

Sheila Voas MRCVS
Chief Veterinary Officer (Scotland)
Scottish Government
Edinburgh

21st Feb 2020

Re: The welfare of the St Kilda Sheep:

Dear Sheila

On 27 Jan we sent you a copy of a letter addressed to the signatories of the St Kilda Management Plan. We enclose copies of the three replies we have received.

None of the replies satisfactorily addresses our concerns and we would like to explore how to take this further. In a reply to a paper we wrote in the *Hebridean Naturalist* the National Trust for Scotland (NTS) have conceded that the feral sheep on St Kilda are protected animals under the Animal Health and Welfare (Scotland) Act 2006. We assume therefore that the legal opinion referred to by [Redacted – CEO of National Trust for Scotland] must absolve NTS of responsibility on the basis that they are not (or claim not to be) the owners of the sheep. Our understanding of the legislation is that ownership is not the only criterion defining the responsible person(s) and that there is a hierarchy of responsibility as illustrated in the Guidance on the Welfare Provisions (Part 2) of the Act by the example of a horse in livery. Page 3 paragraph 12 states:

... "Where a DIY livery arrangement had been made, the livery yard operator would not normally be expected to have a responsibility for the day to day welfare of the animal. However, he or she would have a responsibility for the welfare of a horse if the horse owner or the person contracted to take care of the animal failed to attend to it."

The example would suggest that NTS, as owners and managers of the islands, are responsible for the welfare of the sheep regardless of ownership.

Are we wrong in our interpretation of the Act or the Guidance? If so, does the legislation need to be amended?

We hope you share our concerns and, if so, we would be grateful for your opinion and for any actions you can take to address this matter.

[Redacted]

[Redacted]
Isle of
Benbecula
Western Isles

**Director of
Heritage**
Longmore House
Salisbury Place
Edinburgh EH9
1SH

Our case ID: 300041553 10

February 2020

Dear [Redacted]

The Welfare of the

St Kilda Sheep

Thank you for your letter of 27 January to [Redacted] about the welfare of the St Kilda Sheep. I have been asked to reply.

You have noted in your paper that the Soay sheep have been a wild population for hundreds of years and are a rare living reminder of the prehistoric occupation of the archipelago. With the exception of the St Kildans occasionally taking the sheep from Soay, they have been living as a wild breed.

Historic Environment Scotland is a partner in the 6 World Heritage Site Management Plans in Scotland but has a variety of roles and responsibilities across the very different sites. The management of the St Kilda World Heritage property is led by the National Trust for Scotland. They lead on the management of the cultural and natural heritage of the islands so for further information on the management of the flora and fauna we recommend that you contact [Redacted] at the Inverness office of the National Trust for Scotland [Redacted].

If you wish to discuss Historic Environment Scotland's role in World Heritage further, please speak to [Redacted], our Head of Archaeology and World Heritage [Redacted].

Yours sincerely

[Redacted] | Director of Heritage

Historic Environment Scotland - Longmore House, Salisbury Place, Edinburgh, EH9 1SH Scottish
Charity No. **SC045925**
VAT No. **GB 221 8680 15**

[Redacted]
Isle of Benbecula
Western Isles

10 February 2020

Dear [Redacted]

The Welfare of the St Kilda Sheep

Thank you for your letter dated 27 January concerning the welfare of the feral sheep on St Kilda.

This issue has arisen from time to time and we have taken legal advice on the matter and feel confident that our current approach is consistent with legislation. We understand there are moral and ethical issues too, and we consider these in the context of other wild and feral animals such as deer and goats that inhabit Trust properties. Other than for habitat management purposes we adopt a policy of least intervention.

Whilst we have no immediate plans to revise our policy or practice on St Kilda we will keep the situation under review and reflect any changes in legislation if they emerge.

Yours faithfully

[Redacted]

FROM THE CHIEF EXECUTIVE
The National Trust for
Scotland

Hermiston Quay, 5 Cultins Road
Edinburgh EH11 4DF

Tel: 0131 458 0200 Fax: 0131 438 0201 Email:
information@nts.org.uk Web nts.org.uk

The National Trust for Scotland for Places of Historic Interest or Natural Beauty is a charity registered in Scotland, Charity Number SC007410
Patron - HRH The Prince Charles, Duke of Rothesay KG KT GCB OM
President - Neil Oliver, Chairman - Sir Mark Jones, Chief Executive - [Redacted]

[Redacted]
Isle of Benbecula
Western Isles

12 February 2020

Dear [Redacted]

Thank you for your letter of 27 January 2020 to the Right Honourable Ben Wallace MP, Secretary of State for Defence, and your concerns about the feral sheep population on St Kilda. It has been passed to the Defence Equipment and Support area of the Ministry of Defence (MOD) which is responsible for the defence facility on the island; operated on our behalf by a private company, QinetiQ.

While I understand your concerns, the issues you raise are not something the MOD can help with.

As you may be aware, the defence establishment on St Kilda is on land leased from the National Trust for Scotland (NTS) which owns the island. While the MOD is a signatory to the St Kilda Management Plan, this is only in relation to our facility and not the management of the land. As such, matters concerning the island sheep and the land they graze are for the NTS.

I'm sorry to send what I know will be a disappointing response, but I would like to wish you well with your endeavours.

Yours sincerely

Defence Equipment & Support Secretariat
Ministry of Defence

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[Redacted]
Isle of Benbecula
Western Isles

28th February 2020

Dear [Redacted]

The Welfare of the St Kilda Sheep

Thank you for your letter of 21st February 2020 providing me with responses from the signatories of the St Kilda Management Plan.

I am afraid that I have not had sight of the reply, mentioned in your letter, from the National Trust for Scotland suggesting that the feral sheep on St Kilda are protected animals under the Animal Health and Welfare (Scotland) Act 2006. The letter you received from the Chief Executive of that organisation on 10th February 2020 would not appear to support that contention.

