five-year custodial sentence and/or unlimited fines, which introduces the option of trial on indictment. This in turn has the effect of circumventing the 6-month time bar that applies to prosecutions under summary process. The change is seen as particularly significant with regard to wildlife crime, due to the difficulty of tracing, reporting and sourcing evidence for wildlife crimes in the remote countryside.

The new maximum wildlife crime penalties are also notable in that they match with those for similar offences against domestic animals, following the Wildlife Crime Penalties Review Group (the Poustie review) which reported in 2014.

Measures (s.14(2) – (6)) to amend the seal licensing regime under the Marine (Scotland) Act 2010 came into effect on 1 February 2021, removing the protection of fisheries and the welfare of farmed fish as reasons for obtaining a licence to shoot seals. This provision was introduced late to the Bill in order to protect Scottish farmed salmon exports to the USA, where the Marine Mammal Protection Act prohibits the import of fish from countries that allow the killing of marine mammals. A related change (s.15) created a requirement for the Scottish Government to provide a report on the impacts of acoustic deterrent devices – often used as an alternative to shooting seals – on marine wildlife.

Section 18, providing measures to protect mountain hares, came into force on 1 March 2021. It removes the open season provided under the Wildlife and Countryside Act 1981 and places the species on the protected list at Schedule 5 of that Act. It is now an offence intentionally or recklessly to kill, injure or take mountain hares throughout the year in Scotland, other than under licence.

Section 19 introduced a dozen new sections (ss. 32A – M) to the 2006 Act, providing new pow-

ers and arrangements for authorised persons taking animals in distress into their possession. These measures allow local authority officials and Scottish SPCA Inspectors to make timely arrangements for the animals' welfare, treatment, transfer or destruction, without the need to obtain court orders. Instead, a decision notice can be issued with a three-week deadline for response. Prior to this, animals taken into care often spent long periods in shelters awaiting the outcome of legal proceedings, exacting both financial and welfare costs. The new measures are complex and the Scottish Government issued detailed guidance when they came into force on 30 September 2021.

The Act gives the Scottish Government power to make regulations for fixed penalty notices in relation to offences relating to domestic animals and wildlife (ss.2 and 13), although these too are still to come. Notices will only be issued for offences considered to be at the lower end of the spectrum, specified as those that would attract only a penalty of imprisonment for a term of 6 months and/or a fine of level 5 on the standard scale.

It also provides for greater protection for police dogs and horses, removing the defence of self-defence when a police animal has been harmed, on the same principle as the English "Finn's law".

A further useful reform (s.4) is the requirement for courts to explain their decisions regarding the making or not making of disqualification orders following animal cruelty convictions. The Scottish courts were already required to consider disqualification, widely seen as a practical adjunct to penalties, but there has been some uncertainty as to whether this was consistent practice. Under the Act, the Scottish Courts and Tribunals Service is now required to establish and maintain a record of reasons relating to disqualification orders and this will allow court practice and understanding of the provision to be monitored. Usefully, the Act also clarifies (s.5) that the purpose of a disqualification order is the future protection of animals, and not a substitute for a penalty.

Following attempts to introduce amendments to the Bill on issues such as pet theft and a

potential ban on electric shock collars for dog training, a measure was added requiring a review of the legislation by 1 April 2025. The review is intended to ensure that the provisions of the Act meet animal welfare, health and protection standards and to consider the creation of additional offences. There is also a requirement to provide an information sharing report within five years to evidence steps taken to ensure transparency and communication amongst enforcement authorities regarding individuals with a fixed penalty notice or convicted of a relevant animal health, animal welfare or wildlife offence.

