

# **Wildlife Law Reform**

## **Research Report**

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**Professor Angus Nurse and Dr Helga Hejny**

**ARU Law School**

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## Executive Summary

This research is carried out by researchers at Anglia Ruskin University (ARU) to evaluate the current state of UK wildlife law and make evidence-based recommendations on the case for wildlife law reform. UK law recognizes the sentience of all animals while wildlife law protects individual animals from harm in certain contexts whilst allowing their control and exploitation. This research follows from the review of wildlife law carried out by the Law Commission in 2015 as well as prior academic research into the nature of wildlife crime and its public policy and enforcement response. This includes prior research which considered the adequacy of current UK wildlife law, the impact of austerity measures (such as cuts in policing budgets) on wildlife crime policing and prior analysis of the extent to which UK wildlife law complies with the UK's obligations under international and European Law.

Our key finding is that the Law Commission's conclusion that the UK's wildlife law regime was unnecessarily complex, fragmented and in need of reform remains valid. UK Wildlife law has evolved over time leading to a patchwork of different legislation that aims to provide for both general protection for wildlife and the countryside and species-specific protection (e.g. through legislation such as the Conservation of Seals Act 1970 or the Protection of Badgers Act 1992) as well as the creation of specific wildlife offences and the classification of prohibited acts that negatively impact on wildlife.

The complexity and disparate nature of wildlife law is a factor in its low levels of enforcement and in the challenges experienced in bringing cases to court and successfully prosecuting wildlife offences. Wildlife law is also variable in respect of how it engages with animal welfare issues. The Law Commission ultimately produced a draft bill 'incorporating legislation on the protection, control and exploitation of wild fauna and flora in England and Wales' to replace the existing complex system. Since the publication of the Commission's report and draft legislation, several legislative changes have taken place resulting in markedly different levels of protection for wildlife across the devolved nations of the UK. Scottish wildlife law, for example appears to be stronger than that of England and Wales in its requirements for licensing of shooting estates, penalties for wildlife crimes and its ban on certain types of traps and snares (discussed later).

To resolve issues, we identified **10 recommendations** in our analysis. We recommend that:

1. **UK wildlife law be coordinated into a single statute** that strengthens levels of protection across UK wildlife and adopts an upwardly harmonised, animal-centred approach to wildlife harms, particularly in the context of how offences are constructed. Existing wildlife legislation is replaced with a new integrated Wildlife Act that addresses wildlife protection, wildlife conservation and wildlife management within its constituent parts, rather than development of separate legislation for these different functions as matched statutes. New law should be accompanied by repeal and integration of a range of legislation, (including the Wildlife & Countryside Act 1981) which have been identified as suitable for repeal in the Law Commission's analysis.
2. **Wildlife harms to be given priority in planning** so that the Government's proposed review of the National Planning Policy Framework and any subsequent changes to laws on planning for development of housing and buildings should also strengthen the protection of the environment and protected species from harmful development. Currently the system risks operating in an advisory capacity such that it is possible to carry out harmful development without first *demonstrating* that appropriate mitigation techniques have been

adopted. We recommend an amendment to the permission process so that mitigation is a compulsory element that must be satisfied before development can commence.