Animals protected under the Animal Health and Welfare (Scotland) Act 2006 are defined as those that are:

- (a) of a kind which is commonly domesticated in the British Islands;
- (b) under the control of man on a permanent or temporary basis; or
- (c) not living in a wild state.

The Scottish Government considers that, for the purposes of welfare legislation, the St Kilda sheep should be regarded in the same way as an unowned and unmanaged population of wild deer or other wild animals. We view that the provisions of the 2006 Act:

- (a) can be considered not to apply as although sheep as a species are commonly domesticated in the British Islands, the current populations of sheep on St Kilda, through an accident of history, can now be considered as distinct kinds that are not commonly domesticated" in the British Islands;
- (b) would only apply if and when sheep are gathered up for a particular procedure - otherwise they are not under control as they are free to move anywhere; and
- (c) does not apply as the sheep are feral animals "living in a wild state".

I consider that the analogy of a DIY livery arrangement would not apply to the situation of the St Kilda sheep. In the case of such an arrangement, the horse

would be a legally defined 'protected animal' under the control of its owner against whom pressure might be brought to bear to provide for its welfare. In the case of the St Kilda sheep there is no such owner, although the National Trust for Scotland owns the land on which they live.

Whilst there may be no legal obligation to intervene to alleviate suffering in free-living wild animals, there is an argument that a moral responsibility applies in situations that are managed or artificially created and where human intervention of some sort is practical, for example to euthanase animals with severe injuries or severe emaciation.

My understanding when this was discussed a few years ago is that the National Trust for Scotland warden on St Kilda would not be expected or able to intervene to euthanase sheep for practical reasons. The response from their Chief Executive notes that they adopt a policy of least intervention with regard to the wild or feral animals that inhabit their properties.

I hope this reply is helpful.

Yours sincerely

SHEILA VOAS
Chief Veterinary Office for Scotland

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From: [Redacted @gov.scot]
Sent: 18 May 2020 16:58
To: [Redacted @gov.scot]; [Redacted @gov.scot]
Subject: FW: (Case Ref: AA3758)

[Redacted @gov.scot]

Hope you are both keeping safe and well. I'd be grateful for your thoughts on the attached Micase case from Alasdair Allan forwarding correspondence from [Redacted] on the feral sheep on St Kilda. There is a question about licensing under the Wildlife and Countryside Act 1981 that I am unable to answer. Would either of you be placed to answer the correspondence on that angle.

Animal Welfare has already been involved in terms of the Animal Health and Welfare (S) Act 2006 which does not cover the St Kilda sheep. I've attached [Redacted]'s letter and reply from Chief Vet Officer Scotland from February 2020 for information.

Best wishes

[Redacted @gov.scot]

From: Dr Alasdair Allan MSP <alasdair.allan.msp@parliament.scot>
Sent: 18 May 2020 10:30
To: Scottish Ministers <[Scottish Ministers@gov.scot](mailto:Scottish_Ministers@gov.scot)>
Subject: (Case Ref: AA3758)

Madainn mhath

Please find attached a letter from Alasdair Allan MSP to Roseanna Cunningham. I would be grateful if an electronic copy of any response could be provided for our convenience.

Le dùrachd

[Redacted]
Caseworker
Alasdair Allan
MSP for Na h-Eileanan an Iar
alasdair.allan.msp@parliament.scot
01851 700357
20 Kenneth Street, Stornoway, Isle of Lewis, HS1 2DR

Ms Roseanna Cunningham MSP
Cabinet Secretary for Environment, Climate Change & Land
Reform Environment, Climate Change and Land Reform
Scottish Government
St. Andrews House

Regent Road
Edinburgh
EH1 3DG

Our Ref: AA3758
18 May 2020

Dear Roseanna,

St Kilda Sheep Populations

I am writing on behalf of a constituent, [Redacted] who recently contacted me regarding the populations of sheep on Hirta, St Kilda.

I have enclosed a copy of [Redacted]'s most recent correspondence and would be grateful if you could comment on the points [Redacted] raises.

I look forward to your reply.

Yours sincerely,

Alasdair Allan MSP

Cc: [Redacted]

20 Kenneth Street, Stornoway, Isle of Lewis, HS1
2DR
20 Sràid Choinnich, Steòrnabhagh, Eilean Leòdhais,
HS1 2DR
Phone /Fòn 01851 700357
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Alasdair Allan MSP
20 Kenneth Street
Stornoway
HS12DR

9 May 2020

Dear Dr Allan,

We understand that the Scottish Government considers that the St Kilda sheep populations (outwith any periods of capture) should not be classed as "Protected animals" under the Animal Health and Welfare Scotland Act 2006.

As we assume that the St Kilda Sheep must therefore come under the purview of the Wildlife and Countryside Act 1981 (as amended) we would be grateful if you might ascertain for us whether the appropriate licence was issued to allow release of those sheep on Hirta gathered and handled for research purposes as part of the Soay Sheep Project.

If a licence has been issued we would be grateful if you could provide us with the government minister's rationale for granting such a licence.

Yours sincerely

Redacted (2 correspondents)

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Dr Alasdair Allan MSP
The Scottish Parliament
Edinburgh
EH99 1SP

Your ref: AA3758
Our ref: 202000037834
June 2020

Dear Alasdair

Thank you for your letter of 18 May 2020 on behalf of your constituent [Redacted] about the handling for research purposes of sheep populations on Hirta, St Kilda.

[Redacted] has asked whether a licence was issued for the release of sheep on Hirta, St Kilda that have been captured for research purposes as part of the Soay Sheep Project. Scottish Natural Heritage did not at the time consider there to be a legislative requirement for the capture and later release of the sheep which were classed by them as livestock.

Scottish Natural Heritage now consider that they would need to grant a licence for any future sheep researchers to capture and release the Soay sheep on St Kilda. Scottish Natural Heritage have powers under section 14 of the Wildlife and Countryside Act 1981 (as amended) to grant such a licence and applications may be sent to Licensing@nature.scot for consideration.

