

Scottish Society for the Prevention of Cruelty to Animals: powers review: Report to Minister for Environment and Land Reform

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Background

1. The Minister for the Environment and Land Reform - Màiri McAllan, asked for a review to be undertaken as to whether the Scottish Society for the Prevention of Cruelty to Animals (SSPCA) should be given specific powers, through legislation, to allow them to investigate wildlife crime, including entering land without a warrant.
2. The review process required engagement with Police Scotland (PS), Crown Office Procurator Fiscal Service (COPFS) and Scottish Government policy officials. The process has been supported by Robyn McCormack, Scottish Government.
3. The review was a commitment in the shared policy programme between the Scottish Government and the Scottish Greens which states “The independent taskforce to consider whether the Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA) should be given extra powers to investigate wildlife crime will be asked to report back in a timeframe that will allow any changes to the Scottish SPCA powers to be delivered by legislation implementing changes to grouse and other wildlife management in the course of this parliamentary session.”

Process

4. The review period was time limited, and the exercise undertaken relied significantly on information presented in debates and motions within the Scottish Parliament – notably [Rural Affairs and Environment Committee Official Report \(12 January 2011\)](#), [Meeting of the Scottish Parliament Official Report \(2 March 2011\)](#), and [Scottish Parliament Meeting Official Report \(11 December 2019\)](#).
5. Also, a review of the current powers afforded to the SSPCA under the [Animal Health and Welfare \(Scotland\) Act 2006](#), requirements of the [Regulation of Investigatory Powers \(Scotland\) Act 2000](#) (RIPSA) and associated codes of practice, the [Wildlife and Countryside Act 1981](#), [Wildlife and Natural Environment \(Scotland\) Act 2011](#), [Protection of Badgers Act 1992](#), the [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020](#) and the associated [Wildlife Crime Penalties Review Group: report \(2015\)](#). The [Grouse Moor Management Group: report \(2019\)](#) was also considered in relation to its licensing and recommendations on raptors and predator control in particular.
6. Consideration was given to previous policy advice on the issues raised and the outcome of the 2018 initiative to tackle wildlife crime in the Cairngorms National Park through a special constables’ pilot project. Key source of reference material were the [Consultation on Wildlife Crime Investigative Powers for Inspectors in the Scottish Society for the Prevention of Cruelty to Animals \(2014\)](#) and the subsequent [consultation responses](#).

7. As part of the review process virtual meetings were held with representatives from the following organisations as a sample of those who had submitted responses to the consultation on wildlife crime investigative powers for the SSPCA. The main purpose of these meetings was to ascertain whether any significant changes had taken place since 2014 and whether the views of these organisations had changed during this time. The organisations were:
 - British Association for Shooting and Conservation (BASC)
 - Crown Office Procurator Fiscal Service (COPFS)
 - National Farmers Union for Scotland (NFUS)
 - National Wildlife Crime Unit (NWCUC)
 - NatureScot
 - Police Scotland (PS)
 - RSPB (Scotland)
 - Scottish Badgers
 - Scottish Gamekeepers Association (SGA)
 - Scottish Land and Estates (SLE)
 - Scottish Society for the Prevention of Cruelty to Animals (SSPCA)
8. The SSPCA, SGA and Scottish Badgers all submitted further written information during, or following, the meetings.

SSPCA's current responsibilities

9. The SSPCA's charitable objectives are to prevent cruelty to animals and to encourage kindness and humanity in their treatment. This relates to the purposes of the advancement of animal welfare and the advancement of education in relation to animal welfare in the Charities Act. The SSPCA view is that these objectives mean that it would be within scope of their charitable purpose to cover wildlife crime where an animal has died (as opposed to is suffering) and/or where no animal is found but there is reasonable suspicion that an activity is being undertaken that could cause suffering of an animal in future. That seems a reasonable interpretation. They are, however, prevented from directly doing so as the powers afforded under [section 19\(1\) of the Wildlife and Countryside Act, 1981](#) only extend to a PS constable.
10. The SSPCA are unable to investigate offences where an animal is not under the direct control of a person and is not being caused to suffer. It also means they are unable to investigate and, where appropriate seize, illegal traps, snares, poisonous baits and wild animals that may have died as a result of these activities. This creates a situation where the SSPCA may find themselves at a site where an animal has already died, and they are unable to directly seize any evidence and/or cannot extend their search to wider areas of land in the immediate vicinity. Whilst the SSPCA can report these potential crimes under the Wildlife and Countryside Act,

