



The Scottish Parliament  
Pàrlamaid na h-Alba

**PUBLIC PETITION NO.**

**PE01705**

### **Name of petitioner**

Alex Milne

### **Petition title**

Wildlife crime - penalties and investigation

### **Petition summary**

Calling on the Scottish Parliament to urge the Scottish Government to review legislation relating to the investigation of and penalties applicable to wildlife crime in Scotland.

### **Action taken to resolve issues of concern before submitting the petition**

I have written to my MSPs, and have had correspondence with the Scottish Government and the Crown Office and Procurator Fiscal Service (COPFS).

I have also written to the Environment, Climate Change and Land Reform Committee

### **Petition background information**

Under the provisions of the Police Act 1997, (Part III Section 93), the police can only request to place covert cameras to gather evidence of serious crimes which carry a potential minimum punishment of 3 years.

The use of covert cameras by bodies such as the RSPB is an important tool in the monitoring of many species. It is capable of detecting crime, but usually the main purpose is to increase knowledge of the species and their predators, not the investigation of wildlife crime, although at the present time this incidental occurrence will inevitably happen on a regular basis if they are set on the nests of raptors. It could also form the basis of a police prosecution. However, with the penalty for wildlife crime being 6 months, the evidence gathering and corroboration process is hampered, and it has been suggested that if the police cannot set covert cameras, neither should NGOs and the public.

Following the Poustie Review, it is expected that the penalty for wildlife crime will be increased to 2 years. But if the penalty is less than 3 years it is not regarded as a serious crime and the police are limited in the actions they can take in respect of a reported possible crime. I believe the penalty should be increased to 3 years.

The Environment, Climate Change and Land Reform Committee (ECCLRC) held a

meeting on 16th January 2018 at which the Wildlife Crime Annual Report 2016 was discussed. The excellent discussion covered the 2 aspects in this petition.

Detective Chief Superintendent Sean Scott stated: “It is worth pointing out that our operational activity in the deployment of cameras and directed surveillance is clearly bound by strict legislation. Any activity that we might want to carry out in that regard—in relation to any type of crime, and not just wildlife crime—is bound by that legislation. Under the serious crime test and so on, a three-year sentence would have to be applicable, so there are a number of factors before we can even consider deploying cameras in an investigation.”

This statement confirms that there are serious difficulties in allowing the police to use or deploy video cameras and conduct some searches in wildlife crime cases unless wildlife crime can be included in the definition of serious crime.

The COPFS detailed in a letter to the committee the reasoning behind refusing to allow the cases before the courts which had video evidence available.

During the 2018 meeting Laura Buchan, who is head of the health and safety division of the COPFS, stated: “There will often be disagreements within the team as lawyers discuss how best to apply the law. If that happens, we do not stop there. Often, when we have cases and decisions of such magnitude, reports are prepared for our senior advocate depute within the Crown Office so that they can make the final decision as to whether cases should proceed or whether, in some instances, we should no longer proceed.”

Under the present law dependent on the circumstances if video evidence is obtained of persons engaged in crime then even video evidence obtained solely to detect crime is capable of being excused. This petition seeks to side with those members of the Crown Office who thought these prosecutions should proceed under the present Law.

Whether a case may proceed often depends on Common Law, so the following change in the Law is proposed to make it somewhat more likely that the courts will be allowed to decide whether evidence is admissible. This change does not seek to overrule the common law aspects completely, and cases may still be discontinued due to inadmissibility of video evidence before reaching court.

In July 2013 the then Environment Minister, Paul Wheelhouse, said that he would be urging the Crown Office to consider the use of video footage in cases against those committing wildlife crime, and this minor change should help in that respect.

The Wildlife and Countryside Act 1981 be amended by adding in a Section 19B entitled “Admissibility of evidence in Scotland”:

“In any proceedings in Scotland for any offence under Part 1 there shall be a presumption that photographic, audio recording or video evidence shall be admitted.”

#### **Unique web address**

<https://www.parliament.scot/GettingInvolved/Petitions/PE01705>

#### **Related information for petition**

**Do you wish your petition to be hosted on the Parliament's website to collect signatures online?**

YES

**How many signatures have you collected so far?**

0

**Closing date for collecting signatures online**

26 / 09 / 2018

**Comments to stimulate online discussion**

Do you agree that some wildlife crime penalties should be increased to 3 years or more to allow police to set covert video cameras if a crime is reported?

Do you agree that if crimes against wildlife are detected by video cameras, whether by accident or design, then the cases should be determined in court?

What do you think would be the pros and cons of these suggested measures?