3. **The General Licence system across the UK should be further reviewed and updated** adopting the precautionary principle to lethal wildlife control measures and adopting ethical principles to wildlife management. Wildlife law and policy should be based on situation specific concerns and not general labels such as 'pest species' or ideological, anthropocentric perspectives on wildlife control. There should be a presumption that unless imminent threat to a species (or significant impact on a commercial interest) can be *demonstrated*, lethal control of otherwise protected wildlife would be unlawful.
4. **Disparity between penalties for wildlife crime and companion animal/animal abuse offences should be eliminated.** Penalties for wildlife crimes should be reviewed and strengthened to be consistent with the higher levels of sentencing available for animal welfare offences rather than these higher-level sentences being reserved for a limited number of offences (e.g. CITES import and trade offences).
5. **The law on sale and use of glue traps and snares should be harmonised across the UK** so that a new statute reflects the changes brought about by the Wildlife Management and Muirburn (Scotland) Act 2024 and the ban on snares and glue traps which came into force in Wales on 17 October 2023 following the passing of the Agriculture (Wales) Act 2023. Our recommendation is for a UK-wide ban on the use and sale of wire snares and glue traps to address the welfare concerns associated with the use and sale of these traps.
6. **Wildlife law is reviewed and updated** to better apply the legal tests of recklessness to cover both intentional and deliberate acts and those acts that have negative effects on wildlife where an objective test should be applied concerning whether a 'reasonable' person would have known the risk to wildlife. Accordingly, we recommend that wildlife law be reviewed to ensure that its definition of offences and harm to wildlife prohibits intentional and deliberate acts causing harm to wildlife, and also negligent acts and omissions where a reasonable person would or should have known there was a risk to wildlife. Wildlife law should also incorporate the precautionary principle prohibiting acts with the potential to harm wildlife.
7. **The principle of vicarious liability that was introduced in Scotland in 2012 is extended and incorporated into a new Wildlife Act.** Ideally this should extend beyond offences involving wild birds to also incorporate trapping and snaring activities involving other protected wildlife. Our recommendation is that wildlife law should be revised to make it an offence to 'cause and permit' another to commit an offence where a person has or manages rights over wildlife on their land.
8. **The enforcement regime for wildlife law retains the use of the criminal law but is suitably expanded** to also incorporate a range of enforcement tools such as enforceable undertakings that can be used to require commercial operators to repair the harm they cause.
9. **Wildlife crimes are given notifiable status in law.**
10. **Training on wildlife law is available to wildlife crime enforcers** and further support made available to enforcers, including access to continuing professional development, resources including staffing and facilitation of collaborative working between enforcement departments and teams.

# Contents

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<b>1. Introduction</b>	<b>7</b>
<b>2. Methodology</b>	<b>10</b>
2.1 Literature Review	
2.2 Case Law Analysis	
2.3 Interviews	
2.4 Ethical Issues	
<b>3. Summary of REA Literature, Studies and Case Law</b>	<b>13</b>
3.1 Wildlife Law in Context	
3.2 The Complexity and Consistency of Wildlife Law	
3.3 Compatibility with International and European law	
3.4 Adequacy of Wildlife Law	
3.5 Hunting and Welfare Issues	
3.6 Licensing Issues and the Review of Levels of Protection	
3.7 Legal Liability, the Mental Element and the Construction of Intent	
3.8 Vicarious Liability	
3.9 Enforcement and Reliance on the Criminal Law	
<b>4. Legislative Repeal and the post-Brexit Landscape</b>	<b>27</b>
4.1 Key Legislation for Repeal	
4.2 post-Brexit/retained legislation	
<b>5. Case Studies: Outcome</b>	<b>35</b>
5.1 The Deliberate Nature of Wild Mammal Crime	
5.2 Snares and Traps	
5.3 Badger Persecution	
5.4 European protected Species and Development	
5.5 Culpability for Offences and ‘cause and permit’ clauses	
5.6 Online Wildlife Abuse	
<b>6. Conclusions</b>	<b>54</b>
6.1 Wildlife Law Consolidation, Integration and Reform	
6.2 Compatibility with International and European Law Obligations	
6.3 Licensing and Levels of Protection	
6.4 Adequacy of Wildlife Law	
6.5 Gaps and Loopholes	
6.6 Enforcement	
<b>7. Recommendations</b>	<b>57</b>
<b>8. References</b>	<b>59</b>

<b>9. Appendix 1: The Law Commission review: Key points</b>	<b>65</b>
<b>10. Appendix 2: Key UK Wildlife Law</b>	<b>67</b>

# 1. Introduction

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This report summarises research into the current state of wildlife law that was commissioned by Humane World for Animals UK, formerly Humane Society International/UK (HSI/UK) and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) and is conducted by researchers from Anglia Ruskin University's (ARU) Law School. The project assesses the current state of UK wildlife law combined with an assessment of specific circumstances where prosecution of wildlife offences could not be taken forward because of the wording of wildlife legislation and its apparent inability to protect wild animals. The United Nations states that 'it was estimated that there are between 30 and 40 statutes on wildlife and wildlife management that need to be harmonised' (UNODC, 2021, p.13). Wildlife crimes continue to take place, and prior research has identified difficulties in pursuing wildlife crime cases through to prosecution, issues with evidentiary requirements, and areas where legislation allows for defences that potentially compromise wildlife protection (Nurse, and Harding, 2024). The empirical aspect of this research involves discussions with wildlife law stakeholders to provide case studies to indicate where improvements to wildlife legislation need to be made due to issues with current wildlife legislation wording, lack of enforcement, limitations, or loopholes. Wildlife is a devolved matter, which means that each nation of the UK can govern how it protects and manages its wildlife according to its own needs and priorities. Our research considers issues surrounding consistency in wildlife law, the adequacy of wildlife protection, variations in wildlife law between the constituent parts of the UK with consideration of the extent to which devolved legislation has resulted in different levels of wildlife protection across the UK.

