



The Scottish Parliament
Pàrlamaid na h-Alba

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Dear Roseanna,

Scottish Government's Wildlife Crime in Scotland 2015 Annual Report

On [10 January 2017](#) the Committee took evidence on the Wildlife Crime in Scotland 2015 Annual Report from Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS). It also heard from:

- The Bat Conservation Trust;
- RSPB Scotland;
- Scottish Badgers; and
- The Scottish Gamekeepers Association.

[Written submissions](#) were also received from RSPB Scotland, Scottish Gamekeepers Association, Scottish Badgers, Scottish Land and Estates and the SSPCA.

The Committee has since agreed to write to you to highlight a number of issues stemming from this evidence and also to make some initial recommendations. You will also see that some of the Committee's comments are directed at Police Scotland, who we will also copy this letter to.

Statistics and trends

Reporting year and identification of trends

1. In Session 4 the Rural Affairs, Climate Change and Environment (RACCE) Committee was critical of the way information was presented in the annual report as it considered that it prevented the identification of trends. The current Annual Report appears to have been presented by financial year although, as the Report itself acknowledges, there are still difficulties in comparing different sets of statistics which makes interpretation of the Report

problematic. Also, given the 2015 Annual Report was published in November 2016, some of the material contained in the report is over 18 months old.

2. While the Committee made great efforts in trying to understand the data provided in the report, it was often unclear, as the data provided across different offences was not always consistent, and questions were raised in evidence about what some of the figures were referencing. Police Scotland explained that some of the problems in reporting in sufficient detail are down to the creation of the new force and the fact that “we still do not have a crime recording system for the whole of Police Scotland from which we can extrapolate the data.” However, Assistant Chief Constable Steve Johnson also believed that “the data is strong when it comes to giving us a general indication of the direction of travel or the amount of activity that is taking place.”

3. The Committee also noted that Police Scotland had previously informed the RACCE Committee that it would in future provide quarterly breakdowns for the six priority areas although this does not appear to have happened.

4. The Committee welcomes the desire to make the report as robust and useful as possible, and supports the presentation of information by financial year. However, the Committee considers issues in relation to different data sets continue to affect the ease of interpretation. The Committee is also concerned that the current crime recording system does not enable extrapolation of data. The Committee encourages the Scottish Government to look to address this and make further improvements in the presentation of data in subsequent reports.

5. The Committee would also welcome an explanation as to why quarterly breakdowns were not included in the report in line with previous commitments and whether this will be included in future annual reports. The Committee also recommends that these breakdowns are made public on a quarterly basis.

Recorded crimes and their outcomes

6. Assistant Chief Constable Johnson of Police Scotland welcomed “the clarity that the report provides year on year, but acknowledged that Police Scotland could “do a bit more work to find out whether it shows that this activity is having a positive outcome or whether these are just statistics for the sake of having statistics.” Ideally ACC Johnson would like to have “a crime recording system linked to an incident recording system to allow us to follow that first call about suspicions with regard to an area of scientific importance and the attrition that happens right the way through police and partner systems.”

7. In relation to the level of unrecorded wildlife crime, Detective Chief Superintendent Scott said that Police Scotland can only investigate what it knows about. At the same time, the Committee heard from stakeholders that the number of incidents and particularly incidents identified by stakeholders such as Scottish Badgers and RSPB Scotland, and perceived to be a crime was much greater than what was recorded by Police Scotland and reflected in the Annual Report.

8. The Committee is keen to have clarity in the reporting and recording of incidents and crimes. While acknowledging there may be difficulties in extending the recording beyond crimes (based on evidential requirements) and conviction rates, the Committee considers that in order to have a full picture of wildlife crime and wildlife crime incidents Police Scotland should consider using the information held by stakeholders and extend their approach to recording wildlife incidents to enable a full identification of the level of wildlife crime and potential wildlife crime incidents.

