ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

2nd Meeting, 2018 (Session 5)

Tuesday 16 January 2018

The Committee will meet at 10.30 am in the Robert Burns Room (CR1).

1. **Declaration of interests:** Alex Rowley will be invited to declare any relevant interests.

2. **Decision on taking business in private:** The Committee will decide whether to take items 4 and 5 in private.

   The Committee will take evidence from—
   
   Laura Buchan, Head of the Health and Safety Division, and Sara Shaw, Head of Wildlife and Environmental Crime Unit, Crown Office and Procurator Fiscal Service;
   
   Sean Scott, Detective Chief Superintendent, and Sergeant Andrew Marvin, Scottish Wildlife Crime Coordinator, Police Scotland.

4. **Scottish Government's Wildlife Crime In Scotland - Annual Report 2016:**
   The Committee will consider evidence heard earlier in the meeting.

5. **Work programme:** The Committee will consider its work programme.

Lynn Tullis
Clerk to the Environment, Climate Change and Land Reform Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5240
Email: ecclr.committee@parliament.scot.
The papers for this meeting are as follows—

**Agenda item 3**

Scottish Government Wildlife Crime in Scotland Annual Report 2016 Cover Note

PRIVATE PAPER

**Agenda item 5**

PRIVATE PAPER
Environment, Climate Change and Land Reform Committee

2nd Meeting, 2018 (Session 5)

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Background

1. Section 20 of the Wildlife and Natural Environment (Scotland) Act, passed by the Scottish Parliament in 2011, introduced a requirement into the Wildlife and Countryside Act 1981 that Scottish Ministers must, after the end of each calendar year, lay before the Scottish Parliament a report on offences relating to wildlife.

2. The reports published to date are listed below:

   - Wildlife Crime in Scotland - 2012 Annual Report
   - Wildlife Crime in Scotland - 2013 Annual Report

3. The fifth of these reports, the Wildlife Crime in Scotland 2016 Annual Report was published on 8 December 2017. The Environment, Climate Change and Land Reform Committee agreed at its meeting on 12 September 2017 to consider this report once published.

   **Wildlife Crime in Scotland Annual Reports**

4. The Wildlife Crime in Scotland Annual Reports provides detailed data as to how wildlife crimes are handled and prosecuted in Scotland. Several organisations contribute data to this report which is collated by the Scottish Government.

5. Wildlife crime priority areas are set at a UK level. These are:

   - Badger persecution
   - Bat persecution
   - Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)
   - Freshwater pearl mussels
   - Poaching (including deer poaching, hare coursing, fish poaching)
   - Raptor persecution

6. The annual reports include information broken down by these priority areas.
The 2016 Annual Report

7. The report covers the calendar year 2016, using data for the 2015-16 financial year.

8. The report contains the following chapters:

- **Headline trends** – containing information on wildlife crimes recorded by Police Scotland (including by division), Crown Office and Procurator Fiscal Service Statistics (including cases received, outcomes of reported cases, notable cases and criminal proceeding statistics, people with a charge of wildlife crime proved and penalties applied;

- **Additional data sources** - outlining information from sources such as Science and Advice for Scottish Agriculture (SASA), SAC Consulting Veterinary Services, Scottish Natural Heritage, the Scottish Society for the Prevention of Cruelty to Animals (SSPCA) and the National Wildlife Crime Unit (NWCU);

- **Wildlife Crime Priority areas** – Sections on each of the priority areas have been included. Following the inclusion of a section on fox hunting and the Protection of Wild Mammals (Scotland) Act 2002 in the previous year’s wildlife crime annual report, the 2016 edition also includes details on this subject. Further detail is also provided on trapping and snaring offences. Scottish Natural Heritage has also provided a “Health of Species” appraisal of the priority species falling within its remit;

- **PAW Scotland** – an update on the work of the Partnership for Action Against Wildlife Crime (PAW) Scotland;

- **Scottish Government** – an update on projects carried out by or on behalf of the Scottish Government throughout the period covered by the report;

- **Police Scotland** – Details of the work of Police Scotland throughout 2016;

- **Legislative changes** – information on how implementation of the Land Reform (Scotland) Act 2016 has impacted on wildlife crime.

- **Priority work for 2017** – includes:
  
  i. the outcome of the consultation on Lord Bonomy’s review of the operation of the Wild Mammals (Scotland) Act 2002
  
  ii. a new code of practice for hunting (to be developed by a stakeholder group led by retired Deputy Chief Constable Ruairaidh Nicholson)
iii. Implementing the commitments in the Programme for Government, where the Government state “We will:

1. take forward proposals with Police Scotland for new resources to tackle wildlife crime;

2. establish an independent group to consider how to ensure that the management of grouse moors is environmentally sustainable and compliant with the law;

3. commission work in relation to protecting gamekeepers’ employment and other rights;

4. commission a research project to examine the impact of large shooting estates on Scotland’s economy and biodiversity; and

5. establish an independent group to advise on effective and sustainable deer management.”