1981, either through 101 or directly to the PS wildlife liaison officer or National Wildlife Crime Unit, they are reliant on PS's ability to attend quickly to search, retrieve evidence and process this.

11. The SSPCA argue that these situations can lead to delays in gathering evidence and enforcement actions or in some situations, inadmissibility of evidence because COPFS are not satisfied that PS have led the follow-up. Other bodies representing the nature conservation interests also cite individual cases where delays in PS response have either led to a slowing down of the animal welfare aspects of a case or evidence being lost. Despite there being individual cases reported of delays there appears to be no direct and shared evidence base which can be used to validate the frequency at which delays in PS responses lead to potential wildlife crimes failing to be properly investigated.
12. The SSPCA already has a considerable track record in responding to wildlife welfare cases and rehabilitating those animals in their care. A core principle running through their 2022 Business Plan is to champion animal welfare and to educate people on good practice. There is also a strong commitment to ensuring that the Society's policies, procedures and working practices meet or exceed legal obligations and people are supported with appropriate training. It has been suggested that the offer to support wildlife crime investigations is driven by one or two individuals within the SSPCA and is not a position held at the corporate level. This was tested with the CEO and the Chief Inspector and adequate re-assurances have been provided that the offer is supported at Board and senior level and is aligned with their 10-year strategy and annual business plan.

Campaigning remit

13. Throughout the duration of the period that an extension to SSPCA powers was first raised (2010) the impartiality and ability of the SSPCA to investigate cases from the perspective of *a presumption of innocence* has been questioned by both the land management, shooting and enforcement bodies. This relates to the Charity's campaigning stance on certain practices, such as snaring and glue traps. SLE also raised concerns that senior SSPCA officials have no separation within their social media (twitter) accounts between their personal views and organisational positions and suggested that that calls into question impartiality if entrusted with an enforcement remit.
14. The SSPCA response to this is that their inspectors understand the law and respect that their role is to ensure that that is enforced. SSPCA inspectors do not publicly comment on a live investigation and the over-riding decision, and ultimate safeguard, as to whether a prosecution is within the public interest lies with COPFS. Managing perceptions of whether the SSPCA can operate under a presumption of innocence, given their campaigning remit, remains a challenge.

15. SLE also questioned the SSPCA's compliance with the Lobbying Register and Regulated Lobbying and subsequently advised the lead for the Review that they had reported the SSPCA to the Ethical Standards Commissioner for further investigation. That action has not influenced the outcome of this review. Should any errors be found in recording and reporting then that matter would be dealt with directly with advice and/or enforcement.

Evidence standards

16. The SSPCA is one of over fifty agencies, other than PS, that report cases to COPFS each year as a specialist reporting agency. This, alongside powers through the [Animal Health and Welfare \(Scotland\) Act 2006](#) gives SSPCA inspectors, the legal authority to both investigate animal welfare cases and submit these directly to COPFS. It is the responsibility of COPFS to decide whether there is sufficient evidence to prosecute and whether a prosecution is in the public interest. COPFS, and by extension the specialist reporting agencies, are required to ensure that any evidence gathered is compatible with the [Human Rights Act 1998](#).
17. Specialist reporting agencies follow [COPFS Guide for Specialist Reporting Agencies](#) and the [COPFS Disclosure of Evidence - guidance for specialist reporting agencies](#). These guides provide important safeguards around how evidence is collected, corroboration, timeliness of submission of a case to COPFS, and care over the identification of individuals identified in cases as the perpetrator. A standard reporting format is used for presenting cases to COPFS and these are submitted electronically. Through the Disclosure of Evidence guidance all specialist agencies are required to reveal and where appropriate, provide to the Crown all information, which may be relevant and has been obtained or generated during an investigation. If there is any doubt over whether information should be supplied the advice is that it must be submitted. These are important safeguards which, with appropriate feedback mechanisms in place to address issues in evidence gathering and submissions, ensures a cycle of continuous improvement.
18. The guide for specialist reporting agencies clearly states that *"the approach of most agencies will be to secure compliance with the law by educating and offering advice in the first instance and enforcement of provisions by direct action may be the next step. Reporting cases to the Procurator Fiscal will be seen as a last resort."* Under their animal welfare powers the SSPCA dealt with 188 cases, 33 assisting the police and 155 direct. 28% of these cases were reported to COPFS. The SSPCA purpose clearly aligns with the educate and advise first course of action as it is expressed as *"To provide the support and knowledge people need to protect the welfare of the companion, wild and farmed animals in their lives"*.

