

Respondent Information Form

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately



1. Name/Organisation

Organisation Name

OneKind

Title Mr Ms Mrs X Miss Dr *Please tick as appropriate*

Surname

Anderson

Forename

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3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

Are you content for your ***response*** to be made available?

Please tick as appropriate

X Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

X Yes

No

Consultation Response Form

Q1. Do you agree that the law in Scotland should be changed to give the SSPCA the powers as set out in section 4.1?

Yes No

Q2. Please set out your reasons for your answer to Q1.

We are pleased that the Scottish Government is considering allocating powers to the Scottish SPCA in connection with the investigation of wildlife crime, so that its Inspectors will be able to enter land (other than dwellings or lockfast premises), to search for, search or examine things if they suspect that evidence will be found in or on that thing, to seize evidence, and to enter other premises on the authority of a warrant.

OneKind strongly supports these proposals.

As an animal protection charity OneKind seeks to end animal suffering by ensuring consistent legal protection for animals reflecting modern scientific knowledge of animal sentience, and moving away from historic prejudice or outdated attitudes towards predators and “pest” species. We welcome the wider discussion of wild animal welfare principles generated by Scottish Natural Heritage in recent papers and we hope to see the agency build on these^{1, 2}. We also believe that government should receive independent advice on wild animal welfare in the same way as it does for farmed and companion animals.

Wildlife crimes are particularly difficult to investigate due to the often remote areas where they take place, and the lack of visibility of the offence. Nonetheless it has been acknowledged that wildlife crime in Scotland, from raptor poisoning to hare coursing to the illegal use of traps is a stain on our society that is proving extremely difficult to eradicate. As the Minister for Environment said in his foreword to the first Wildlife Crime report in 2012:

“It can be barbaric and cruel and is very often hugely detrimental to the conservation status of wildlife. When I closed my speech at the 20th Annual Wildlife Crime Conference earlier this year I demanded that we protect those animals that are unable to speak for themselves.”³

OneKind endorses that view. Unfortunately our experience of reporting concerns or offering evidence of suspected offences against wild animals is that these are not

¹ Commissioned Report No. 630 Applying wildlife welfare principles to individual animals
http://www.snh.org.uk/pdfs/publications/commissioned_reports/630.pdf

² Commissioned Report No. 629 Applying wildlife welfare principles at the population level
http://www.snh.org.uk/pdfs/publications/commissioned_reports/629.pdf

³ <http://www.scotland.gov.uk/Resource/0043/00434716.pdf>

consistently and adequately addressed, for a variety of reasons – lack of resources, police priorities, lack of knowledge by call takers, or issues of admissibility. There are experienced specialist wildlife officers in Police Scotland, but there are not nearly enough of them and it cannot be guaranteed that a report from the public will reach the appropriate person in time to prevent further unnecessary suffering or preserve evidence at the scene.

We agree with the observation in the consultation document that:

“When incidents are discovered it is often impossible for police officers to attend the scene quickly and delays increase the likelihood of evidence being destroyed – either deliberately or a simply as a result of exposure.”

OneKind would therefore expect responsible individuals and organisations around the country to welcome the prospect of a further cadre of over 60 trained inspectors with expertise in evidence-gathering being deployed wherever offences against wild animals are suspected.

The Scottish SPCA is a reporting agency to the Crown and, as discussed in the consultation document, under the Animal Health and Welfare (Scotland) Act 2006 individual Inspectors have specific rights of entry to non-domestic and domestic premises (the latter with a warrant) for the relief of suffering and the investigation of relevant offences against animals. These powers were introduced by the Minister then responsible for animal welfare in acknowledgment of the functions already being performed by the Scottish SPCA and its excellent reputation for enforcing the previous Protection of Animals (Scotland) Act 1912.

OneKind has made enquiries of the Crown Office regarding the numbers of prosecutions and convictions achieved by the different reporting agencies under the 2006 Act. As an example, according to our calculations, the rate of convictions in completed Scottish SPCA cases under section 19(2) of the 2006 Act was 83% in 2012-13, compared with a rate of 46% in completed police cases during the same period. For section 24, albeit with fewer cases to go on, the Scottish SPCA conviction rate was 73% and the police conviction rate 25%.

