

## Briefing for the Public Petitions Committee

**Petition Number:** [PE1705](#)

**Main Petitioner:** Alex Milne

**Subject:** Wildlife crime - penalties and investigation

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

### Background

Wildlife crime is defined by the Partnership for Action against Wildlife Crime in Scotland (PAW Scotland)<sup>1</sup> as "any unlawful act or omission, which affects any wild creature, plant or habitat, in Scotland". This can range from targeted persecution of rare species and habitats for financial gain to unnecessary cruelty against common species for sport. A list of offence categories considered to constitute wildlife crime can be found in the Appendix of the most recent [Scottish Government Report on Wildlife Crime in Scotland](#).

In 2015-16, there were 261 recorded wildlife offences. This included (amongst other categories) offences relating to badgers, birds, cruelty to wild animals and fish poaching.

### Current Penalties for Wildlife Crimes

The maximum penalties for many of the principal offences, for example those set out in the Wildlife and Countryside Act 1981, are a £5,000 fine and/or up to 6 months imprisonment on summary conviction (i.e. by a sheriff sitting alone) with no option of conviction on indictment (i.e. by a sheriff or judge sitting with a jury) although there have been penalty increases for newer offences and for offences involving certain species.

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<sup>1</sup> PAW Scotland consists of a variety of organisations including the police, land managers, NGOs and the Scottish Government. Its aim is to address wildlife persecution and habitat destruction.

## **Investigation of Wildlife Crime**

Each Police Scotland division has a Wildlife Crime Liaison Officer. Section 19(2) of the Wildlife and Countryside Act 1981 gives a specific power to constables to enter premises other than a dwelling if the constable has reasonable cause to suspect that any person is committing or has committed an offence under Part I of the Act.

The police have statutory powers under the Regulation of Investigatory Powers (Scotland) Act 2000 and the Police Act 1997 under which they may, when certain conditions are met, be authorised to undertake covert surveillance. Scottish Ministers, or the senior authorising officer or designated deputy may only authorise intrusive surveillance if they believe it meets certain conditions including, for example, to prevent or detect serious crime. The tests for a serious crime are set out in section 31(7) of the [Regulation of Investigatory Powers Act 2000](#) and [section 93 of the Police Act 1997](#):

“(a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more;

(b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.”

The impact of these restrictions (in addition to those imposed by common law) has been the subject of debate with relation to the admissibility of covert camera evidence in wildlife crime cases, such as alleged persecution of birds of prey, both in relation to the ability of the police to detect wildlife crime, and the admissibility of camera evidence obtained by NGOs.

The petitioner in this case suggests that the Wildlife and Countryside Act 1981 should be amended to include a presumption that for any offence under Part 1 of the Act, photographic, audio recording or video evidence should be admissible. The petition also calls for maximum penalties for wildlife crimes to be increased to 3 years to enable them to be treated as ‘serious crimes’ for the purposes of enabling the gathering and use of evidence.

### **Scottish Government Action**

The Scottish Government established a Wildlife Crime Penalties Review Group in 2013 (the Poustie Review) with a remit:

“To examine and report on how wildlife crime in Scotland is dealt with by the criminal courts, with particular reference to the range of penalties available and whether these are sufficient for the purposes of deterrence and whether they are commensurate with the damage to ecosystems that may be caused by wildlife crime.”

The [Wildlife Crime Penalties Review Group Report](#) was published in 2015. The Group focused its work on the priority areas identified by the Government - bat persecution, badger persecution, illegal trade in endangered species, freshwater pearl mussels, poaching and raptor persecution.

The report includes ten recommendations including **increasing maximum penalties** available on summary conviction, at least for the more serious offences, to at least a £40,000 fine and up to 12 months imprisonment, and making conviction on indictment more commonly available across the range of wildlife offences with a maximum term of imprisonment of up to 5 years.

The Scottish Government responded to the report in a [letter from the Minister for Environment, Climate Change and Land Reform](#) in February 2016, and in relation to the recommendation on penalties stated:

“This issue is clearly at the heart of the issue of penalties for wildlife crime and we agree with the conclusions in the Report. We will produce a list of the offences to which we think the recommendation should apply and look to take this forward in a suitable legislative vehicle in the next Parliament.”

The Scottish Government’s 2018-18 [Programme for Government](#) states that they will progress “Professor Poustie’s<sup>2</sup> recommendations to increase penalties for wildlife crime.”

## **Scottish Parliament Action**

[PE01615: State regulated licensing system for gamebird hunting in Scotland](#) (lodged 22 August 2016) calls on the Scottish Parliament to introduce a licensing system for gamebird hunting, and urges the Scottish Government to implement the recommendations of the Review of Wildlife Crime Penalties in Scotland. The Public Petitions Committee took evidence from stakeholders and referred the petition to the Environment, Climate Change and Land Reform (ECCLR) Committee in [December 2016](#).

The ECCLR Committee [took written and oral evidence from the petitioner and stakeholders in 2017](#) which focused on the call for a licensing system for gamebird shooting. The Wildlife and Environmental Crime Unit of the Crown Office and Procurator Fiscal Service [wrote to the ECCLR Committee](#) on the 30<sup>th</sup> May 2017 about the admissibility of evidence in respect of wildlife crime.

The Wildlife and Natural Environment (Scotland) Act 2011 requires the Government to lay an annual report on Wildlife Crime before the Parliament. [The Wildlife Crime in Scotland \(Annual Report 2016\)](#) was [scrutinised by the ECCLR Committee](#) in January 2018.

In a PQ answered by Roseanna Cunningham in January 2017 (Question S5W-06079), the Scottish Government stated that the Poustie recommendation to increase maximum penalties requires consultation and

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<sup>2</sup> Chair of the Wildlife Crime Penalties Review Group

primary legislation, and that the consultation will be undertaken during this Parliamentary session.

Alexa Morrison

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10<sup>th</sup> September 2018

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