Organisational positions

Animal welfare/nature conservation and land/sporting management

19. The views expressed by organisations are unsurprisingly split between those who actively promote an extension of powers (Animal welfare and conservation: SSPCA, RSPB Scotland and Scottish Badgers) and those who are against further powers (Land management and sporting: BASC, NFUS, SLE, and SGA). The views held have not substantially changed since the 2014 consultation and in some cases the strength of belief about whether powers should, or should not, be extended are stronger now.
20. Both sides of the debate acknowledged that since 2014 there have been further legislative changes that have improved the detection and deterrents for wildlife crime. These include the increase in penalties for wildlife crime, greater partnership working on joint initiatives and educational activities, the introduction of covert surveillance and the 'deterrent' of a successful prosecution under vicarious liability. In addition, scientific (forensic) advances, improved sensitivity of tracking devices and more rapid transmission of data for enforcement purposes have contributed to more detection of, and a greater likelihood of, successful prosecutions.
21. The land management and sporting interests argue that these changes have all helped to raise standards within the land management sector, with standards being written into employment contracts and landowners and/or managers taking swift action on 'suspicion' of poor or illegal practices. The land and sporting management organisations also argue that extending powers to the SSPCA would lead to challenge under the [Human Rights Act 1998](#), in particular under Article 8 "*by affecting a person's right to respect for their private and family life, home and correspondence*". This argument is often counteracted with the argument that if these individuals are doing nothing wrong then they have nothing to fear from extended powers. Such arguments are somewhat superficial and belie the complexities of the Human Rights issues at play.
22. It is hard to argue against the view that it has taken layering of legal and regulatory action to try to move the land management sector into improving its practices. Little of this has come voluntarily. The animal welfare and nature conservation organisations argue that bringing another layer of resource to investigate potential crimes could serve to drive further positive change.
23. The Scottish Government itself stated in response to the [Grouse Moor Management Group: report \(2019\)](#) that despite the range of measures introduced to tackle wildlife crime that it still continues; citing in particular raptor persecutions. The [Wildlife Crime Scotland 2020 Annual Report](#) stated that 196 offences relating to wildlife were recorded by the police (2019-2020); an increase of 13% on the previous year. Whilst crimes against birds dropped by 22% it was still one of the most recorded types of crime (36 offences). The Scottish Government have been clear that self-regulation has not led to sufficient change and that further

intervention would be required. The forthcoming licensing of grouse moors is considered an important mechanism that can be applied to drive appropriate behaviours and standards, with those failing to meet the standards potentially losing the ability to manage a grouse moor. The ultimate sanction of not issuing a licence, or withdrawing a licence, for grouse moor management should act as an additional deterrent. However, there will always be situations where individuals commit crime whatever the level of controls are, and the test perhaps is whether sufficient steps are in place to minimise the likelihood of a crime being committed.