Additional resources

9. COPFS considered the resources it has to tackle wildlife crime as “reasonably steady”. Gary Aitken, Head of COPFS’ Wildlife and Environmental Crime Unit, said that it had “four core lawyers involved in the wildlife and environmental crime unit over the period that the report covers” and that in relation to its total workload it had “a positive proportion of staff is devoted to this.” Police Scotland also considered its resources as “stable” having previously increased the number of officers directly responsible for tackling wildlife crime. It also highlighted how it had targeted resources into prevention and deterrence activity, and raised this as one reason why conviction rates had dropped 9% over the previous reporting period despite the stable resources.

10. The Committee was interested to hear from Assistant Chief Constable Steve Johnson about the lack of information in the report about “the health of the species that we are trying to protect.” ACC Johnson continued:

“For example, we have a lot of statistics with regard to raptor persecution, and we can compare them with the situation in 2010, 2011 or 2012. That is fantastic, because it gives us an idea of activity, but what is the outcome of that? What is that work for? What is the current health of the raptor flock in Scotland? Is it better or worse now than it was in, say, 2010, and if it is worse, what are we going to do about that? How do we move into those preventative and enforcement spaces, and what are we going to do about the intelligence gaps that we have in order to make that assertion on whether what is happening is good or bad? Indeed, for all the six priority areas highlighted in the report, I would welcome some context as to where each sits with regard to overall performance or outcomes and what we are seeking to achieve.

11. The Committee is concerned about the lack data on the health of species and. The Committee appreciates that this goes beyond Police Scotland and requests the Scottish Government to outline what steps it plans to take to address this and the likely resource requirement of this.

12. The Committee welcomes the continued resource being provided by COPFS and Police Scotland. The Committee considers there may be a number of reasons why conviction rates may have dropped and heard no evidence to support the view that there was a direct relationship between this and the prevention and deterrence activity. The Committee is keen that the next Annual Report focuses in more detail on the issue of how the resources deployed to wildlife crime are making a difference.

This should be fully evidence based and provide examples as to where and to what extent the resources are effective.

Wildlife crime priority areas

13. The Committee considered each of the wildlife crime priority areas contained in the Annual Report.

Badger persecution

14. As the Annual Report states, of the 5 badger crimes identified by Police Scotland in the past year, 4 have gone forward for prosecution. However, Scottish Badgers identified over 40 badger crimes in 2014-15.

15. While the Committee acknowledges what Police Scotland identifies as a crime may differ from conservation groups, it is concerned by the large variation between these figures. In seeking to reassure the Committee, Detective Chief Superintendent Scott said that “every one of those cases will have been assessed on its own merits and reported accordingly, based on the evidence and material at our disposal.” DCS Scott added that there is a commitment to work with Scottish Badgers to have a recording system that can “deconflict” its respective data to help “to enable it [Scottish Badgers] to say that it reported an incident to us and we have done nothing or that it reported an incident to us and was satisfied with the outcome.”

16. Eddie Palmer of Scottish Badgers welcomed this commitment as “making clear the journey from the public reporting something to it becoming an incident that is investigated and maybe considered to be a crime—would be a tremendous improvement.”

17. The Committee also heard details of a “secure intelligence provision mechanism” that was recently established between Police Scotland and Scottish Badgers to help share intelligence when investigating badger crime. In answering concerns in written evidence from Scottish Badgers that police call centres do not always recognise badger crime as a crime, DCS Scott highlighted specific training for call handlers on all wildlife crime priority areas and that both Police Scotland officers and COPFS staff are undertaking training led by Scottish Badgers to “enhance understanding of the issues across our agencies.”

18. In supplementary written evidence, Scottish Badgers welcomed the closer working relationship with Police Scotland but remained concerned that “the situation will not improve unless there is a change of culture, in particular the positive acceptance that badger persecution is a crime.”

19. As identified earlier the Committee remains concerned about the approach to identifying and recording wildlife crime. The Committee welcomes the positive steps being taken by Police Scotland to better train its staff in recognising badger persecution and welcomes its enthusiasm to work with Scottish Badgers to better record possible crimes and share intelligence. The Committee encourages Police Scotland to extend this approach to all forms of wildlife crime and will continue to monitor this action and the results on the ground in identifying and prosecuting crimes and in minimising future badger persecution.