These data demonstrate the pre-eminent role of the Scottish SPCA in bringing cases under Scotland’s main animal welfare legislation, with a significant success rate. To say that is by no means to denigrate the work of the local authorities and police, who play a key enforcement role, and many cases reported by the Scottish SPCA are investigated in partnership with these and other agencies⁴. Nonetheless the large number of Scottish SPCA cases, and the high rate of successful convictions, indicates the great value of having a specialist agency to investigate and report domestic animal cases to the Crown. The lack

⁴ A table of prosecutions and convictions under the Animal Health and Welfare (Scotland) Act 2006 is shown at Appendix 1.

of equivalent powers under the Wildlife and Countryside Act 1981 is anomalous and out of step with our knowledge of the capacity of wild animals to suffer due to illegal conduct by humans.

As the law stands, throughout the whole of Scotland, Scottish SPCA Inspectors can obtain warrants under the 2006 Act to enter houses in relation to animal welfare offences involving companion animals, agricultural animals and wild animals that have been made captive. If an Inspector finds a live animal in an illegal trap or snare he or she can exercise powers under the 2006 Act. But if dozens of illegal traps or snares are found, none of which contains a live animal, the Inspector has no powers to act and must call for police assistance before the offence can be investigated under the 1981 Act.

It seems to us both appropriate and helpful to permit Scottish SPCA Inspectors to gather evidence about actual, historic or potential offences against animals, to provide that this is done in a responsible manner, and to ensure that all parties understand the legal position. OneKind believes that the proposed measures could bring significant improvements in the detection of wildlife crime and the protection of Scotland's sentient wild birds and animals.

OneKind is aware that some doubt has been cast on the appropriateness of extending Scottish SPCA powers so that it can fully investigate wildlife crimes. Comments have been made about the Scottish SPCA's objectivity, simply because it opposes certain activities on policy grounds. Proponents of this view should be invited to provide evidence of any incident where Scottish SPCA Inspectors have carried out an investigation for reasons other than enforcement of the law.

The issue of accountability was raised in 2010, at the time of the Wildlife and Natural Environment (Scotland) Bill in the Scottish Parliament⁵. Examples were given of two wildlife issues on which the Scottish SPCA has expressed a policy view, namely the licensed guga hunt on Sula Sgeir and the continued use of snares.

It is important to understand the difference between taking a policy position based on operational experience, as the Scottish SPCA does (on snares, for example), and carrying out organised public campaigns on such issues, as OneKind does.

The Scottish SPCA, along with other mainstream animal protection groups such as OneKind, has long sought to use proper means to educate the public about activities that cause animals to suffer and to bring about changes to the law. However, these policies are separated from operational matters and we cannot recall anyone criticising the Scottish SPCA for speaking out on issues such as puppy farming or badger baiting. There may therefore be an element of subjectivity in the concerns being expressed.

The spectre of so-called "private inspectors" was also raised during the Bill's passage. Views were expressed that inspectors appointed under the Wildlife and Countryside Act

⁵ Supplementary written submission from Sheriff T.A.K.Drummond QC
<http://archive.scottish.parliament.uk/s3/committees/rae/bills/WANE/documents/Sheriffdrummondformatted.pdf>

1981 should not have greater powers than police officers, and should not carry out the investigation of crime⁶.

We believe that the current proposal is proportionate - it provides that the rights of entry of the police and Scottish SPCA Inspectors would be the same. Concern about human rights intrusions must be allayed by the requirement for a warrant to be obtained before entry can be taken to dwellings or lockfast premises.

OneKind agrees that accountability is absolutely fundamental to the protection of citizens' rights and that, theoretically, devolving power to a non-governmental body could impinge on those. We would point out, however, that the Scottish SPCA has had enforcement powers at least since the time of the 1912 Act and in order to safeguard that status it has always required high standards of its Inspectors and set in place appropriate procedures. Rigorous internal processes are in place regarding the authorisation of potentially sensitive investigations. Protocols are in place with local authorities and police for the sharing of information and responsibility about different kinds of cases.

These are not the actions of an out-of-control or unaccountable organisation. If that unlikely scenario were to arise we would suggest that the Crown Office, as the public prosecution service, would swiftly require the organisation to moderate its behaviour.

Finally, we point out that the Scottish SPCA is subject to the authority of the Office of the Scottish Charity Regulator which has powers to investigate and regulate the conduct of charities.

We reiterate that ending the anomaly regarding Scottish SPCA powers to investigate wildlife crime will, in our view, bring benefits to Scotland's wild animals and to the communities that appreciate them.

⁶ Sheriff Drummond Stage 1 evidence <http://archive.scottish.parliament.uk/s3/committees/rae/or-10/ru10-1902.htm#Col3045>

Q3. If you would prefer to see changes to the SSPCA's powers to investigate wildlife crime other than those set out in section 4.1, please describe them.

We are satisfied with the proposals in section 4.1.