PS/NWCU

24. PS and NWCU have expressed concerns about an extension of powers stating that the primacy of PS in investigating wildlife crimes should be respected. Concern is also expressed that the SSPCA would be able to 'elect' which cases to progress whilst PS are required to log and investigate all incidents reported to them.
25. Additionally, PS cite improvements in recognising, logging and grading a wildlife crime in the PS Command and Call centre, through a flag that is reviewed on a (near) daily basis by the Wildlife Crime Liaison Officer(s). PS state that around 5000 incidents are reviewed daily with an average of 5 suspected wildlife crime incidents reported to police each day. These figures relate to incidents reported through channels such as 101/999 or online reporting via the PS website, but do not include incidents reported directly to the Wildlife Crime Liaison Officers by partners or the public. The logging system in the Command and Call centre is also designed to flag cases where evidence may be lost through a delay in responding and priority is attached to following these up. If embedded effectively within PS processes and culture this system could be an effective mechanism to address issues raised around response times leading to loss of evidence.
26. PS have introduced enhanced training which includes a wildlife crime officer (2-day induction), investigator training (1-week long training course repeated twice a year) and more advanced training, for example on RIPSAs to give officers a better understanding of the law and how to apply for surveillance. Joint education initiatives and partnership approaches to responding to crime are also considered to be more effective. Both PS and NWCU are keen to continue to work in, and strengthen, partnership training approaches with the SSPCA and recent examples of senior investigators contributing to PS training were cited. A commitment to embedding wildlife crime training across PS, beyond the dedicated wildlife crime officers, would be another step towards improving the response to these crimes.
27. These steps by PS are all welcomed by the animal welfare and conservation organisations, with NatureScot noting much better co-ordination and regular communications in recent times with the NWCU. Nonetheless these organisations also still highlighted concerns over the level of resource that PS can commit to tackling wildlife crime. Cases were cited of delays in responding to gathering and

processing evidence which may have led to a loss of evidence or cases becoming time barred. In some cases, these might be down to staffing gaps (e.g. rota, holiday or sick absences) in individual areas. In other cases, these may be down to the Wildlife Crime Officer being diverted to deal with a situation that requires immediate resource deployment, such as a road traffic accident.

28. Some of the views expressed during the review process were that the SSPCA would also have resource constraints in responding to wildlife crime, not least because they report a significant rise in animal welfare cases figures since 2020. The SSPCA counter this by highlighting that their 10-year strategy is about investing in frontline resources and diversifying their income streams to achieve this. They also have a geographically distributed network of 63 inspectors who could respond to cases and with animal welfare – including responding to death or preventing future harm – being their primary focus, that they are more able to commit resource to respond to cases.
29. It has not been possible during the review to secure sufficient data, as opposed to ad hoc reports, on the number of cases where this has occurred or the timing of such cases. Every organisation must manage situations of prioritisation and/or where there is capacity constraint at times. This does not necessarily mean that the fundamental system in place is flawed and merits a systemic change.

Intelligence and forensics

30. PS and the NWCUC express concerns that extending powers to the SSPCA could result in wider crime investigations being disrupted and/or becoming an obstacle to being able to step back and deploy wider investigating powers such as covert (directed or intrusive) surveillance. Under the current [Animal Health and Welfare \(Scotland\) Act 2006](#) powers and protocols in place, it is the case that some SSPCA logged incidents can trigger a flag on the Scottish Intelligence Database (SID). This leads to a conversation with PS and the SSPCA may be asked to stand down. PS and NWCUC have highlighted reservations that it is not just serious crimes which could be interfered with and there is a wide range of lower impact cases which may be affected. It is also noted that it is not necessarily a quick process for the Scottish Intelligence Unit to find out if there is intelligence suggesting that the SSPCA should not enter land.
31. The SSPCA's access to forensic evidence to appropriately follow up on cases has also been questioned by some stakeholders. It was also noted that the SSPCA do not appear to have the in-house expertise to be able to contribute to the Partnership Against Wildlife Crime (PAW) Science Group who are exploring new science breakthroughs and their application to

crime cases (such as retrieval of DNA from feathers). The argument of not being able to offer direct expertise on the PAW Science Group is of less significance provided steps are in place to have the right experts on the group and for information on the latest techniques to be appropriately shared with enforcement bodies or they contract in that expertise. Access to forensic expertise does not appear to be a significant barrier to change as the SSPCA already have agreements in place with expert providers, some of whom also provide analytical skills to PS.