I hope this reply is helpful.

Yours

Roseanna Cunningham

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Ms Roseanna Cunningham MSP
Cabinet Secretary for Environment, Climate Change & Land Reform
Environment, Climate Change and Land Reform
Scottish Government
St. Andrews House
Regent Road
Edinburgh
EH1 3DG

Our Ref: AA3758

26 June 2020

Dear Roseanna,

Re: St Kilda Feral Sheep

I am writing on behalf of a constituent, [Redacted] who sent a reply to a recent Scottish Government correspondence (your reference: 202000037834) regarding the feral sheep on St Kilda.

I would appreciate your comments on the matter.

Yours sincerely,

Alasdair Allan MSP
Cc: Mr David Buckland

20 Kenneth Street, Stornoway, Isle of Lewis, HS1 2DR
20 Sràid Choinnich, Steòrnabagh, Eilean Leòdhais, HS1 2DR
Phone /Fòn 01851 700357
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Attachment to A Allan MSP's letter of 26 June 2020

Alasdair Allan MSP
20 Kenneth Street
Stornoway
HS120R

Your Ref. AA3758

Dear Dr Allan,

Thank you for forwarding the letter dated June 2020 from Roseanna Cunningham revealing the change in legal designation of sheep on St Kilda.

In our opinion, Scottish Natural Heritage's decision to class the sheep on St Kilda as animals subject to the Wildlife and Countryside Act 1981, and therefore (outwith

periods of capture) not subject to the Animal Health and Welfare (Scotland) Act 2006, is flawed.

We would be grateful for your advice for how we might best challenge this decision either through the Scottish Parliament or through the courts.

In addition, we would be grateful if you will forward the enclosed letter to Roseanna Cunningham that hopefully offers her the moral context to our enquiries.

Thank you.

Yours sincerely,

[Redacted]

Enclosed Letter of 15 June 2020

Roseanna Cunningham
St Andrew's House
Regent Road
Edinburgh
EH13DG

Dear Ms Cunningham,

Thank you for your letter to Alasdair Allan dated June 2020 (your ref. 202000037834) regarding the sheep on St Kilda.

As veterinary surgeons we have for several years now been arguing that the sheep on St Kilda should be managed in such a way as to avoid the rapid increase in the population, the consequential regular crashes that ensue and so reduce the associated suffering the sheep are subjected to. A paper that details our concerns is appended overleaf.

On 21 January 2020 we wrote to all the signatories of the St Kilda Management Plan asking them to reconsider their policy of deliberate non-management of the sheep. We did not receive a reply from Scottish Natural Heritage (SNH). However, the National Trust for Scotland informed us that they are confident that the legal advice they have taken is consistent with legislation.

From your letter, we were both surprised and concerned to learn that the status of the sheep has changed. SNH have decided that the sheep are no longer the 'feral sheep' that are specifically included as "protected animals" under the Animal Health and Welfare (Scotland) Act 2006 and have now become 'wild animals' with the inadequate protection conferred by the Wildlife and Countryside Act 1981. We would be grateful if you could let us know when this change was made, its scientific rationale and your own assessment of the moral issues it raises.

Thank you.

Yours sincerely,

[Redacted]

Appendix

Feral ungulates: who has responsibility for their welfare?

The problem: welfare legislation

In the British Isles there are a number of discrete populations of feral ungulates, including sheep, goats and ponies. In this paper, we outline the welfare legislation as it applies to such animals and highlight what would appear to **be** a fundamental flaw in their protection from neglect by taking a detailed look at the feral sheep on St Kilda,

Under current British animal welfare legislation, feral animals are protected, being '...of a kind which is commonly domesticated in the British Islands' (Animal Welfare Act 2006; Animal Health and Welfare (Scotland) Act 2006). The guidance notes on the Scottish legislation (Anon 2006) makes it clear that their inclusion as 'protected animals' derives from the fact that their '...collective behaviour, lifecycle or physiology has been altered as a result of their breeding and living conditions being under human control for multiple generations'. Feral sheep, goats and ponies are all specifically mentioned and the rationale for inclusion is clearly stated: 'When man has made an animal dependent on him, then the animal should continue to be protected'.

So far so good: feral animals are afforded the same protection under the welfare legislation as farm animals or pets. They are protected from acts of omission as well as commission. The problem comes **when** one looks at the responsibility for animals. The Animal Welfare Act 2006 states that: '...the person who owns an animal shall always be regarded as a person who is responsible for it.' The guidance on the Scottish legislation expands on this: 'Responsibility for an animal is only intended to arise where a person can be said to have assumed responsibility for its day to day care, or for a specific purpose, or by virtue of owning it.' (Anon 2006)

Feral animals, as the word 'feral' implies, often have no known owner and in many cases no one has assumed responsibility for them. They are protected under the legislation but, in the absence of any responsible person, their protected status is, in effect, meaningless.

The potential welfare consequences of this paradox can be illustrated by looking at an example: the feral sheep populations of the St Kilda archipelago off Scotland's Atlantic coast. The Soay sheep on Hirta, the largest island, have been studied by biologists for the past 60 years.

The example: feral sheep on St Kilda

Protected animals:

St Kilda was occupied from prehistoric times until 1930, when the inhabitants were

evacuated. together with their cattle and sheep (Macgregor 1931). In 1932, the proprietor of St Kilda, the Earl of Dumfries, transferred 107 sheep of the primitive Soay breed to Hirta from the neighbouring Island of Soay. With no management, this nucleus of sheep grew steadily over a period of 25 years, reaching a recorded population of 1,344 in 1960 before crashing dramatically to 610 head in 1961 through starvation and nutritional disease (Boyd et al. 1964).