Committee Consideration

9. The Committee will take evidence from Police Scotland and the Crown Office and Procurator Fiscal Service.

10. The Committee took evidence from both organisations as part of its consideration of the 2015 Annual Report. A copy of the Committee’s response to the Scottish Government on the 2015 Annual Report is available here. Throughout the year, the Committee has received various other updates.

11. Police Scotland provided a written update to the Committee in advance of the publication of the 2016 report on its work throughout the year. This is included at Annex A.

12. In May 2017, the Committee wrote to the Crown Office and Procurator Fiscal Service about admissibility of video evidence and this letter is included at Annex B. The subsequent response is available at Annex C.

13. The Cabinet Secretary wrote to the Committee upon the publication of the Analyses of the fates of satellite tracked golden eagles in Scotland – Scottish Natural Heritage Commissioned Report No. 982 and this correspondence can be found at Annex D.

Clerks/SPICe
Environment, Climate Change and Land Reform Committee
Dear Mr Dey,

WILDLIFE CRIME UPDATE

I am aware that the Scottish Government Annual Wildlife Crime Report is still to be published and therefore, as the Wildlife Crime portfolio holder in Police Scotland, I thought I would take the opportunity to update you on elements of the wildlife crime work that Police Scotland has undertaken in 2017.

The following is offered by way of a brief synopsis:

1. Freshwater Pearl Mussels (FWPM) – To date, only one incident of pearl fishing has been reported in 2017. However, many of the previous reports have been as a result of surveys conducted by Scottish Natural Heritage and other organisations, and in 2017 these have been fewer in number. In order to assist officers when they are investigating FWPM related crime, Police Scotland has worked with partner agencies to produce a guide to estimating the age of dead mussel shells. This has been circulated to relevant Police Divisions where crimes have been reported in the past and is available on the Police Scotland intranet. Finally, Operation Caesar has been concluded. This operation started in June 2012 to investigate whether Scottish FWPM that had been illegally fished were being laundered through the jewellery trade. Following extensive work with the jewellery trade it would appear that currently, pearls do not appear to be being laundered through the mainstream or local jewellery trade. As such, it is suggested that current FWPM crime is more likely to be for personal collections.

2. Badger Persecution - The winter / spring period of 2016 / 17 saw Scottish Badgers staff deliver one day training to a number of police officers in Divisions across Scotland. It is anticipated that further local training will take place in early 2018 as this has undoubtedly improved the partnership response when a crime is reported. Police Scotland now meets with Scottish Badgers officials on a regular basis to discuss reports of badger persecution received by both organisations. The consensus is that this has seen an improvement in the dissemination of information by both sides along with more accurate recording of crime and a greater understanding of why certain incidents may not necessitate a crime report.

3. Raptor Persecution – Disappointingly, raptor persecution remains an issue in Scotland although fewer reports have been received than in previous years. Police Scotland continues to investigate all instances of reported raptor crime and meets regularly with SNH to share information which could assist in Open General Licence restrictions. With the impending launch in 2018 of the South of Scotland Golden Eagle project, a draft operational order has been written in conjunction with the National Wildlife Crime Unit to consider crime prevention activity, not only in the south of Scotland but in the north of England as well. Meetings have also been held with colleagues south of the border.
4. Poaching – Hare Coursing has continued to be an area of concern in 2017, not just in Scotland but across the UK in general. A number of well publicised arrests have been made and those individuals already sentenced at court have received fines and orders banning them from keeping dogs (unfortunately this is only applicable in Scotland and is not a cross border sentence). This form of crime occurs predominantly in east coast divisions and now appears to be almost year round activity rather than the traditional period of late spring and late summer. Many of the individuals involved are repeat offenders and a number are believed to travel across divisional and national boundaries. Analytical work is being undertaken in conjunction with the National Wildlife Crime Unit to assist in targeting the individuals and vehicles involved.

Operation Moon (targeting deer poaching) has been running across a number of Police Scotland Divisions in 2017. Highland and Islands Division is currently undertaking such work in the lead up to Christmas when venison may be offered for sale via the black market. In light of this, and issues recognised with the venison dealer licensing process, Police Scotland officers are now in initial discussion with Food Standards Scotland on a range of wild game issues and how these may be addressed in future.