Dogs (Protection of Livestock) (Amendment) (Scotland) Act 2021

This Act came into force in November 2021, aimed at addressing the widespread concern that livestock worrying incidents are on the increase in Scotland. It amends the Dogs (Protection of Livestock) Act 1953 to increase the maximum available penalty for allowing dogs to chase or attack livestock from a £1,000 fine to 12 months' imprisonment and/or a fine of up to £40,000. While convicted persons are unlikely to receive a custodial sentence, due to the statutory presumption against short sentences in Scotland, the custodial provision does open the way for courts to make alternative disposals such as community payback orders, which could potentially be of use in addressing persistently negligent behaviour. Courts will also have powers to disqualify persons convicted of relevant offences from keeping dogs. The Act gives new powers to Police Scotland to seize dogs for examination by a veterinary surgeon, with specific guidance for veterinary surgeons on examination of dogs currently in the pipeline.

To improve public understanding of the serious consequences of these incidents, the principal offence was reframed as "Offence where dog *attacks or worries* livestock on agricultural land". The categories of livestock involved were also widened to include llamas, alpacas, deer, buffalo and enclosed game birds as well as the original cattle, sheep, goats, swine, horses, or poultry.

Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021

Arguably the most significant animal welfare measures of 2021 came in the shape of secondary legislation – the Animal Welfare (Licensing of Activities Involving Animals) (Scotland) Regulations 2021 – which build on and extend similar measures already implemented south of the border.

The Regulations build on a longstanding Scottish Government to introduce registration and licensing of animal sanctuaries and rehoming activities, as well as reforming breeding licensing. They cover the licensing of selling animals as pets, rehoming animals as pets, operating animal welfare establishments (including sanctuaries and rehoming centres), breeding dogs, breeding cats and breeding rabbits. The operation of animal welfare establishments, rehoming of animals as pets, cat and rabbit breeding have not previously required licensing in the UK. Introducing the licensing of animal rehoming centres and the rehoming of animals as pets without a physical rehoming centre is intended to address concerns about the lack of regulation of individuals posing as well-meaning rescue organisations but being motivated by profit from transport or rehoming fees, or placing unsuitable animals with new owners.

The Regulations provide for licensing authorities (generally local authorities) to charge fees and inspect premises. They modernise and replace previous licensing requirements for dog breeding and pet sales by allowing licences to be suspended, varied or revoked and issued for periods of up to three years based on risk assessment. They also replicate “Lucy’s Law” by preventing the commercial sale of puppies or kittens not bred by the seller.

Mandatory Use of Closed-Circuit Television in Slaughterhouses (Scotland) Regulations 2020

These Regulations came into effect in July 2021, bringing Scotland into line with standards in England with regard to mandatory video recording in abattoirs and the requirement to share this information with authorised persons, such as official vets.

Looking ahead

The Scottish Government has committed to

consider the welfare of animals used in exhibition and display, with potential new regulations under the Animal Health and Welfare (Scotland) Act 2006. It is not yet known when, or if, the Scottish Government will follow the example of Westminster and include protection for cephalopods and decapod crustaceans within the Act, but previous Ministerial assurances indicate that this will be forthcoming.

2022 looks like being a year with considerable emphasis on wildlife, however, with a number of new measures and policy developments on the horizon.

Hunting with Dogs (Scotland) Bill

The Scottish Government introduced its new Hunting with Dogs (Scotland) Bill on 25 February 2022. The Bill builds on recommendations from the Bonomy review to improve and clarify the current Protection of Wild Mammals (Scotland) Act 2002, as well as a further public consultation on reducing to two the number of dogs allowed for searching, stalking or flushing permitted in certain circumstances, and prohibiting trail hunting.

The new Bill allows dogs to be used to search for, stalk or flush a wild mammal, but only for specified purposes and as long as the activity meets the requirements in the Bill. These purposes include preventing serious damage to livestock, timber or crops, protecting human health or preventing the spread of disease. No more than two dogs may be used without a licence granted by NatureScot, any dog used is kept under control, and permission has been obtained from the landowner or the person who manages or controls the use of the land.

Trail hunting, defined as laying animal-based scents, will be banned although there is an exception for training up to two dogs to follow such scents for lawful purposes, as long as no wild mammal is killed.