Health and safety/ at risk

32. PS also raise concerns over the increased risks to the health and safety of SSPCA inspectors who may be entering land, or under warrant properties, where there are firearms. The argument is that the PS equipment, protocols and back-up in place in situations which may escalate could not be replicated for the SSPCA. SSPCA would counter this argument by stating that they already have effective risk assessment and management processes in place which SSPCA inspectors follow to assess risk and to stand down from situations until PS support can be provided. If additional powers were granted the detail of the actual training and protocols in place would need to be thoroughly assessed to ensure that the risks are appropriately managed. This review would best be conducted as a joint exercise between PS and the SSPCA.

COPFS

33. COPFS do not offer a direct view on whether powers should be extended or not, maintaining the line that it is a matter for Ministers to determine. In relation to concerns that have been raised about evidential standards COPFS note that these have and should continue to be addressed through appropriate training, written materials, and established protocols for information sharing. Feedback loops already exist for animal welfare cases submitted by the SSPCA to COPFS. These have proved beneficial in addressing issues and improving the standards of evidence gathering and reporting. COPFS also highlight standards in evidence gathering, processing and reporting is not just an issue for the SSPCA, but equally applies to PS and other specialist reporting agencies. Challenges made over evidential standards therefore do not seem to be a significant barrier to the powers' discussion.

Scenarios

34. Through the review process some scenarios have been tested which would give different levels of additional powers to the SSPCA which might assist PS with detecting, investigating and processing evidence for wildlife crime. Consideration has also been given to whether appropriate protocols exist, or could be developed, to manage the more significant of the concerns which have been raised.

35. Scenarios include:

Scenario 1 - S19 powers of the Wildlife and Countryside Act 1981 afforded to the SSPCA. This would give them the powers, if wildlife crime is reported directly to them, to:

- i. Enter land, other than a lockfast or dwelling, without a warrant and seize and appropriately hold evidence during an investigation and presentation of a case to COPFS.
- ii. Take any machinery, other equipment, or materials on to the land, for the purpose of assisting the inspector in the exercise of their powers.
- iii. Take samples of any articles or substances found and remove the samples from the land for testing.
- iv. Bring other specialist expertise, except PS, onto the land.
- v. Apply for a warrant to search premises/lock fast.

The powers would, however, be limited by excluding the powers to stop or search a person or to arrest an individual.

Scenario 2 – Create powers that enable the SSPCA simply in situations where they are already responding to a case under their existing powers in the [Animal Health and Welfare \(Scotland\) Act 2006](#), to then proceed to seize a dead animal and equipment and/or to conduct a search on the land, or immediate neighbouring land without a warrant. SSPCA would be able to seize and appropriately hold and present evidence to COPFS.

Limiting scope: Scenario 1 and 2 – could be further limited in scope by:

- i. removing the powers to bring in other specialist expertise (usually a vet or an ecologist). In these situations, following clear protocols, the case would be handed over to PS who would assume the lead role and co-ordinate the partnership response and the specialist expertise required (that expertise of course might come from the SSPCA inspector).
- ii. removing the ability to apply for a warrant to search premises/lock fast. In situations where a warrant is required to extend the search this would be applied for by PS who would lead the follow-up response. This might help mitigate against the arguments which are proffered around contravention of Article 8 of the [Human Rights Act 1998](#).
- iii. limit the scope of the search either by land ownership or by specifying a search area. Again, this might help mitigate against some of the concerns raised in relation to Article 8 of the [Human Rights Act 1998](#).

36. Neither Scenario 1 or 2 would give the SSPCA any specific powers for covert surveillance, which are granted to public authorities under the [Regulation of Investigatory Powers \(Scotland\) Act 2000](#) and associated codes of practice.