Since then, numbers have followed a three-to four-year cycle of rapid recovery followed by a crash; the population fluctuating between 600 and 2,000 (Clutton-Brock et al 2004). Such dramatic losses of up to 70% of the flock occur when a winter of particularly harsh weather coincides with the population exceeding the winter carrying capacity of the Pasture and is exacerbated by parasitism (Clutton-Brock 2004a). Synchronous cycles of increase and crash occur with the feral sheep on the neighbouring islands of Boreray and Soay (Grenfell et al 1998; Anon 2003).

There is historical evidence that the Soay sheep on Soay (that spawned the current population of sheep on Hirta) were owned by the island proprietor and managed by the St Kildans, taking... some for eating, passing on some to the Manse and some being preserved for the proprietor. The people were charged 2/6 [two shillings and sixpence] for each sheep' (Harman 1997).

The sheep have been feral for less than a hundred years (a relatively short period of their time on St Kilda), yet their physiology has been determined by thousands of years of domestication. Unlike many wild ungulates, they breed in their first year, wean their lambs early and adult ewes are unaffected, in terms of fecundity, by increasing population density (Clutton-Brock 2004b). These traits are the result of domestication and render them unsuitable for life unmanaged, particularly in a location where summer grazing is plentiful prior to mating and where there are no competing grazers, nor predators, nor means of dispersal. All these factors condemn the sheep to frequent cycles of rapid population increase followed by crash.

There can be little doubt that sheep suffer during the crash years. The following description was written by a veterinary surgeon:
'In 1964 the grazing was poor; the sheep were weak and emaciated. They were starving. The absence of ketosis suggested that this was a slow, chronic process rather than an acute one... The sheep were extremely thin and light in weight. Most of the sheep could be outrun easily by a man, and generally after running for about 50 m the sheep would sink to the ground exhausted and distressed. Some sheep would not attempt to run, but stood listlessly with head down on tottering legs waiting to be caught' (Cheyne et al 1974).

Responsible person:

We have established that protected animals are suffering from neglect during the crashes. So who has responsibility for their welfare?

St Kilda was bequeathed to the National Trust for Scotland (NTS) in 1957. The current St Kilda Management Plan (SKMP) was drawn up by NTS, together with other key stakeholders, including the Ministry of Defence and Scottish Natural Heritage. It describes the policy with regard to the sheep:

'A number of sheep carcasses may be apparent. This is a natural result of the deliberate policy of non-management of the flock, which is treated as a wild population mirroring their original condition on Soay'. The plan continues, suggesting the crashes to be beneficial: The high mortality, driven by natural selection, is believed to be important in maintaining near-natural characteristics of the sheep' (Anon 2012).

No evidence is given to support this assumption. On the contrary, there are no records of periods of mass starvation in sheep within St Kilda's wealth of historical literature. Life was hard for the St Kildans; it is just not plausible that they would have allowed sheep numbers to outstrip the winter carrying capacities of the islands. Mass starvation is likely to be a relatively recent phenomenon and a consequence of their unmanaged state.

The current management plan claims: '... non-management is permissible by law because the sheep a) have no owner b) are not on agricultural land and c) are not considered to be a domestic or captive population' (Anon 2012). The second point can be dismissed as having no relevance under current welfare legislation and the third point is, as we have detailed above, incorrect. However, the first point may well be true in a legal, if not a moral sense: because they are not owned, no one has responsibility for their welfare.

We have used the feral sheep on St Kilda as an active example to illustrate a legal paradox. St Kilda is remote and most of the sheep deaths occur in late winter or early spring when there are very few visitors. If Hirta were a fenced area of land (c. 670ha) on mainland UK where, up to, 1,400 adult sheep were dying of starvation every few years we suspect that action would have been taken long ago by the welfare authorities: regardless of claims of non-ownership. To give an idea of the scale of the losses it is equivalent (on an area basis) of 2000 adult sheep dying of starvation and parasitism in Richmond Park (c. 955 ha) every three to four years over a sixty year period.

The solution: amend the legislation

In a previous article in the *Hebridean Naturalist* we set out in detail our argument for appropriate management to prevent the recurrent crashes and associated suffering of the feral sheep on St Kilda. In response, NTS have confirmed that they have '...obtained legal advice ...' and '...believe that the current [non]-management policy is the best way to ensure these remarkable feral sheep populations continue to thrive in the islands' (Luxmoore 2017).

We, the authors, are vets not lawyers but if the legal advice that NTS have received is correct then perhaps the law should change. We suggest that the welfare legislation be amended such that the hierarchy of responsibility for the welfare of feral ungulates specifically includes land owners and/or managers on whose land they range.

Animal Health and Welfare (Scotland) Act, 2006

Animal Welfare Act, 2006

Anon. 2003 *Revised Nomination of St Kilda for inclusion in the World Heritage Site List*, Crown Copyright p19

Anon. 2006 *Guidance on the animal welfare provisions (part 2) of the animal health and welfare (Scotland) act 2006*, sects 7&8.

Anon. 2012 *The St Kilda World Heritage Site Plan 2012-2017*. P 104

Boyd, J, M. Doney, J M, Gunn, RG & Jewell PA. 1964 The Soay Sheep of the Island of Hirta, St Kilda A Study of a Feral Population. *Proc Zool Soc London* Vol 142 Part 1 pp 129&149

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Cheyne IE, Foster WM and Spence JB, 1974 The incidence of disease and parasites. In *Island*

Survivors: The Ecology of the Soay Sheep of St Kilda. Athlone Press, University of London p. 342
Clutton-Brock TH, Pemberton JM, Coulson T, Stevenson IR & McCall ADC. 2004 The Sheep of St Kilda. In *Soay Sheep: Dynamics and Selection in an Island Population* Eds T Clutton-Brock & J Pemberton, Cambridge University Press p25
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Grenfell BT, Wilson K & Finkenstadt BF, Coulson TS, Murray S, Albon SD, Pemberton JM, Clutton-Brock TH & Crawley MJ 1998 Noise and determinism in synchronised sheep dynamics *Nature* 394 674-7
Harman M 1997 *An Isle called Hirte: History and Culture of St Kilda to 1930* MacLean Press, Isle of Skye pp 186-203
Luxmoore R 2017 Letters to the Editor *Hebridean Naturalist: Journal of Curragag Outer Hebrides Natural History Society*, 17: pp 78-80
Macgregor AA (1931) *A Last Voyage to St Kilda* Cassell and Company, London p215

Response to Micase 202000053330 from Cab Sec ECCLR

Alasdair Allan MSP
[Redacted Dr Allan's staff]

Our Reference: 202000053330

09 July 2020

Dear Alasdair,

Thank you for your letter of 26 June 2020, on behalf of your constituent [Redacted], about the feral sheep on St Kilda.