Please return the completed forms to: sspcaconsultation@scotland.gsi.gov.uk

Annex 1: Outcomes of Charges under Part 2 of Animal Health and Welfare (Scotland) Act 2006, by Reporting Agency						
Charge Code	Offence	Agency Name	Outcome	2010-11	2011-12	2012-13
Unnecessary suffering						
Section 19(1)	Causing unnecessary suffering to an animal by an act, having known, or ought reasonably to have known, that the act would cause suffering or be likely to do so	Police	Convicted	26	12	19
			Not Convicted	15	27	10
			Ongoing			4
		SSPCA	Convicted	2		1
			Not Convicted	1		1
Section 19(1) Total				44	39	35
Section 19(2)	As a responsible person, causing unnecessary suffering as above, by an act or an omission	Local Authority	Convicted		2	1
			Not Convicted	3		
			Ongoing			4
		Police	Convicted	5	15	6
			Not Convicted	7	7	7
		SSPCA	Convicted	69	84	70
			Not Convicted	28	30	12
Ongoing			1	60		
Section 19(2) Total				112	139	160
Section 19(3)	As a responsible person, permitting another person to cause unnecessary suffering by an act or omission, or failing to prevent it	Police	Not Convicted			1
Section 19(3) Total						1
Mutilation						
Section 20(1)(A)	Carrying out a prohibited procedure on a protected animal (for example, tail-docking a dog)	Police	Not Convicted	4		
			SSPCA	Convicted	1	
		Not Convicted	1	1		
Section 20(1)(A) Total				6	1	1
Section 20(1)(B)	Causing a prohibited procedure to be carried out on a protected animal	SSPCA	Convicted	1		
Section 20(1)(B) Total				1		
Section 20(2)	As a responsible person, permitting another person to carry out a prohibited procedure on a protected animal, or failing to prevent	SSPCA	Convicted		1	

	it					
			Not Convicted	2		
Section 20(2) Total				2	1	
Section 20(3)	Taking a protected animal out of Scotland for a prohibited procedure or causing it to be taken	-	-	-	-	-
Cruel operations						
Section 21	Performing an operation, allowing another to perform an operation, or failing to prevent an operation on an animal without due care and humanity	-	-	-	-	-
Animal fights						
Section 23(1)(A)	Keeping or training an animal for a fight	SSPCA	Convicted	1	2	
			Not Convicted	1	1	
			Ongoing			2
Section 23(1)(A) Total				2	3	2
Section 23(1)(B)	Possessing equipment for use at an animal fight	SSPCA	Not Convicted	2		
Section 23(1)(B) Total				2		
Section 23(2)	Causing or arranging, betting on or taking part in an animal fight	SSPCA	Convicted		2	
			Not Convicted		2	
Section 23(2) Total					4	
Section 23(3)	Attending an animal fight	SSPCA	Not Convicted		3	
Section 23(3) Total					3	
Section 23(4)	Supplying, publishing, showing or possessing a video of an animal fight	SSPCA	Not Convicted		1	
Section 23(4) Total					1	
Ensuring welfare of animals						
Section 24	Failing to take reasonable steps to ensure that the needs of an animal for which a person is responsible are met to the extent required by good practice	Local Authority	Convicted	2		2
			Not Convicted	1		
			Ongoing			3
		Police	Convicted	1	3	1
			Not Convicted		3	3
			Ongoing			1
		SSPCA	Convicted	13	17	8
Not	18		9	3		

			Convicted			
			Ongoing			13
Section 24 Total				35	32	34
Care notices						
Section 25(7)	Failure in a material regard to comply with a care notice	Local Authority	Convicted	1		
			Ongoing			2
Section 25(7) Total				1		2
Abandonment						
Section 29 (1)(A)&(B)	Abandoning an animal for which a person is responsible, in circumstances likely cause it unnecessary suffering	SSPCA	Convicted		1	
			Not Convicted			2
			Ongoing			1
Section 29 (1)(A)&(B) Total					1	3
Section 29(2)(A)&(B)	Leaving unattended an animal for which a person is responsible and failing to make adequate provision for its welfare	Police	Not Convicted	3		1
			SSPCA	Convicted	6	6
		Not Convicted		3		
Section 29(2)(A)&(B) Total				12	6	5
Disqualification orders						
Section 40(11)	Breach of a post-conviction order disqualifying a person from owning, keeping or other specified activities connected with animals	SSPCA	Convicted	1		4
			Not Convicted			4
Section 40(11) Total*				1		8
*Further detail not disclosed as small number in sample might allow identification of accused						
Source: Crown Office and Procurator Fiscal Service case management database, information requested by OneKInd						