37. If either Scenarios 1 or 2 were to be pursued these would need to be accompanied by protocols being established, including:

- i. Set clear, and legally binding, codes of practice which would set out the handover

- details of evidence between the SSPCA and PS.
- ii. Clear protocols and procedures for flagging wider crime investigations and ‘flags’ which would mean that the SSPCA should stand-down unless requested to assist by PS.
 - iii. Protocol where SSPCA would log that they were entering land under S19 with 101 (or another number) prior to doing so, to mitigate against challenge that there is not reasonable cause.
 - iv. Procedures which would enable independent scrutiny of SSPCA handling of cases which go beyond the internal HR processes of the organisation given the public interest around appropriate enforcement (i.e. analogous to the public scrutiny afforded by [Police Scotland’s Professional Standards Department](#) and the [Police Investigations and Review Commissioner](#)).
 - v. Established training and protocols on assessing health and safety risks to SSPCA inspectors and procedures for standing back until PS assistance can be provided.
38. **Scenario 3 – Enhanced Partnership Working.** Irrespective of the debate around enhanced powers it is clear there is a desire to continue and enhance partnership working as a means of tackling wildlife crime. Partnership working to address wildlife crime takes place through the Partnership for Action Against Wildlife Crime (PAW), and the priority delivery groups for the seven priorities: badger crime, bird of prey crime, freshwater pearl mussels, poaching (fish, deer and hare coursing), cyber, CITES and bat crime. The NWCU signal that these delivery groups are bringing in a structure under the 4 P’s system to *“establish a single whole system approach, expanding our global reach and pooling skills and expertise to tackle wildlife crime”*.
- Pursue: Prosecuting and disrupting wildlife crime offenders and organised crime groups.
 - Prepare: Reducing the impact of wildlife crime offending.
 - Protect: Increasing protection of wildlife against offenders.
 - Prevent: Preventing people from engaging in wildlife crime.
39. During the review contributors have also suggested that there should be:
- i. Renewed leadership of the PAW programme of activities with the Group co-chaired by the Minister and a senior PS official and progress measured on clearly stated plans and measures of success. Progress could be reported to Parliament to provide additional scrutiny.
 - ii. PAW priorities should be set by the enforcement agencies (PS, NatureScot and Scottish Environment Protection Agency) to avoid being diluted by organisations, on either side of the arguments, who have vested interests.
 - iii. NatureScot who have existing powers to ensure compliance with licences should be directed to allocate sufficient resource and expertise to ensuring compliance with these licences and taking appropriate and timeous action where this is not the case.
 - iv. Protocols should be established between PS and supporting partners which

- enable a more direct route, other than through 101, which enables these bodies to directly highlight a potential crime and seek PS follow up.
- v. Training should continue, and be strengthened, to ensure that all PS officers are adequately trained on wildlife crime issues. There should be appropriate input to that training from partners – through agreed, stated protocols.
 - vi. There should be a stronger focus on educating the public about what constitutes wildlife crime and how this should be reported for investigation.
 - vii. Steps should be taken by PAW to review and reconcile the information which is gathered on the number of wildlife crime cases which are reported, the actions taken to address these and the timelines for processing whether the outcome of that is not to pursue or to present to COPFS for prosecution.
40. One issue which is difficult to address through procedures alone is managing the perception that a campaigning organisation, such as the SSPCA, cannot act with a *clear presumption of innocence*, and this could lead to further challenges and distraction of resource. The ultimate safeguard might, however, be that COPFS decides whether a prosecution is in the public interest. There is also the safeguard of Article 6 of the [Human Rights Act 1998](#) which seeks to ensure that everyone has the right to a fair trial and that evidence is appropriately disclosed.

Recommendation

41. It is evident that without the full institutional support of COPFS, PS and the NWCU an extension of powers, whatever the scope of those might be, to the SSPCA would be fraught. Such institutional support is not readily forthcoming due particularly due to concerns over primacy of responsibility, access to intelligence or interference with other cases and health and safety risks to personnel.
42. There is, however, a strong commitment to partnership working, alongside the other controls already in place, to tackle wildlife crime. Scenario 3 is therefore the recommended course of action, alongside the additional control that will come through the licensing of Grouse Moors.

Susan Davies, FRSB
SSPCA Powers – review lead

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