Bat persecution

20. With no offences involving bat persecution and bat disturbance seldom reported, Police Scotland acknowledged that it is “unclear how wide the scale of the problem is.” It did however point to Local Authorities and Scottish Natural Heritage as statutory bodies who are required to keep records of bat colonies surrounding new housing and infrastructure developments. Police Scotland suggested they might be able to provide data regarding the extent of bat colonies being potentially aggravated by such developments.

21. Detective Chief Superintendent Scott added that officers at Police Scotland are going on “bat training” in early 2017 to “enhance our relationship with experts on bats and our own understanding.”

22. Peter Charleston from the Bat Conservation Trust said that the “vast majority of bat crime relates to development” and so “working with the industry is key.” Mr Charleston also believed that the significant financial sanctions used to combat bat persecution had sent out a “loud and clear” message to the industry that there is a need to comply with the law. Relationships with Police Scotland were also strong although Mr Charleston expressed disappointment that the “excellent preventative work” did not featured in the Annual Report.

23. The Committee recognises that there is a low level of recorded crime in this priority area and welcomes the approach of Police Scotland and the Bat Conservation Trust in working together to prevent potential incidents. The Committee considers there would be benefit in assessing the numbers of bat colonies potentially affected by new developments and therefore recommends the details held by Local Authorities and SNH in the planning process be compiled by the Scottish Government and passed to Police Scotland. The Committee also recommends consideration is given to reflecting good practice across Scotland in future annual reports.

International trade in endangered species of wild flora and fauna

24. The Committee was interested to learn from Police Scotland that while only one incident was reported in relation to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), it saw an “upsurge in online criminal activity.” The Committee heard COPFS staff and Police Scotland officers are to undertake training later this year on issues related to the trade in endangered species.

25. In the context of protecting wild flora and fauna, Assistant Chief Constable Johnson also highlighted the need to raise awareness with academia who he believes can help provide a “sound evidential basis” if the research has “academic rigour and stand up to scrutiny”.

26. The Committee recognises that the trade in endangered species is complex as much of this may be happening on-line. The Committee welcomes the positive approach being taken by Police Scotland and the COPFS in actively promoting training on this issue and in seeking a sound evidence base on which COPFS might take forward prosecutions. The Committee is keen to see how this translates into some progress

over the next 12 months in terms of the identification of incidents and prosecution levels.

Freshwater pearl mussels

27. Given the rarity of freshwater pearl mussels (FWPM), the Committee recognises that it can be difficult for the police to raise awareness of the threat posed by criminal activity, particularly as the location of colonies of FWPMs cannot always be disclosed. The Committee heard of the recent awareness raising exercise by Police Scotland, its joint working with the Scottish Environment Protection Agency as well as its work in investigating the subsequent retail sale of illegally obtained pearls.

28. The Committee also noted Police Scotland's admission that the mechanisms for reporting criminal activity in relation to FWPMs must be clearer. We were also unable to track in the Annual Report whether the five recorded offences in relation to FWPMs led to convictions.

29. The Committee welcomes Police Scotland's efforts in investigating and raising awareness of FWPM offences. It also looks forward to seeing how its work translates into outcomes in the coming year in relation to: the protection of sites; the provision of greater clarity in how to report possible illegal activity; and its investigations into potential secondary markets for illegally obtained pearls

Poaching and coursing

30. As you will know, of the 284 recorded wildlife crimes in 2014-15, fish poaching accounted for 36% of the total (101 recorded crimes). 38 of these crimes were reported to COPFS and there was a subsequent 50% conviction rate.

31. The Committee heard from Andy Smith of the Scottish Gamekeepers Association that while fish poaching is a "the biggest crime that we now have", its ghillies work very closely with the Police to highlight possible crime. In relation to the relatively high prosecution rate for fish poaching, Gary Aitken of COPFS said that this was often because two people had seen the crime being committed which would therefore "fall into a more traditional evidence set." Mr Aitken added that this is less likely for other types of wildlife crime such as raptor persecution.