Mr Buckland has written suggesting that the classification of the feral sheep as being, outwith any periods of capture, not subject to the protections of the Animal Health and Welfare (Scotland) Act 2006 ("the 2006 Act") offers them lesser protection.

You may wish to be aware that the Chief Veterinary Officer for Scotland wrote to [Redacted] on 28 February 2020 that, for the purposes of welfare legislation, the St Kilda sheep should be regarded in the same way as an unowned and unmanaged population of wild deer or other wild animals. I have attached a copy of the Chief Veterinary Officer for Scotland's letter, explaining why the St Kilda sheep were not covered by the 2006 Act, for your information.

You may also wish to be aware that Scottish Natural Heritage wrote to [Redacted] on 6 July 2020 that, as a result, the St Kilda sheep would be regarded as non-native animals under The Wildlife and Natural Environment (Scotland) Act 2011. This amended section 14 of the Wildlife & Countryside Act 1981 making it an offence to "release any animal outwith its native range." Previously it had been an offence to "release any animal of a kind which is not ordinarily resident in Great Britain in a wild state." The implications of this change were brought to the attention of stakeholders

during the consultation on the Code of Practice on Non-Native Species in 2011. This would apply to all feral sheep not regarded as livestock, so that would include both Soay and Boreray Blackface sheep on St Kilda.

Scottish Natural Heritage also informed Mr Buckland that they were unable to discuss this issue with National Trust for Scotland staff, involved in managing St Kilda, as they were on furlough. Scottish Natural Heritage would make those staff aware of the situation when they return and of the need for a licence to re-release sheep, when they are caught for research purposes.

I hope this reply is helpful.

Yours sincerely,

ROSEANNA CUNNINGHAM

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From: [Redacted] @gov.scot
Sent: 30 July 2020 08:34
To: [Redacted]
Subject: St Kilda Sheep

Dear [Redacted]

I hope you are keeping safe and well.

The Animal Welfare team was supplied yesterday, by Food Standards Scotland, with what appears to be a draft of a letter intended for the Chief Veterinary Officer (Scotland) about the St Kilda sheep. It may be that this was sent by mistake and I have attached it for your reference.

Sheila Voas will, of course, be happy to consider any correspondence that we receive from you. If you wish that to be done I would be grateful if you could send Sheila a copy of the letter once it has been finalised.

Yours sincerely

[Redacted]

[Redacted]; ARD – Animal Health & Welfare; P Spur; Saughton House; Broomhouse Drive; Edinburgh; EH11 3XD;

T: [Redacted]

Re: St Kilda sheep

Dear Sheila.

Thank you for your letter of 28 February 2020.

We are surprised and concerned that the advice given to government is that the sheep on St Kilda '...can now be considered as distinct kinds that are not commonly domesticated' and so are not considered to be "protected animals" under the Animal Health and Welfare (Scotland) Act 2006.

As your letter states, the Act defines a "protected animal" as being '...of a kind which is commonly domesticated in the British Islands'. The guidance notes on the legislation make it clear that their inclusion as "protected animals" derives from the fact that their '...collective behaviour, life cycle or physiology has been altered as a result of their breeding and living conditions being under human control for multiple generations'. Feral sheep, goats and ponies are all specifically mentioned and the rationale for inclusion is clearly stated: '...When man has made an animal dependent on him, then the animal should continue to be protected'.

This raises the question: if the two St Kilda breeds of sheep are not feral sheep, what are they? They are clearly non- native to the UK, never mind St Kilda, so cannot be classed as wild animals (even if a choice is made to treat them as such) in the way grey seals can. So even if, for the sake of argument, the sheep are of 'a kind' that places them somewhere between domesticated breeds and truly wild animals, why would the Scottish government choose to place them under the purview of an act (the WCA) that affords them the lesser welfare protection?

The Scottish Government's position on this matter seems to be somewhat confused. SNH have informed us that they only became aware in this change in status of the sheep from 'livestock' to being 'of a distinct kind' in May 2020 and that National Trust for Scotland had not been informed (because of the furlough scheme). So that we might better understand how this change has come about, we would be grateful if you could provide us with:

- the exact date that this decision to change the status of the sheep was made:
- a list of individuals and organisations that were consulted when making the decision;
- a full list of all stakeholders who were informed of the change of status.
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- a copy of the advice given to Scottish Government together with any associated legal opinion.

Yours sincerely

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From: [Redacted]
Sent: 30 July 2020 17:39
To: [Redacted] @gov.scot
Cc: [Redacted]
Subject: St Kilda sheep

Dear [Redacted]

My sincere apologies for sending the draft of our letter to FSS by mistake. The intended recipient was my colleague, [Redacted], and I must have sent it to [Redacted] (FSS) instead. I now attach a final version of the letter for Sheila's attention.

Regards
[Redacted]

Letter of 30 July 2020 from [Redacted] to S Voas, CVO(S)

Sheila Voas, FRCVS
Animal Health and Welfare Division
Agricultural and Rural Delivery Directorate
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

Re: The Welfare of the St Kilda Sheep

Dear Sheila,

Thank you for your letter dated 28 February 2020 confirming that: 'The Scottish Government considers that, for the purposes of welfare legislation, the St Kilda sheep should be regarded in the same way as an unowned and unmanaged population of wild deer or other wild animals.'