The Bill will be subject to close scrutiny from both opponents and supporters, aiming to ensure that the loopholes and confusion that have dogged the current legislation are eradicated. Animal welfare advocates will be keen to prevent Scottish mounted hunts engaging in sport-

ing activities under another guise, as is currently thought to be the case with their “pest control services”. There is some concern that the provision in the Bill for licensing the use of more than two dogs for “environmental purposes” might be exploited as a pretext for using a full pack. On a more positive note, however, the word “pest” has been dropped from the legislation altogether and the protection of the Bill extends to all wild mammals other than rats and mice.

Fireworks and Pyrotechnic Articles (Scotland) Bill

This Bill, introduced in February 2022, follows the report of an independent Firework Review Group which recommended tightening legislation to reduce the harm fireworks can cause.

The Bill's proposals include: the introduction of a fireworks licensing system; a new power for local authorities to designate firework control zones, where it is not permitted for the public to use fireworks; restricting the days fireworks can be sold to and used by the general public; a new offence to criminalise the supply of fireworks and pyrotechnics to under-18s to ensure adults do not purchase such products on behalf of children, and a new offence of being in possession of a pyrotechnic while at, or travelling to, certain places or events, without reasonable excuse. It does not refer specifically to animal issues, but these were represented on the Review group and are acknowledged in the accompanying policy memorandum and explanatory notes.

Deer Working Group Review

The Deer Working Group was established in 2017 and conducted independent research on the current legal framework for the managing of wild deer throughout Scotland. Its report in January 2020 made 99 recommendations for wild deer welfare and management. Proposals included phasing out the use of lead ammunition to cull deer, modernisation of existing deer legislation, the development of robust deer management plans and enhanced monitoring of deer numbers. Consideration was also given to the potential welfare implications where densities are particularly high, suggesting that sustainable deer management might benefit the

welfare of wild deer.

In 2021, the Scottish Government acknowledged a need for effective deer management, but also addressed the importance of ensuring deer welfare and health, whilst maintaining, and improving standards, where necessary. The Scottish Animal Welfare Commission also commented on the need to study welfare implications further and improve the available data.

Legislation is expected during the current session of the Scottish Parliament and will be preceded by a public consultation.

Grouse Moor Management Group (Werritty Review)

The Scottish Government accepted the Group's recommendation for a licensing scheme for grouse moors in Scotland and decided that it would not avail itself of a potential five-year delay. Development of a licensing scheme is underway with legislation expected during this session.

Strategic Approach to Wildlife Management

In its Programme for Government 2019-2020, the Scottish Government announced its intention to develop “a strategic approach to wildlife management that puts animal welfare at the centre while protecting public health and economic and conservation considerations”, with the publication of a set of principles planned for the following year. The principles have not yet been published but animal welfare stakeholders have urged the Scottish Government to include ethical principles in line with the International Consensus Principles for Ethical Wildlife Control published in 2017 by Dubois et al.

Glue traps

In January, the Scottish Government announced its intention to ban the use of glue, as well as the sale of these devices, subject to the provisions of the Internal Market Act. This follows a review by the Scottish Animal Welfare Commission (SAWC) which concluded that there are significant animal welfare issues related to their use, not only for rodents but also for non-target species such as wild birds. Legislation is expected



during the current parliamentary term.

By Libby Anderson

The CITES' National Legislation Project (NLP)

In May 2018, I began my two-year Arts and Humanities Research Council (AHRC) Leadership Fellowship - Lessons Learned from the Implementation of and Compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (AH/R002584/1) - which sought to address the lack of empirical investigation of CITES implementation and compliance. The NLP is a project administered by CITES to assess member countries' implementation of the convention through four components: 1. designate at least one Management Authority and one Scientific Authority; 2. prohibit trade in specimens in violation of CITES; 3. penalise such trade; and 4. confiscate specimens illegally traded or possessed. After 45 years, coun-

tries' implementation breaks down as follows:

- Category 1 - implementation meets the requirements - 92 members (50+%)
- Category 2 - implementation does not meet all of the requirements - 46 members (25.3%)
- Category 3 - implementation does not meet the requirements - 36 members (19.8%)
- 8 countries have not been assessed (4.3%)

The CITES Secretariat also monitor compliance in terms of annual and biennial reporting.