32. The SGA considered deer and hare coursing with dogs to be a "major problem". While the SGA considers the recording of such poaching and coursing offences as "reasonably robust", it raised the question of whether the public perceive such crime to be less deserving of attention as it might be "perceived to be more a crime against 'property' rather than wildlife per se." The Committee heard that poaching (other than fish) and coursing are more difficult to track, as the new disaggregated data supplied by Police Scotland does not differentiate between species. The Annual Report states that a further break down of these figures will be considered for future reports.

33. The Committee welcomes the positive relationships between those who manage and work in estates and Police Scotland and the COPFS.

34. **The Committee is concerned that the new disaggregated data supplied by Police Scotland does not differentiate between species and welcomes the statement in the Annual Report that a further break down of these figures will be considered for future reports.**

35. **The Committee remains concerned that there still appear to be major problems with hare coursing and dogs and encourages Police Scotland to focus efforts in this area. The Committee would welcome further detail on this in future Annual Reports.**

Raptor persecution

36. As you wrote in the foreword to the Annual Report, “the most high profile wildlife crime is of course raptor persecution.” This was certainly reflected in our evidence; both in terms of the significant impacts such offences have on bird of prey populations and the vociferousness of stakeholders.

37. In terms of the 19% increase in raptor persecution in the past year, the Committee heard from Police Scotland that this rise may correlate with the areas covered by full time wildlife crime officers and greater reporting of possible offences in those areas. However, Assistant Chief Constable Johnson did not know whether the increase in recorded incidents meant that raptor persecution on the whole had risen or if it was due to relationships being built between wildlife crime officers and those reporting possible offences.

38. When questioned on whether those killing birds would now hide evidence of a crime rather than allow a dead raptor to be discovered, Police Scotland acknowledged that this might be the case. However, Assistant Chief Constable Johnson said that it was difficult to prioritise resources to find out whether a reduction in bird populations was necessarily linked with a rise in raptor persecution or whether it was based on “ecological effects”. Gary Aitken of COPFS added that “unfortunately, criminals learn, and our forensic techniques become public knowledge in this area just as they do in every other area” but if there was “good evidence that someone had taken to conceal the wildlife crime that they had committed—that is quite a big if, because getting that evidence would be tricky—we would view that sort of thing very seriously.”

39. Ian Thomson of RSPB Scotland said that there have been “numerous” cases in which evidence has been found concealed or partially concealed. Mr Thomson also reinforced a comment raised previously in evidence that that the level of reported wildlife crime was only the ‘tip of the iceberg’ and referred to a case in 2008 where 41 red kites had been found illegally poisoned in the north of Scotland but using population modelling it may have only represented “a quarter of the likely actual number of poisoned birds.”

40. Andy Smith from the SGA said:

“I do not know whether we totally go along with the tip of the iceberg argument. On the ground, I definitely see a massive change in what is happening and in attitudes from the situation 20 or 30 years ago in the industry. That is important from our point of view.”

41. In relation to the reporting of raptor crimes and the perceived reluctance of some individuals to speak out against raptor crime, Detective Chief Superintendent Scott said that in his experience this happened very seldomly. Ian Thomson said nevertheless considered raptor persecution as “one of the most difficult wildlife crimes to investigate because, when the Police ask for information or conduct interviews, they largely face a wall of silence” as it is often “carried out by local people, potentially as part of their employment”. Andy Smith did not however see “a culture of silence” and believed that attitudes were changing, “albeit slowly.”

42. On an organisational level, DCS Scott said that in the PAWS (Partnership for Action Against Wildlife Crime in Scotland) raptor group “each individual organisation has its agenda and priorities, but as a whole they work well together.” He nevertheless acknowledged that he had spoken candidly to some members about breaches to the voluntary PAWS protocols, such as in dealings with the media. DCS Scott added that “we are encouraging and working with partners in order to try to ensure that that does not happen.” Andy Smith referenced this conflict within the raptor group and suggested PAWS was not always “working” while Ian Thomson said that the PAWS protocols “represent progress.”