Scottish Natural Heritage have since informed us that they only 'became aware that the sheep on St Kilda were not considered livestock in May this year'.

Therefore, we would be grateful for the following clarifications:

- When did the Scottish Government's designation of the St Kilda sheep's legal welfare status change from livestock to wild animals?
- Which individuals and organisations were consulted prior to Scottish Government arriving at the decision to change the sheep's status?
- Which stakeholders were informed, and/or warned of the implications, of the change of status?

We would also be grateful for a copy of the advice - scientific and legal - given to

Scottish Government that informed this decision.

Thank you,

Yours sincerely,

[Redacted]

=====

Agriculture and Rural Delivery Directorate
Animal Health and Welfare Division
T: [Redacted]
E: sheila.voas@gov.scot



Scottish Government
Riaghaltas na h-Alba
gov.scot

[Redacted]
Isle of Benbecula
Western Isles

6th August 2020

Dear [Redacted]

The Welfare of the St Kilda Sheep

Thank you for your letter of 30th June 2020 raising some further questions on the topic of the welfare of the St Kilda sheep. I am aware of the recent Ministerial correspondence cases on your behalf by Alasdair Allan MSP, the replies to which you will have seen.

The definition of animals protected by the 2006 Act has not changed since the full legislative process in the Scottish Parliament concluded with unanimous agreement on 31st May 2006 and was commenced on 6th October 2006. Such protected animals are defined as those that are:

- (a) of a kind which is commonly domesticated in the British Islands;
- (b) under the control of man on a permanent or temporary basis; or
- (c) not living in a wild state.

As noted in my letter to you of 28th February 2020 the St Kilda sheep should be regarded in the same way as an unowned and unmanaged population of wild deer or other wild animals and are not covered by the definition of protected animals under the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”) as:

- (a) can be considered not to apply as although sheep as a species are commonly domesticated in the British Islands, the current populations of sheep on St Kilda, through an accident of history, can now be considered as distinct kinds that are not commonly domesticated” in the British Islands;
- (b) would only apply if and when sheep are gathered up for a particular procedure – otherwise they are not under control as they are free to move anywhere; and
- (c) does not apply as the sheep are feral animals “living in a wild state”.

I will follow up with SNH their interpretation of the wildlife legislation up until May 2020 and what it was that prompted a change at that time.

I hope this reply is helpful.

Yours sincerely

SHEILA VOAS
Chief Veterinary Officer (Scotland)

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From: [Redacted SG staff] **On Behalf Of** Voas S (Sheila)
Sent: 08 April 2021 15:16
To: [Redacted SG staff]
Cc: [Redacted SG staff]
Subject: FW: ST KILDA SHEEP

Hi [Redacted],

Please see the further correspondence attached re St Kilda sheep. Would you be able to action a response please? Thanks in advance.

[Redacted]
Animal Health and Welfare Division
Agriculture and Rural Economy Directorate
The Scottish Government
P Spur – Saughton House
Broomhouse Drive
EDINBURGH
EH11 3XD

Tel: [Redacted]

[Redacted]

From: [Redacted] @cne-siar.gov.uk
Sent: 08 April 2021 09:45
To: DG Economy
Subject: FW: ST KILDA SHEEP

Good morning,

I attach a letter for the Minister's information, which appeared not to have been received yesterday. [Redacted]

Best regards

[Redacted]
Àrd-oifigear/Chief Executive
Comhairle nan Eilean Siar

***Rathad Shanndabhaig | STEÒRNABHAGH | Eilean Leòdhais | HS1 2BW
Sandwick Road | STORNOWAY | Isle of Lewis | HS1 2BW
Fòn/Tel. No. (01851) 822600***

Letter of 30 March 2021 from [Redacted] to B Macpherson (Minister RANE) and others

The legal and ethical situation regarding starvation in St Kilda sheep

Dear Sir,

On 21 Feb 2020 we wrote to the Chief Veterinary Officer (CVO) to seek support in persuading the co-signatories of the St Kilda Management Plan to take responsibility, on both moral and legal grounds (under the Animal Health and Welfare (Scotland) Act 2006 (AHWA)), for the welfare of the sheep populations on St Kilda. However, she informed us that, because of 'an accident of history', the Scottish Government (SG) have never classified the sheep on St Kilda as "protected animals" under the AHWA but rather, they 'should be regarded in the same way as an unowned and unmanaged population of wild deer or other wild animals' (letters; 28 Feb 2020; 6 Aug 2020). Nevertheless, we remain convinced that all the sheep on St Kilda come under the purview of the AHWA and we respectfully offer the following selection of questions to draw your attention to the inconsistencies and confusion that SG's designation seems to have created:

1. The AHWA Guidance unambiguously includes all "feral" sheep as "protected animals" under the AHWA, explaining that:

"Protected animals" include the kinds of animals whose collective behaviour, life cycle, or physiology has been altered as a result of their breeding and living conditions being under human control for multiple generations. Livestock, poultry, horses, cats and dogs are all protected animals whether they are in captivity or living wild as "feral" animals. Thus feral cats, sheep, goats or ponies are "protected animals" for the purpose of the Act (Paragraph 8, Guidance on Part 2 of the AHWA).

Ironically, the best scientific evidence to support the rationale for inclusion of feral livestock under the AHWA comes from the long term studies of the Soay sheep on Hirta. In the definitive account of that research, *Soay sheep: Dynamics and Selection in an Island Population*, edited by T. Clutton-Brock & J. Pemberton (2004), Clutton-Brock states (page 304):

The small size, early weaning ages and age at first breeding of Soay sheep [they breed as lambs] are all typical of animals that have been subjected to artificial selection. In most wild sheep, mothers suckle lambs through the summer and females usually breed for the first time in their second or third year of life. As we have argued, it is likely that early weaning age of Soays is responsible for the lack of density dependence in fecundity and together with the capacity to become pregnant in their first year, is responsible for their unusually high rate of population growth.