- 18 countries are in need of urgent action
- 31 countries have some form of trade suspensions
- 9 of these are the same country

Methods

In order to contribute new data and deeper understanding to this discussion, I analysed academic and grey literature, analysed the content of as many member countries' legislation as could be found and read, and analysed the compliance

data from CITES⁴. Based upon this analysis, in 2019, I conducted a two-round Delphi iterative survey (32 participants the first round; 23 second round), which identified three case studies (Canada, Indonesia, and South Africa). I conducted 20 semi-structured interviews with experts about the three case studies to get more information about best practices and lessons learned.

Findings

Legislative content analysis

Component 1 - Authorities

Five countries do not have a Scientific Authority, which means that they cannot properly implement CITES. Of interest, although not required in CITES, 85 countries do not have an Enforcement Authority. This raises the issue of how violations are discovered as well as to any resulting arrests, prosecutions, and so forth when violations do take place. All other countries have Management and Scientific Authorities with varying structures – either separate organisations or the same agency.

Component 2 - Prohibit violations

From the legislative content analysis, it appears that 103 countries prohibit trade that violates CITES. Yet, 80 countries have legislation that does not.

Component 3 - Penalise violations

Penalties is a difficult component to analyse since it is possible that the penalties for violations of the main law implementing CITES sit within another piece of administrative, civil or criminal legislation that outlines sanctions. So while, a majority of countries appear to have provisions to penalise violations, there were 65 countries for which penalties could not be determined. The most common approach to penalisation was a combination of fines and prisons (99 countries).

Component 4 - Confiscation of illegally traded or possessed wildlife, including products

A majority of countries seem to have provi-

sions to confiscate wildlife (118) and some go further to mention equipment (i.e. tools, vehicles). I could not determine for 55 countries what confiscation measures are in place.

Compliance

As mentioned, there are 31 countries under suspension for their reporting practices. The number of countries which have failed to submit biennial reports is much higher, with 67 countries having *never* submitted a biennial report. These reports are critical to assess implementation as well as challenges and limitations. In addition, the quality of reporting can be poor, which also needs to be addressed.

Delphi iterative survey results

The most important aspect for authorities is that each of them are independent without pressure when making decisions and that they have clearly defined roles. In regards to prohibiting trade and penalising such violations, participants agreed with suggestions, which were supportive rather than punitive. For instance, suggestions for introducing measures to restrict trade from countries failing to completely implement CITES, were somewhat agreed with, but suggestions for a mentorship scheme between countries were agreed with more. The same was true for the suggestions for improving implementation of confiscation measures. In terms of confiscations, it was recommended that members utilise mechanisms for cost recovery for housing live wildlife and storing evidence and for asset forfeiture.

Concerning compliance, again participants supported non-punitive measures to improve compliance, such as working groups. There was also some support (25 out of 32) for there to be more visibility on the CITES' website of whether or not countries have submitted their annual and biennial reports.

Round 2 of the Delphi Iterative Survey unpacked the responses of the 32 participants from the first round. For the authorities, this quote from a participant sums up the consensus:

“The keys to success for enforcement are: independent decision making for risk management, good communication with the MA (regardless

⁴ I found that CITES legislation or review of the legislation is available in English for 112 member countries. I have working knowledge of Spanish and Russian, which comprised a further 20 countries. Therefore, Google translate was relied upon in 47 instances. In four instances, the text could not be translated or was unclear (three in Arabic; one in Somali).

of embedded or outside agency enforcing), and a values-based understanding of trade and application of law.”

In regards to prohibition, further exploration revolved around the lack of protection given by some countries to non-native species. A majority felt that ‘Stricter domestic measures are good mechanisms for preventing trade in wild-taken specimens of nationally endangered species’. It was recommended that ‘Importing countries could respond more strongly by not allowing countries with poor implementation of or compliance with CITES to import CITES species’. Finally, Round 2 participants mostly agreed with suggestions to add additional criteria to the NLP, particularly around successful prosecutions and the specific types of penalties that are allowed.