Our core research questions focus on the ways in which current wildlife laws create inconsistencies in protection levels between species, inconsistencies in protection of the same species in different circumstances, inconsistencies in legislative interpretation by the courts (case studies), and inconsistencies in enforcement. We illustrate these issues with real-life multiple case studies to bring into focus wild animal suffering and in some cases (e.g. badger baiting) also the suffering of companion animals involved in wildlife crimes because of weak or inconsistent laws and problems of enforcement. The research considers the case for wildlife law reform put forward in the Law Commission's 2015 review of wildlife law which identified the complexity of wildlife law and identified a need for a single integrated wildlife law or a pair of matched statutes that would provide for more effective wildlife protection (Law Commission, 2015). The Law Commission set out concrete proposals for revised wildlife law, but barring some changes made via the Infrastructure Act 2015, the Commission's proposals have not yet been implemented.<sup>1</sup> This research makes recommendations for wildlife law reform to better protect wildlife. The Dubois et al. (2017) principles for managing human–wildlife conflict identified a need to modify human practices, when possible, to justify the need for control, to have clear and achievable outcome-based objectives and to cause the least harm to animals. These principles underpin our recommendations for reform.<sup>2</sup>

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<sup>1</sup> Section 23 of the Infrastructure Act 2015 amends the Wildlife and Countryside Act 1981 in respect of invasive species and species control agreements.

<sup>2</sup> See also the Wild Animal Welfare Committee's Position Paper on Ethical Principles in Wildlife Management. Available at:

<https://static1.squarespace.com/static/5edf4fd72d25275e3acc8c4a/t/64be364869588f5832e36b95/1690187337418/P>

The research is a mixed methods study comprising of socio-legal analysis of wildlife law in its contemporary context, combined with small scale qualitative research to assess the adequacy of UK wildlife law and the core issues that impact on the adequacy of wildlife protection. Our research makes some use of wildlife crime data to assess types of wildlife cruelty and issues that arise in prosecuting wildlife crime. But our research is not quantitative in nature. A core concern of the research is to identify the effectiveness of current wildlife law and assess any problems with the law that hamper prosecution of wildlife crimes. Thus, our analysis is not solely based on issues such as the number of reported incidents, the number of cases that proceed to prosecution or the level of fines or wildlife seizures as measures of ‘success’ in wildlife law enforcement. Instead, it considers in depth the extent to which wildlife law provides for adequate protection for UK wildlife, where there remain gaps or loopholes that provide theoretical protection but where in practice wildlife can still be killed or taken, and areas where the wording of legislation hampers effective prosecution of wildlife crimes.

The Law Commission produced proposals for consolidated wildlife law, but these were not taken up by Government<sup>3</sup>. Since publication of the Commission’s report there have been several changes of Government, and the new Labour Government elected in 2024 made a manifesto commitment to enact significant legislation to improve animal welfare (Labour Animal Welfare Society, 2024). Other pressures including the COVID-19 pandemic have pushed animal welfare and wildlife law to the margins, the result being that there has been a lack of appetite for large set pieces of consolidation and very few of the Commission’s recommendations have been taken forwards to date.