So domestication is responsible for the rapid population growth that, in the absence of predators, competing grazers or ability to disperse, leads to frequent population 'crashes' when up to 70% of the population die. Clutton-Brock states (page 307): '*The effects of starvation in the Soays are savage...*'

What is SG's scientific justification for disregarding the AHWA Guidance?

2. In the letter from the CVO, she refers to the sheep as being 'considered as distinct kinds that are not commonly domesticated in the British Islands'. This paraphrase is borrowed from the AWWA Guidance but is used out of context. The Guidance explains:

Wild rabbits, mice and rats are not protected animals unless they are under the control of man as they are not of a "kind" commonly domesticated in the British Islands'. The domestic rabbit, mouse and rat is quite different to the wild kind, and the fact that some kinds of animals can be domesticated, does not mean that all such animals are then "protected".

Of course, all sheep in the British Islands have been domesticated. The SG appears to be implying that a reverse process is possible: i.e. that a domesticated animal can revert to its wild progenitor. This has inverted the intended meaning of this passage. Even if a breed takes a part return journey towards the wild species it still remains 'quite different to the wild kind' because of previous domestication. The Guidance makes it clear that protection under the AWWA for domesticated animals is not time-limited:

When man has made an animal dependent on him, then the animal should continue to be protected.

Is it possible that by misinterpreting its own Guidance, the SG risks undermining the Act's intentions?

3. The SG's view that the sheep are not protected by the AWWA would seem to be at odds with that of the Home Office, National Trust for Scotland (NTS) and Scottish Natural Heritage (SNH):

(a) The Animals in Science Regulation Unit (ASRU) at the Home Office, with particular regard to the sheep on St Kilda, directed us to the AWWA Guidance, stating:

In guidance published on 18 October 2006, the Scottish Government classified feral sheep as "protected animals", whether living in the wild or in captivity, for the purposes of the Animal Health and Welfare Scotland Act 2006. (Home Office FOI 56622, 4 Dec 2019)

This information correlates with the Home Office's own, unambiguous definitions that:

A feral animal is an animal living in the wild but descended from domesticated individuals.

and:

A 'wild' animal species is one that has never been cared for or farmed by humans, and is not descended from domesticated individuals.' (Home Office Advice Note: 02/2016 'Working with animals taken from the wild'. 2.2 & 2.4)

There can be no doubt that all the sheep on St Kilda are descended from "domesticated individuals" and are therefore 'feral'.

(b) The owner and manager of St Kilda, NTS, have agreed that the sheep 'certainly fall into this category [of] a "protected animal" [as] 'of a kind which is commonly domesticated in the British Isles' as defined by the AWWA (Dr R, Luxmoore, 2017 Hebridean Naturalist; 17, p78) but claimed that they are not "responsible" for the sheep.

(c) SNH are surely the experts in knowing which organisms can be viewed as 'wild'. They have informed us that, until May 2020 when they became aware of the CVO's correspondence, they treated the St Kilda sheep as 'livestock' (R. Cunningham MSP, letter June 2020).

Might the above organisations be persuaded to convene along with SG and draw

up a clear welfare protocol for such feral livestock?

4. 'An accident of history' is given as the reason for the St Kilda sheep not being subject to the protection conferred by the AHWA. No such term is used in the AHWA or the Guidance. With regard to the three different populations of sheep on St Kilda:

(a) The Boreray Blackface breed of sheep on Boreray are a breed improved by the islanders and of the same type as those previously managed on Hirta and subsequently sold through Oban livestock market in 1930. Following failure by the islanders to gather their sheep on Boreray at the time of evacuation, the sheep were left to become feral.

What was the subsequent 'accident of history' that changed these feral sheep into a 'distinct kind'?

(b) The current Soay breed of sheep on Hirta grew from 107 sheep, owned at the time by the Earl of Dumfries, purposely caught on Soay and transferred and abandoned on Hirta. With such a small founder cohort, this population will have been subject to different dynamics than those on Boreray and Soay. **What form did the 'accident of history' take in this cohort and when did it occur?**

(c) The Soay breed of sheep on Soay had received regular management up until 1930, with some further sheep taken until the outbreak of the Second World War. **What form did the 'accident of history' take in this population and when did it occur?**

5. The decision to exclude the sheep on St Kilda from protection under the AHWA has implications for other populations of feral ungulates. For instance, the feral goats on Rum probably became feral in the 1820's when most of the island's human residents were cleared from the land. **Are the Rum goats protected by the AHWA as the Guidance would appear to assert or are they now of an unprotected 'distinct' kind?**

6. The confusion over the St Kilda sheep's welfare status seems to have led to the unlicensed release of hundreds of individual non-native sheep on Hirta between 2012 and 2020 in breach of the Wildlife and Natural Environment (Scotland) Act 2011 (WANE). **How does SG intend to deal with this significant breach and ensure constructive lessons are learnt?**

7. Does the sheep being regarded as an 'unmanaged population of wild deer' conflict with the requirement, under the WANE Act, for landowners to manage deer? And by extension, does SG expect NTS to manage the sheep as they do their wild deer and thereby follow Section 3.2 of the Code of Practice on Deer Management? The Code states:

Actions to ensure that wild deer welfare is safeguarded [viz:] the definition of welfare in relation to wild deer is 'concern for their physical and psychological well being. This definition can be applied to both the individual animal and population level.'

And insists:

You should:

- take account of the impacts of your management activities on the welfare of deer.
- Tackle any welfare issues as and when they arise for individual deer.
- Adjust management action when the welfare of the local population of deer (rather than the individual animal) is being compromised.

