

Petitioner submission of 26 September 2022

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

Tests 1&3, referred to by NatureScot, can clearly be established with fact.

Test 2 is decided by the authority, in my experience, without addressing case law, government policy, or international conventions. In particular, how they have applied proportionality in relation to these responsibilities.

The authority unilaterally decides what is an alternative "solution" and whether it's "satisfactory". This discretion, I believe, often discriminatory, the authority applies to "other satisfactory solutions" is contrary to EU case law, C-339/87, which focuses on the implementation of EU Directives and states "mere administrative practices, which by their nature may be changed at will by the authorities, do not constitute proper transposition." In my experience, NatureScot's decisions are based upon an unqualified opinion of what they consider to be a satisfactory alternative, which can be changed to suit their agenda, and the European courts have judged that this discretionary "will" doesn't constitute proper transposition of a Directive.

My experience is, NatureScot refuse my license applications even though they accept they would have no negative effect on the favourable conservation status of the species and offer up their satisfactory alternative which doesn't address what I'm trying to achieve without explaining how they've applied the principle of proportionality. So, given the focus of the EU Birds Directive is maintaining the favourable conservation status of the species, what is their conservation objective in refusing me a license? I don't believe they have one and as such are acting out-with the powers given to them by Scottish Government and the Natural Heritage (Scotland) Act 1991.

I believe, NatureScot ignores its statutory obligation under the Nature Conservation Act 2004, Section 1(2), to "must have regard" to the UN's Convention on Biodiversity which highlights "sustainable use of natural resources" as positive to conservation. This is detailed in the related "Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity". There's also the related Nagoya Protocols on access to

genetic resources, and the Aichi Targets, targets 13 & 18 especially relevant to cultural use. In my experience, NatureScot appear not to "have regard" to any of these when case law has determined that to "have regard" means that unless there's some overwhelming reason not to comply (e.g. a threat to the favourable conservation status), these international obligations should be adhered to. I don't feel they are adhered to, and NatureScot won't explain why!

NatureScot state there's no appeals process provided for in legislation. The Scottish Regulators Strategic Code of Practice which is provided for by the Regulatory Reform Act 2014 states " regulators SHOULD - Offer an independent, impartial and transparent appeals procedure " and "SHOULD recognise.....five principles of better regulation: regulation SHOULD be transparent, accountable, consistent, proportionate and targeted ONLY where needed." NatureScot's complaints process is dealt with by NatureScot staff, which I don't feel is impartial, it doesn't allow for discussion and the Ombudsman only examines procedural issues. The stated purpose of the Regulatory Reform Act 2014 is to "promote regulatory consistency" but the present licensing criteria lacks a conservation objective for license refusals so creates inconsistency. Surely a clear conservation objective would address this?

In retirement, and with 50 years' experience, I want to create a captive bred population of native species, maintained within a studbook, with cultural and conservation benefits, at no cost to public funds, and NatureScot think that using non-native species is a satisfactory alternative, contrary to the GB Invasive Non-Native Species Strategy and Covenant of Social, Economic and Cultural Rights. I'm being denied my cultural right of sustainable access, when other cultures are granted theirs. Article 13 of the EU Birds Directive states "measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of the species", when, in my case, using non-native species increases the risk of genetic pollution, a risk NatureScot don't monitor, either physically or through registration, the latter a devolved matter which they have left with Defra.

I had a video meeting with NatureScot after submitting my last application, at that meeting I was told they hadn't read the application yet. I made 6 requests for further meetings, all ignored. I made a complaint detailing all the issues I had with their refusal, they rejected my complaint and informed me they hadn't got the resources to address them.

In my experience, NatureScot are not a competent authority on all issues related to Scotland's natural heritage and I wouldn't expect them to be, but FoI shows they are making decisions without competent specialist advice, including qualified legal advice. I feel citizens, many who have a lifetime experience in managing natural resources sustainably and giving them a deep understanding of conservation issues, are being locked out by NatureScot because of a political agenda, and our natural heritage is clearly suffering for it. The dictatorial treatment I feel I've been subjected to has to stop, citizens need accountability.