This research is informed by several developments that make it timely to review wildlife law now. First, the Dubois et al. (2017) principles for ethical wildlife control help guide development of international, national, and local standards and control decisions for wildlife management and the implementation of control mechanisms. Secondly the Animal Welfare Sentience Act 2022 is now in force and wildlife law is an area where the Animal Sentience Committee would likely find that current wildlife policy does not meet the Act’s requirements of giving all due regard to the welfare of sentient animals (wildlife). Also of importance is the United Nations’ 2021 assessment of the UK’s legislative, enforcement and judicial structures on wildlife crime. The UN’s assessment recommended a review of the draft wildlife bill produced by the Law Commission in light of the passage of the Animal Welfare (Sentencing) Act 2021 (amending the Animal Welfare Act 2006) and the (then) impending introduction of the Sentience Act. The UN recommended that a review of wildlife law should focus not just on consolidation of the disparate laws but should also aim to align sentencing and achieve elevation of penalties across the UK.<sup>4</sup>

This research assesses the available literature on the current state of UK wildlife law as part of the project’s overall assessment of progress towards achieving the Commission’s

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<sup>3</sup> The Government stated that it needed to consider the implications of EU exit on wildlife policy before deciding on how to implement the Commission’s recommendations. It also noted that pressure on parliamentary time meant that it would be difficult to find parliamentary time to bring forward legislative proposals for major reform at the time the Commission made its recommendations. See <https://lawcom.gov.uk/document/wildlife-law-related-documents/>

<sup>4</sup> See the UN summary report at: [https://www.unodc.org/documents/Wildlife/UK\\_Toolkit\\_Exec\\_Summary.pdf](https://www.unodc.org/documents/Wildlife/UK_Toolkit_Exec_Summary.pdf)



recommendations. It also analyses relevant case law and conducts analysis of the law building on prior research that identifies that insufficient resources are attached to the investigation and prosecution of wildlife crimes (Nurse and Harding, 2023). Prior research has also identified that evidentiary issues sometimes impact on whether wildlife crime cases are prosecuted and that cases considered viable by investigators are not prosecuted (Nurse and Harding, 2024). This prior research indicated some issues with the wording and consistency of wildlife legislation that we explore in further detail in this research. Our analysis also addresses some current problems in wildlife law, including measures that were not considered in the Law Commission's review, for example, some issues related to the Hunting with Dogs Act 2004, although it does not conduct a formal review of this legislation (see Section 3.5).

Wildlife crime is widely recognised as a significant area of crime with wildlife trafficking accepted as one of the most lucrative forms of criminal activity globally (Nurse, 2015; Wyatt, 2013). Interpol and the United Nations Environment Programme (UNEP) estimated that natural resources 'worth as much as USD 91 billion to USD 258 billion annually are being stolen by criminals' (Nellemann et al., 2016, p:4). Yet prior research has identified inconsistency in enforcement and prosecution approaches as well as identifying loopholes in UK wildlife law (Nurse, 2012, 2015). As a result of the devolved approach to wildlife protection and developments since its introduction, the Wildlife and Countryside Act 1981, the main piece of wildlife protection law in the UK, has been amended and supplemented multiple times by provisions in other pieces of legislation which means that different wording or different clauses may be in the law in each country. Scotland, Northern Ireland and Wales now have several pieces of wildlife protection law. Devolved legislation has resulted in some strengthened legislation in Scotland that arguably provides for increased wildlife protection (Anderson, 2020). However, wildlife crime is still considered to be an under-resourced area of crime both nationally and internationally.<sup>5</sup>

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<sup>5</sup> Wildlife crime is not currently notifiable and is not clearly identifiable within official crime statistics. Statistics are produced by wildlife organisations (usually charities and eNGOs) to fill the gap in order to provide a national level overview of wildlife crime – this is produced in the form of the Wildlife & Countryside Link Wildlife Crime Report. See, for example: [https://www.wcl.org.uk/docs/assets/uploads/Wildlife\\_Crime\\_Report\\_2023.pdf](https://www.wcl.org.uk/docs/assets/uploads/Wildlife_Crime_Report_2023.pdf)

## 2. Methodology

This research commenced with a Rapid Evidence Assessment (REA), a tool for synthesising the available research evidence on a policy or contemporary issue, as comprehensively as possible, within the constraints of a given timetable. A toolkit for undertaking a REA has been widely implemented since its inception by Government Social Research 11, also recently used by Horvath et al., (2013) and Horvath et al. (2014). According to Davies (2003) the functions of a REA are to:

- search the electronic and print literature as comprehensively as possible within the constraints of a policy or practice timetable.
- collate descriptive outlines of the available evidence on a topic.
- critically appraise the evidence.
- sift out studies of poor quality.
- provide an overview of what the evidence is saying.