8. A 2013 SPICe Briefing, *Wild Deer in Scotland*, states:

It is considered publically [sic] and morally unacceptable to allow deer numbers to increase to such levels that they are subject to large natural mortalities in winter. **Is it not equally unacceptable to allow sheep numbers to increase to such levels that they are subject to high mortalities in winter?**

9. The sheep on St Kilda being regarded as 'wild animals', and now being released under licence as an invasive non-native, would seem to require an assessment via the *Wildlife Management Framework* (WMF). Such an assessment must consider Section 2.3 of the Guide to the WMF: '*Wildlife management safeguards animal welfare*' which states:

'Disease, starvation, injury, suffering and death occur naturally. However where wildlife is managed for specific reasons the impacts on welfare should be considered and mitigated against where possible. In some instances the reasons for managing wildlife are primarily to safeguard welfare'.

In addition, the 2014 *SNH Position on Wildlife Welfare* clearly stipulates that welfare must be included in management plans:

'Management plans and activities which have or are likely to have an impact on wildlife will take their welfare into account. Welfare will be explicitly considered in activities and planning processes which either directly or indirectly are likely to impact on the welfare of wildlife. Plans which have a bearing on wildlife welfare will show how welfare has been taken into account, both at the group and individual level, for species where we have the adequate knowledge and can undertake appropriate action.'

Even if SG (erroneously, in our view) continues to regard feral animals such as the St Kilda sheep as 'other wild animals', the WANE act requires consideration of their welfare with 'appropriate action' and 'management plans'. **Therefore, might it be less confusing to follow the AHWA Guidance and bring such categories of feral livestock under the purview of the AHWA?**

With the aspiration of the AHWA in mind, "to promote the welfare of animals" (Paragraph 3, Guidance on Part 2 of the AHWA), might we urge the SG, by consultation, to review the current welfare legislation regarding feral livestock. In light of the refusal of NTS to accept responsibility for the welfare of the sheep on St Kilda, it would be important not only to clarify which feral animals are protected by the AHWA but also who has responsibility for their care.

Yours sincerely,
[Redacted]

cc: Alasdair Allan, MSP
Angus MacNeil, MP
Mark Ruskell MSP
[Redacted] , CEO, NTS
[Redacted], CEO, Comhairle
[Redacted] , CEO, & [Redacted], SNH
[Redacted], Chair, AWC
[Redacted], ASRU, Home Office

=====

Ms Roseanna Cunningham MSP
Cabinet Secretary for Environment, Climate Change & Land Reform
Environment, Climate Change and Land Reform
Scottish Government
St. Andrews House
Regent Road
Edinburgh
EH1 3DG

Our Ref: AA3758
17 May 2021

Dear Roseanna,

Re: St Kilda sheep

I am writing on behalf of a constituent, [Redacted] who recently contacted me regarding the legal and ethical situation regarding starvation in St Kilda sheep.

I attach his full letter to this correspondence.

I look forward to your reply.

Yours sincerely,

Alasdair Allan MSP
Cc: [Redacted]

20 Kenneth Street, Stornoway, Isle of Lewis, HS1 2DR
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Phone /Fòn 01851 700357
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Dr Alasdair Allan MSP
alasdair.allan.msp@parliament.scot
Our Reference: 202100203017
Your Reference: (Case Ref: AA3758) - starvation in St Kilda sheep

18 June 2021

Dear Dr Allan

Thank you for your letter of 19 May 2021 to Roseanna Cunningham, the then Cabinet Secretary for Environment, Climate Change and Land Reform, about the position regarding the sheep on St Kilda. I have been asked to reply.

I am sorry that it has not been possible to reply to your letter. The issues raised by the letter of 30 March 2021 from [Redacted] were also addressed to the Minister for Rural Affairs and the Natural Environment.

The issues are currently being considered fully and I will ensure that you receive a response when that process is complete.

I hope this interim reply helps to inform you that the issues are being looked at.

Yours sincerely

[Redacted]

AHW: Animal Welfare

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Ariane Burgess

Member of the Scottish Parliament
Highlands and Islands

Mairi McAllan MSP
Minister for Environment, Biodiversity and Land Reform
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

3rd June 2021

Dear Mairi

Please allow me to begin by congratulating you on your appointment as Minister for Environment, Biodiversity and Land Reform; I look forward to working constructively together.

As you may be aware there has been an on-going matter regarding the welfare of the sheep on St Kilda. I have been contacted by signatories to the St Kilda Management Plan who remain convinced that the Scottish Government has incorrectly categorised the sheep as "wild or unowned animals" rather than feral as would seem the correct categorisation under the Animal Health and Welfare (Scotland) Act 2006.

This has an obvious impact upon the Sheep's health and welfare. Can I ask you and the Scottish Government to revisit this categorisation of the St Kilda Sheep?

If the Scottish Government is unwilling to recategorise the St Kilda Sheep under the 2006 Act, would you be willing to meet with the signatories to address their concerns and ensure their satisfaction with the Scottish Government and its agencies' plans to ensure the welfare of the sheep on St Kilda.

Kind regards

Ariane Burgess MSP

Ariane.Burgess.MSP@parliament.scot

Ariane Burgess MSP
[Redacted – Ms Burgess' staff] @parliament.scot

Our Reference: 202100212094
Your Reference: Welfare of the sheep on St Kilda

9 July 2021

Dear Ms Burgess

Thank you for your letter of 3 June 2021 to Mairi McAllan MSP, Minister for Environment, Biodiversity and Land Reform, about the position regarding the sheep on St Kilda. I have been asked to provide an interim reply.

I am sorry that it has not been possible to reply to your letter. The issues raised by the letter of 30 March 2021 from [Redacted] were also addressed to the Minister for Rural Affairs and the Natural Environment.

The issues are currently being considered fully and I will ensure that you receive a response when that process is complete.

I hope this interim reply helps to inform you that the issues are being looked at.

Yours sincerely

[Redacted]

AHW: Animal Welfare