For more detail of the findings, particularly of the case studies and recommendations, please contact me (tanya.wyatt@northumbria.ac.uk) or visit my webpage (<https://drtwyatt.weebly.com>).

By Dr Tanya Wyatt

The need for a broader constitutionalisation of environmental and animal protection: A question of preserving States’ identify and modernising it

Last February, the Chamber of Deputies of Italy approved an amendment of the article 9 of the country’s Constitution to incorporate the need to protect the environment, biodiversity, ecosystems, and animals for the benefit of “*future generations*”.⁵ It joins here the four members of the European Union having previously granted the protection of the environment constitutional value (Germany, Slovenia, Luxembourg, Austria) and certain other States such as India and Switzerland. Some States, such as France, have recognised the importance of preserving the environment not directly by amending their Constitution but via Charters and documents integrated into a “constitutional bloc” established in their internal order.⁶

However, it is worth noting that the step made by Italy in granting constitutional rights to, not only the environment, but also to animals, is completely outstanding as only four other countries in the world had done it yet.

If it is important to welcome the Italian decision, and in a general way, these global initiatives in favor of a recognition of the importance of preserving the environment at the highest level of the legislative scale, a question remains.

Why, in 2022, when studies on the sentience

5 Camera dei deputati, Documentazione parlamentare, « Modifiche agli articoli 9 e 41 della Costituzione in materia di tutela dell’ambiente », 2022, <<https://temi.camera.it/leg18/temi/modifiche-agli-articoli-9-e-41-della-costituzione-in-materia-di-tutela-dell-ambiente.html>>.

6 The Charter of Environment of 2004 has a constitutional value in France, having been integrated into the « *bloc de constitutionnalité* » of the country in 2005, <<https://www.conseil-constitutionnel.fr/la-constitution/la-charte-de-l-environnement>>.



and cognitive abilities of animals continue to multiply, as well as those relating to the interdependence between human health and its environment, is it still rare to observe steps such as those of Italy?

Of course, when the Constitutions of most of the States of the world were drafted, the standards having been laid down as priorities concerned, under a restricted prism, the structures of society (e.g. separation of powers, the right of freedom, of property, etc.) and the values that Humans should promote in their interactions (e.g. equality, fraternity...). At the time, scientific knowledge of the environment and animals was not as advanced, so it is not surprising that the protection of the environment or animals was not integrated into Constitutions from the start (although it would have already been welcomed).

However, today, and has been for many years, it is indisputable that the environment must be preserved, not only for future generations but also for present generations, who are already

experiencing some of the effects of climate change.

On another note, the extinction of biodiversity conduct to the decrease of ecosystem services which are vital for Humanity (we notably think here to the maintenance of plant diversity and agriculture's economies' structure offered by the bees⁷) or to the propagation of zoonoses (threatening human health and/or constraining individuals to stay at home, as the COVID crisis showed).

It is then an unquestionable fact that the preservation of Human rights (notably the right to live, to be free and to property) is connected to environment and biodiversity protection.

These rights and, therefore, the identity (or even, for some Pacific territories, the very existence) of the States, as it was defined when

⁷ FAO, "The importance of bees and other pollinators for food and agriculture", May 2018, <<https://www.fao.org/3/i9527en/i9527en.pdf>>.

their Constitution was drafted, depends on the maintenance of a healthy and stable environment and on a higher degree of empathy towards animals. Thus, under a broader prism than that originally envisaged by many of the Constitutions around the world, the protection of the environment and of animals must henceforth be considered as contributing directly to the maintenance of dynamic societies and healthy and balanced human relations.

These values should therefore be incorporated as quickly as possible into the Constitutions of States that have not already done so, in order to proclaim their recognition and understanding of current scientific data. This proclamation will thus enable these values to be protected at the highest level and guide in a new light future reports and activities relating to the environment and animals.

Italy has made a welcome update to its Constitution in the light of the advances and challenges of the 21st century, thereby giving itself the power to modernise its identity while allowing the perpetuation of its original and fundamental values. It is now imperative that other States follow suit.

By Meganne Natali