5. Convention on International Trade in Endangered Species (CITES) – Police Scotland continues to undertake a small but significant number of CITES cases, increasingly generated by postings taken from internet. The impact of Brexit could be significant in this area as CITES is implemented within Europe through two EC Regulations (338/97 and 865/06 as amended). These Regulations implement CITES in a stricter manner than is required by the Convention and also contain provisions to prohibit or restrict imports of species which are considered to be a threat to native EC fauna and flora. Police Scotland is now an established member of the UK CITES Priority Delivery Group and this will assist with remaining fully engaged in the developments in this area. Discussions continue with a number of partner organisations for a one day CITES course in Scotland in early 2018.

6. Bat Persecution – An SNH bat expert provided awareness training to Police Scotland officers at three venues across Scotland. Once again it is hoped that this can be repeated in 2018.

7. Training – Police Scotland held a further Wildlife Crime Officer Introduction course at the beginning of October 2017. In total, 40 officers from across Scotland received inputs on the UK Wildlife Crime priorities as well as inputs on the role of SNH, the National Wildlife Crime Unit and Traps / Snares. Although predominantly delivered by police officers, assistance was received from colleagues at SNH, SASA and RSPB. Further offers of assistance with training are currently being developed with BASC, SGA and GWCT.

It should also be highlighted that in 2017, Police Scotland launched the Investigators Development Programme (IDP) and that a wildlife crime module exists within the new National Investigators Exam. This is the first stage of the IDP and is open to all officers and staff in Police Scotland.
8. Additional posts – Police Scotland is currently in the process of appointing an additional Detective Constable within the Specialist Crime Division to support the work of the Wildlife Crime Coordinator and to support investigations at divisional level. This is a Scottish Government funded post and is in addition to funding provided for the Wildlife and Rural Crime Special Constable scheme currently being developed for deployment in the Cairngorms National Park.

9. Bonomy Review – As you will be aware, Scottish Ministers responded to Lord Bonomy’s report on the Protection of Wild Mammals Act 2002 by outlining proposals to convene a stakeholder group to develop a new code of practice on hunting. Police Scotland has played a full part in this group, including assisting with the provision of a facilitator for a workshop day, and is now part of the small team drafting the proposed code of practice document.

2017 also saw the first conviction of ‘traditional fox hunting activity’ under the legislation introduced 2002. This resulted in fines for two individuals who were convicted of deliberately hunting a fox with dogs near Jedburgh in 2016.

10. Scottish Sentencing Council – Police Scotland recently met with representatives of the Scottish Sentencing Council. Environmental and Wildlife Crime has been chosen by the Council as one of the first areas of business due to the particular impact in Scotland on tourism, rural industry and the local economy. Officers provided an overview of the variety of legislation, breadth of investigations undertaken and both the penalties available and those handed out to convicted wildlife criminals.

I hope the foregoing is of interest to you and your fellow committee members and I look forward to your continued support in our efforts to tackle wildlife crime.

Yours sincerely,

Sean Scott
Detective Chief Superintendent
Local Crime
Annexe B

Gary Aitken  
Head of the Health and Safety Division  
Crown Office and Procurator Fiscal Service  
c/o Clerk to the Committee  
Room T3.40  
The Scottish Parliament  
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21 May 2017

Dear Gary,

ADMISSABILTY OF EVIDENCE ON WILDLIFE CRIME

In January 2017, you gave evidence to the Environment, Climate Change and Land Reform Committee on behalf of the Crown Office and Procurator Fiscal Service on the Scottish Government’s Wildlife Crime in Scotland 2015 Annual Report. In concluding that meeting, I noted the Committee’s “interest in wildlife crime extends way beyond simply looking at the annual report.” It is on that basis that I am writing to you on behalf of the Committee seeking clarity around the gathering and admissibility of evidence of potential wildlife crime.

During its consideration of wildlife crime annual reports, the Committee and its predecessor have consistently heard of the challenges of gathering evidence of a sufficient quality to support prosecution. At the Committee’s meeting in January, Detective Chief Superintendent Sean Scott of Police Scotland highlighted the “huge amount of effort” Police Scotland dedicate to gathering evidence to present to the Crown and Procurator Fiscal Service in order for it to prosecute. DCS Scott further told the Committee of the geographical challenges involved in gathering evidence of wildlife crime due to, among other issues, “lack of closed-circuit television, witnesses, social media or open source information”.

Witnesses from Police Scotland told the previous session’s Rural Affairs, Climate Change and Environment Committee of the specific issues around video evidence and that admissibility of such evidence was a matter for the Crown Office.