43. Nevertheless, the Committee heard clear evidence that the PAWS protocols are not being followed as Ian Thomson said:

“On withholding information and the accusation that we are not following protocols, there is a suggestion that if a satellite-tagged golden eagle goes missing suspiciously, we should go and tap on the door of the big hoose and say, “Do you mind if we go and look for this golden eagle that we suspect was illegally killed?” thereby giving the perpetrators every opportunity to clear up before we find it. The reality is that we will not do that.”

44. It is clear to the Committee that raptor persecution remains a significant problem. It nevertheless recognises the work of Police Scotland and in particular its wildlife crime officers in building relationships with stakeholders in their respective local areas. The Committee also welcomes the establishment of the raptor group within PAWS and sees this as a potentially powerful means by which to share concerns and raise awareness of issues.

45. The Committee clearly recognises the tensions and the lack of trust which exist between some member organisations. It was particularly concerned by the admission of RSPB Scotland that it openly ignored PAWS protocols. Nevertheless the Committee believes PAWS, both at community and national levels, can play an enormously important role in the prevention of wildlife crime. The statutory agencies therefore need to continue to work with and build consensus between organisations representing a wide range of conservation and land management interests.

46. As chair of the PAW Scotland Executive Group, the Committee would welcome an update from you on whether you consider it is still an important tool in fighting wildlife crime and if so, what can be done to strengthen its work and resolve conflict between partner organisations, particularly as it appears it has not met since late 2015. Also, in relation

to its voluntary protocols, are these sufficient to ensure effective working or do they need to be made mandatory?

Other issues

Scottish Society for the Prevention of Cruelty to Animals (SSPCA) investigatory powers

47. The Committee was interested to hear the divergence of views on extending the investigatory powers of the SSPCA.

48. On the one hand, Police Scotland acknowledged that there was potential to develop its relationship with the SSPCA further but unlike the SSPCA, it has the investigatory accountability which the SSPCA is not subject to. However, Assistant Chief Constable Johnson said that giving the SSPCA “the power to seize and retain evidence before informing the Police would play to the strengths of both partners.”

49. On the other hand, Ian Thomson referenced a case where the SSPCA was quickly on the scene of a gull caught in a trap on moorland but did not have the subsequent right to search for other traps. Mr Thomson therefore “strongly supports extending the SSPCA’s powers to enter land if there is suspicion that wildlife crime offences under the Wildlife and Countryside Act 1981 are taking place. Eddie Palmer commented on the speed in which the SSPCA is able to respond to incidents and therefore considered it to be an extra resource for the police. The Bats Conservation Trust would also welcome additional powers for the SSPCA providing there is clarity as to who has the “ultimate responsibility” in investigating wildlife crime. Mr Charleston added that “we need to be able to go to somebody and say, ‘This is your responsibility, and we want you to enforce the law.’”

50. The Committee is aware of the current Scottish Government review of this issue and noted that the Session 4 Rural Affairs, Climate Change and Environment Committee wrote to the then Minister for Environment, Climate Change and Land Reform as to when the analysis and conclusions will be published. One year on, the Committee now understands that you will respond to the consultation on the extension of wildlife crime investigative powers for inspectors in the SSPCA by June 2017. When you make that announcement the Committee would welcome your providing it with detail of the evidence base upon which the decision was made.

Wildlife Crime Penalties Review Group

51. The Committee is of course aware of the various pieces of work to implement the recommendations of the Wildlife Crime Penalties Review Group. **The Committee will continue to follow this work closely – both in relation to potential primary legislation and the recommendations which might be implemented by other means.** You will no doubt be pleased to learn there was certainly no dissent in evidence of the need to increase penalties as a deterrent to wildlife crime.

52. The Committee learnt from Gary Aitken of COPFS that “the Scottish Sentencing Council has advised that one of the first black-letter law areas that it will look at is wildlife crime sentencing guidelines.” **The Committee very**

much welcomes this approach and will continue to monitor the Scottish Government's progress in implementing the report's recommendations in the short to medium term. In addition, the Committee would like to know the intended timescale for when the Scottish Government plans to introduce the relevant primary legislation as outlined in its response to the Wildlife Crime Penalties Review Report on 24 February 2016.

