

Petitioner submission of 6 May 2022

PE1895/F: Mandatory accountability for NatureScot's decision making procedures

The Court judgement, para' 141, McMorn v Natural England states "The (Birds) Directive provides a broad and general protection, sufficiently broad to require derogations in a wide variety of interests so as to create the desired balance between wildlife and human interests. There is no warrant for requiring the principal derogations to be construed narrowly; they should be construed with proportionality and the balance of the objectives in the Directive in mind.". This means that the Directive is broad in order to allow exemptions in a number of circumstances in order to create balance between the interests of wildlife and humans. Also of note is para' 140 "The phrase "no satisfactory alternative solution" must not be construed so as to make the derogation nugatory in operation."

NatureScot have told the Committee that the circumstances set out in legislation determines whether or not a conservation objective is required but this statement ignores case law. The above court judgement shows the balance of the objectives should be the focus when deciding whether to grant exemptions. This influences the way our national law should be implemented. NatureScot's license refusals appear to ignore this balance and their own recent policy statement "What We Do" - "Our purpose is to - PROMOTE the sustainable use of Scotland's natural resources."

The Regulatory Reform (Scotland) Act 2014 creates the Scottish Regulators Strategic Code of Practice, Section 6 of the Act requires the code to include the following principles, which are implemented within Section 2 of the Code –

"Recognise, in their policies and practice, a commitment to the five principles of better regulation: regulation should be transparent, accountable, consistent, proportionate and targeted only where needed."

I don't feel the treatment I've experienced from NatureScot has been either transparent, accountable, consistent or proportionate. For them to have no conservation objective means their target is unclear, so it is

impossible to determine if one is needed, as such I feel they're in breach of their statutory code of practice by having no conservation objective.

NatureScot also have a statutory obligation under the Nature Conservation (Scotland) Act 2004 to have regard to the UN's Convention of Biodiversity, Article 10(c) states "Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements". I feel this is ignored and not addressed.

Article 5 of the EU Treaty states that regulation should be the minimum required to achieve the objective. NatureScot appear to imply they don't need an objective to refuse a license application but Natural Heritage (Scotland) Act 1991 provides them with general aims -

"Section 1.(1A) SNH 's general aims and purposes in relation to natural heritage are -

(a)to secure the conservation and enhancement of; and
(b)to foster understanding and facilitate the enjoyment of,
the natural heritage of Scotland; and SNH shall have regard to the desirability of securing that anything done, whether by SNH or any other person, in relation to the natural heritage of Scotland is undertaken in a manner which is sustainable."

My license application provides an opportunity for a better understanding of our natural heritage and facilitates its enjoyment through a connection with my cultural heritage. It's possible to do this in a sustainable way that provides conservation benefit by reducing the threat of genetic pollution and addressing degradation of natural instinct in captive populations.

I believe NatureScot ignore their statutory duty under Section 1 of the Natural Heritage Scotland Act. I don't understand their actions and if I had the opportunity to tell the full story I don't think any reasonable person would understand it either.

I've recently received another refusal from NatureScot in which they've decided the purpose I require the license for isn't what I say it is, it's something else, which fits their perception of addressing it with their concept of an alternative. This is what I'm being subjected to when there is no clear conservation objective. As the Scottish Government hasn't fully implemented the Aarhus Convention and citizens have no way of addressing environmental issues at reasonable cost, I don't believe the present situation is compliant with case law in the form of the

Wednesbury principle, which is covered in Scottish Government's decision making guidance "Right First Time". This addresses the test of unreasonableness, so surely Scottish Government should implement conditions that clarify whether a "target" is required by highlighting a conservation objective, which facilitates understanding of licensing decisions? Is it not reasonable to expect a defined conservation objective when being refused a license given what I outline here and previously?

In my experience NatureScot don't explain refusals in the context of proportionality but then that would be impossible if they have no objective. When I've contacted Scottish Government about conflicts with their own policies all they do is seek advice from NatureScot on a response, leaving NatureScot as judge, jury and executioner. My feeling is there's no oversight and no accountability, and our natural and cultural heritage is paying the price.