The Committee has noted recent high profile instances where video evidence of alleged offences was available and not utilised, it has been suggested, on the grounds of admissibility.

The committee is therefore seeking clarity around the admissibility of evidence of wildlife crime, with specific regard to:

- Which pieces of legislation and case law cover:
  - admissibility of evidence; and
  - the admissibility of video evidence and of CCTV evidence;
• How the Crown Office and Procurator Fiscal Service use this to interpret the admissibility of evidence
• Whether there is guidance which is issued and/or applied by the Crown Office and Procurator Fiscal Service to the analysis of:
  • admissibility of evidence; and
  • video/CCTV evidence,
• What the guidance states with regard to admissibility of evidence, and
• How that guidance is currently publicised to stakeholders and interested parties.

It would also welcome an understanding, to whatever extent is possible, of the rationale behind the decisions taken in the previously noted cases.

I would be most grateful for a response to this letter by Wednesday 31 May 2017.

On behalf of the Committee, I thank you in advance for your time and look forward to hearing from you.

Yours sincerely,

Graeme Dey MSP
Convener
Environment, Climate Change and Land Reform Committee
30 May 2017

Dear Graeme

Thank you for your letter of 21 May 2017, addressed to my colleague Gary Aitken, enquiring about the admissibility of evidence in respect of wildlife crime.

I have been asked to reply in my role as the Head of the Wildlife and Environmental Crime Unit (WECU) in COPFS.

The Law on Admissibility of Evidence

The admissibility of evidence in criminal proceedings in Scotland is largely governed by the common law, although there are also statutory provisions which bear on the admissibility of certain categories of evidence. There is a substantial body of case law, developed over many years, which sets out the principles and considerations which fall to be applied.

The key common law authority, for present purposes, is Lawrie v Muir 1950 JC 19. In that case, critical evidence had been obtained by officials who, though acting in good faith, had illegally obtained entry to the premises in question. A Full Bench of the High Court reviewed previous authority, and concluded that an irregularity in the obtaining of evidence does not necessarily make that evidence inadmissible. The Lord Justice-General, Lord Cooper, observed: “Irregularities require to be excused, and infringements of the formalities of the law in relation to these matters are not lightly to be condoned. Whether any given irregularity ought to be excused depends upon the nature of the irregularity and the circumstances under which it was committed”. In the particular circumstances, the evidence was held to be inadmissible.

Quite apart from the common law rules, an accused person might object to the admissibility of particular evidence, on the basis that it would breach an accused’s right to a fair trial under Article 6 of the ECHR\(^1\). There is case law determining that certain types of evidence are incompatible with an accused’s Article 6 right, rendering that type of evidence inadmissible in a criminal trial in Scotland. However, even if the admission of evidence would not be incompatible with the accused’s Convention rights, the common law rules of admissibility must also be satisfied.

The principles governing the admissibility of evidence are not specific to video evidence or CCTV evidence. Video and CCTV evidence is often used in criminal trials in Scotland. Any question about the admissibility of such evidence in any particular case will depend on the particular facts and circumstances of that case. Questions about the admissibility of evidence often relate, although not exclusively, to the manner, or the circumstances, in which the evidence was obtained.

The Role of Prosecutors

In making decisions in individual cases, prosecutors must apply the law (including the law on the admissibility of evidence) to the particular circumstances of the case. There is no particular policy or guidance to be applied in assessing questions of

\(^1\) European Convention on Human Rights and Fundamental Freedoms 1950
admissibility of evidence: it is a matter of law, not policy, and a matter to be resolved by applying the law to the particular factual circumstances of individual cases. Again, this is not specific to video evidence or CCTV evidence. Prosecutors are, moreover, under a duty to keep cases under review.

In a recent case, the Lord Justice-Clerk, Lady Dorrian, giving the Opinion of the Criminal Appeal Court approved the Lord Advocate’s submission that: “it is important in the public interest that prosecutors exercise their judgment independently, robustly, forensically and objectively on the whole evidence available”: Stewart v. Payne 2017 SLT 159, para. 97. From time to time, that may mean that prosecutors make decisions which are controversial – but it is important, in the public interest, that prosecutors exercise their independent judgment without regard to any potential controversy and that the independence of prosecutors to apply the law to the facts of particular cases is respected.

**Recent Cases Involving Video Evidence**

Following a defence challenge to the admissibility of covert video evidence obtained by RSPB investigators in the case against Stanley Gordon, Crown Counsel carried out a review of the relevant material bearing on that case and the case against Craig Graham. Crown Counsel concluded that the placing of covert cameras was, in those cases, for the purpose of detecting crime and, as that activity was not authorised, the subsequent video evidence was obtained irregularly. The irregularity was not capable of being excused, for the purposes of the common law of admissibility, and it followed, on the application of the common law principles to which I have referred, that the evidence was inadmissible. In light of that conclusion it was appropriate that the proceedings were brought to an end.