Vicarious liability and the Land Reform Act 2016

53. The Committee heard from Police Scotland that while it takes "every opportunity to utilise the vicarious liability legislation", identifying the landowner "can be problematic". Gary Aitken of COPFS added that it also has to consider who has the beneficial right in such cases and that this "can be tricky to establish."

54. The RSPB nevertheless believed that vicarious liability provisions have had "a marked deterrent effect." Mr Thomson also considered that the establishment of a land register under the Land Reform (Scotland) Act 2016 will also be very important.

55. The Committee looks forward to considering the Scottish Governments plans for improving transparency in land ownership in Scotland. The Committee would welcome clarification from you on the anticipated timing of laying the relevant regulations for the publication of a land register, as contained within the provisions of the Land Reform (Scotland Act) 2016.

Review of the Protection of Wild Mammals (Scotland) Act 2002

56. Detective Chief Superintendent Scott warmly welcomed Lord Bonomy's recent review of the Protection of Wild Mammals (Scotland) Act 2002 and believed its recommendations would improve Police Scotland's ability to gather evidence. DCS Scott also saw no reason why the appointment of an independent monitor to oversee foxhunting "should not work".

57. The Committee acknowledges your recent response to Lord Bonomy's review and will seek updates from you on how the Scottish Government's implementation of the various recommendations are progressing. The Committee is taking evidence on this from Lord Bonomy at its meeting on 28 March.

Conclusion

58. The Committee welcomed the opportunity to look more closely at the Wildlife Crime Annual Report and shares your belief that it "continues to shine a spotlight on an area of crime that people in Scotland want to see an end to." The Committee is also aware that combating wildlife goes beyond the work of Police Scotland and COPFS and includes public education and awareness raising; the work of partner organisations such as the SSPCA, Local Authorities and academia; the many and varied stakeholders such as those who work and manage the land; the passionate work of the voluntary sector; and of course the required leadership of the Scottish Government.

59. The Annual Report is particularly useful in identifying where persecution has happened, where it is perhaps likely to happen in the future and the overall trends. Nevertheless, the Committee would like to see the data that is compiled in the Report become both more targeted and accurate to better identify trends so that greater benefits can be derived from this important document.

60. The Committee was also alarmed at the clear distrust between some stakeholders. The Committee believes that wildlife crime is everyone's problem and while it welcomes the public condemnation of such crimes by the SGA and others it is of the view that more must be done by all concerned in terms of reporting to and co-operating with Police Scotland. The Committee sees PAWS as an important vehicle in helping encourage and enable such a positive approach and wants to see its protocols being followed by all those involved.

61. The Committee therefore calls on the various groups and organisations who make up PAWS to continue to build upon these relationships and so that the benefits that can be derived from joint working are not diminished. The Committee also seeks evidence in future years of Police Scotland's partnership working with stakeholders. While the Committee saw glimpses of this in the 2015 Annual Report, it was not clear whether this was consistently the case across the board.

62. The Committee, while acknowledging the overall dedication of Police Scotland in combating wildlife crime, nevertheless notes a number of gaps in its work. This includes its intelligence on whether a reduction in wildlife in specific areas is due to natural changes to populations or reveals potential persecution. The Committee appreciates that this may require the application of resources but believes that this must be prioritised in order to get a clear picture of wildlife crime in Scotland so that the data provided in future annual reports is not just 'the tip of the iceberg'.

63. The Committee is also keen that its scrutiny of wildlife crime is not limited to the annual reporting cycle and will continue to examine issues as we consider necessary.

64. The Committee would welcome updates from you, as appropriate, on the development of the new wildlife crime unit which it heard is currently an ongoing process.

65. In relation to the points directed to you above, we would request a response by Friday 28 April.

Yours sincerely,



Graeme Dey MSP

Convener

Environment, Climate Change and Land Reform Committee