

PE2100/B: Ministerial guidance to clarify the criteria for assessing licence applications under section 16 of the Wildlife and Countryside Act 1981

Petitioner submission, 3 September 2024

I think the response from the Scottish Government and the briefing from the SPICe is a good example of what I've had to endure for the last 16 years, people changing the focus of the issue away from my purpose but then I have to ask, how much influence has NatureScot had in these two responses?

My petition is clear, there is no mention of asking the Scottish Government to bring forward legislation to include the sustainable cultural use of natural resources under Section 16 of the Wildlife and Countryside Act 1981.", that is NOT its intention. Cultural use is already provided for on a discriminatory basis. The issue I'd like the Government guidance on is how "no other satisfactory solution" should be applied.

Section 16 is the implementation of Article 9 of the EU Birds Directive. Article 2 provides for cultural use on a proportional basis, proportionality is addressed in paragraph 6 of the Directives introduction and states -

"The measures to be taken must apply to the various factors which may affect the numbers of birds, namely the repercussions of man's activities and in particular the destruction and pollution of their habitats, capture and killing by man and the trade resulting from such practices; the stringency of such measures should be adapted to the particular situation of the various species within the framework of a conservation policy."

Article 13 states - "Application of the measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of the species of birds referred to in Article 1."

NatureScot's alternative solution is to use non native species which is contrary to the Scottish Government's joint strategy on the use of non native species which promotes the use of native species by stakeholders.

NatureScot don't have a conservation policy which provides for sustainable cultural use and they don't explain how they have applied the principle of proportionality to any decision, even though the "balancing duties" policy states they do -

"In communicating our decisions and advice, we will highlight that we have considered other interests and taken them into account in reaching our conclusions. This will be the main way in which we document that we have applied our balancing duties." In my experience, this does not happen!

In 12 years and approximately 15 applications, they have never once explained the proportionality of any decision. What they explain is what they see as an alternative solution, applied as an overriding criteria, but also change the "purpose" of my

applications to suit that alternative. This is contrary to the case law from the EU Court of Justice, C-339/87 which states -

"The transposition of a directive into national law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific express legal provision, a general legal context may be sufficient if it actually ensures the full application of the directive in a sufficiently clear and precise manner. That may be the case where transposition is effected by a legislative provision serving as the basis for the adoption of administrative measures which are officially published, general in scope and capable of creating rights and obligations for individuals. In contrast, mere administrative practices, which by their nature may be changed at will by the authorities, do not constitute proper transposition." Without clarification on this issue, I believe the present position is unlawful.

In my experience NatureScot can change their "will" because they have no transparent conservation "objective" to apply when making a licensing decision on sustainable cultural use. Why does the Scottish Government not see clarification on licensing criteria important, when it creates rights and obligations for citizens? The Scottish Government have told me they support the UNESCO Convention on intangible cultural heritage. They also support the UN's Covenant of Social, Economic and Cultural Rights and have said they will introduce a Bill this year to implement it into law. Their own biodiversity strategy is based around the UN's Convention on Biodiversity, Article 10 supports cultural use and the Addis Ababa Principles and Guidelines on Sustainable Use of Biodiversity explains why it's positive to conservation.

NatureScot refuse to acknowledge whether or not their staff receive training on their Regulators Code, certainly in my experience I have seen nothing that would indicate they apply the code to their duties. The Committee have an opportunity to clarify the directive behind the implementation of the Regulators Code within NatureScot as it was Fergus Ewing MSP, the then Minister, who wrote to their CEO in 2015 explaining the code "requires regulators to take a risk-based enabling approach, communicate clearly and effectively, and understand who they regulate." This is certainly not my experience.

Sometimes I wish I hadn't started out on a project that required licensing by NatureScot because the experience has made me seriously question our democracy as without accountability I don't believe we have one. When someone like me, who has 50 years of experience related to a licensing issue and has done years of research to be able to go to authority with a mountain of supporting information, with much of it based in case law, is vilified like I feel I've been, something is seriously wrong!

I don't believe anyone with authority is holding NatureScot to account on any of their duties or compliance with their Regulators Code and its lack of focus on proportionality. I've been to the SPSO and I don't believe they have the competence to address the issues on proportionality.

Regarding the SPICe "briefing", paragraph 2 under "Licensable purposes under the Wildlife and Countryside Act 1981" doesn't provide the full story of what I've been

trying to do and there's no mention of the importance of applying proportionality to licensing decisions.

I don't feel it's fair if the Committee take NatureScot's word over mine without giving me the opportunity to respond. If possible, I would like to address the Committee in person to explain the issues in greater detail.