By way of context, it may be useful to mention the following:

(i) The statutory access rights granted by section 1 of the Land Reform (Scotland) Act 2003 are granted for specific purposes. The purpose of investigating and detecting crime is not one of those purposes. It follows that someone who is on land for such a purpose is not there pursuant to the rights granted under the Act.

(ii) In any event, the Scottish Outdoor Access Code states that where people exercising access rights wish to undertake surveys of natural or cultural heritage which require the installation of any equipment or instruments they should “seek the permission of the relevant land managers”: para. 3.64.

(iii) The police have specific powers which they may utilise in appropriate cases in the investigation of wildlife crime. In particular, 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 suspects with reasonable cause that any person is committing or has committed an offence under Part I of the 1982 Act. Further, as you will appreciate, the police have statutory powers (under the Regulation of Investigatory Powers (Scotland) Act 2000 and the Police Act 1997) under which they may, when that is permitted under the statutory regime, be authorised to undertake covert surveillance.
COPFS remains committed to tackling wildlife crime, including raptor persecution. There is a strong presumption in favour of prosecution in cases reported to the Service where there is sufficient admissible evidence and prosecution is in the public interest.

Yours sincerely

Sara Shaw
Head of Wildlife and Environmental Crime Unit
Crown Office and Procurator Fiscal Service
31 May 2017

Dear Graeme

I am writing to inform you that the report Analyses of the fates of satellite tracked golden eagles in Scotland – Scottish Natural Heritage Commissioned Report No. 982 will be published by Scottish Natural Heritage at 2.30pm today.

As you will be aware, I ordered this review in August 2016 to find out more about the suspicious disappearance of a number of satellite-tagged golden eagles in north-east Scotland.

The report can be downloaded from the SNH website at:

The key findings of the report are:

- Of 131 young eagles tracked, as many as 41 (31%) have disappeared under suspicious circumstances. These disappearances are significantly connected with contemporaneous records of illegal persecution.

- The suspicious disappearances occurred mainly in six areas of the Highlands (predominantly in the central and eastern Highlands). Some, but not all, areas managed as grouse moors were strongly associated with the disappearance of many of the tagged eagles.

- Tagging revealed that the persecution of young eagles is suppressing the golden eagle population in the central and eastern Highlands, and hampering overall recovery from historic, widespread, persecution.

- Wind farms were not associated with any recorded golden eagle deaths, and there were very few records of tagged young golden eagles near wind farms.

- Operations associated with tagging had no discernible adverse effects on the welfare, behaviour or survival of the birds.

In light of the conclusions of this report and your letter to me of 24 May setting out the Committee’s thoughts and recommendations regarding the petition on the licensing of shooting businesses, I am today announcing a package of further measures to address this ongoing problem which is blighting our natural environment and Scotland’s reputation. These measures are as follows:

- I am publishing a map showing the clusters of disappeared birds, with grid references confirming the last location fix for the tagged eagles which disappeared.

- I will ask Scottish Natural Heritage and my officials to explore options, using existing powers, which could be used to order the temporary or permanent cessation of activities linked to grouse moor management where we have good reason to believe that they are harming highly protected raptor species.
To enhance enforcement and prevention, I will work with Police Scotland to recruit a team of Special Constables focused on wildlife and other rural crime, starting with a pilot scheme in the Cairngorms National Park. After careful consideration, I have decided that this is a better route than giving further investigative powers to SSPCA inspectors. I am very grateful to the SSPCA for their public-spirited offer and their patience while we have considered this proposal.

I will establish a group to examine how we can ensure that grouse moor management continues to contribute to the rural economy while being environmentally sustainable and compliant with the law, including consideration of licensing this type of shooting business.

I am commissioning a research project to examine both the benefits and costs of large shooting estates to Scotland’s economy and biodiversity.

I am keen to examine ways in which we can protect the employment and other rights of gamekeepers and their role in enhancing biodiversity, not just game interests.

Further details on each of these proposals, which add to those we have already implemented or are committed to delivering, will be made available in due course. I believe that we are sending a strong message to wildlife criminals and the general public that the Scottish Government will continue to do all that it can, including working closely with partners, to tackle the illegal persecution of our protected wildlife.

Yours,

Roseanna Cunningham
Cabinet Secretary for Environment, Climate Change and Land Reform