This research examines the protection of wildlife through analysis of the current state of wildlife law. Our core research aims were to:

- Examine the proposals made by the Law Commission and assess the progress made on these to date.
- Assess the current landscape of wildlife law (see Appendix 2 for summary) and identify key weaknesses and gaps in the current system with regards to protecting the welfare of wildlife.
- Identify any further gaps, or loopholes in wildlife legislation since the Law Commission's review was completed, and since the UK's EU exit.
- Identify the ways in which current wildlife laws create inconsistencies or different levels of protection levels between species, or the same species in different circumstances.

The REA assesses the relevant literature on perceived problems with UK wildlife law and key issues identified in the relevant case law and enforcement practice.

### 2.1 Literature Review

To examine the literature, an initial bibliographic list was developed by searching through the relevant academic literature published after the Law Commission's review using various key words including 'wildlife law + UK' 'wildlife law + reform' and 'wildlife law + reform + UK' to identify the relevant literature. Much of the literature is available online via databases such as Google Scholar. We also searched ARU's electronic library which provides access to a wide range of databases such as Westlaw and Web of Science. Our initial analysis through Google Scholar revealed a substantial number of publications that fell outside the scope of our study. 'Wildlife + UK' obtained 464,000 results 'wildlife law + reform' obtained 171,000 results and 'wildlife law + reform + UK' obtained 80,400 results. Many of the papers were descriptive about aspects of or the purpose of wildlife law and fell outside of the scope of our research into the adequacy of wildlife law and its perceived effectiveness. Searches were further refined to narrow down the relevance of papers and those papers selected for inclusion in our REA are those which score a medium or high match for the research question focus on the current state of UK wildlife law, its perceived problems

and the case for reform since the Law Commission’s 2015 review. The Google Scholar search identified more than 450,000 papers matching the preliminary search terms and to identify papers for inclusion in the (REA) an initial list of 100 papers was selected by selecting the first 40 pages of results from our three search terms.<sup>6</sup> Close reading of these paper abstracts reduced the final list of papers for inclusion to the 15 papers examined in depth in our literature analysis.<sup>7</sup>

## 2.2 Case Law Analysis

Our case law analysis was carried out using the legal databases LexisNexis and Westlaw using ‘wildlife’ as a key search term, followed by ‘wild birds’ ‘wild animals’ ‘poaching’ and ‘non- native’ species for triangulation and to ensure that no relevant cases were missed. These key terms mirror the structure of the Law Commission’s Wildlife Report (Volume 1). Our analysis identified 29 cases relevant to the core issues of;

- Weak protection because of legislative wording
- Culpability for wildlife offences and accessory liability in tort
- Licences and wildlife control
- Inconsistency in wildlife law and areas where UK is weaker than EU law
- Explicit defences or loopholes
- Accountability for wildlife harms
- New problems and issues that the Law Commission may not have considered

Our case law analysis also considered post-Brexit changes to legislation to ensure that our review reflects contemporary concerns and the current operation of wildlife law.

## 2.3 Interviews

The final stage of our research was the development of case studies to illustrate specific areas of concern where we identified a case for legislative or policy reform for wildlife law to achieve better wildlife protection. The draft case studies were further discussed with research stakeholders to incorporate practitioner perspectives on the problems with current wildlife laws. Table 1 provides a key to the interview participants.

**Table 1 – Key to Interview Participants.**

Code	Description
NGO1	Policy Specialist, National UK Charity
NGO2	Investigations Specialist, National UK

<sup>6</sup> The total number of papers contained within the searches also included some overlap with some papers being selected several times by different search terms. Duplicated papers were only considered once.

<sup>7</sup> The REA is intended to assess the current state of literature and key themes identified in the literature, rather than produce a detailed thematic analysis of all available literature. It should also be noted that the REA literature prioritises peer-reviewed journal articles and the legal literature and does not include monographs, edited collections or NGO policy literature or grey literature. However, publications such as the Law Commission’s reports are considered within our wider literature review.

	Charity
NGO3	Investigations Specialist, National UK Charity
NGO4	Investigations Specialist, National UK Charity
NGO5	Former Wildlife Policy Specialist, National UK Charity
LP1	Commercial Lawyer, Planning and Environmental Law Specialist

We conducted six semi-structured interviews, with a mix of male and female staff (our interviewees were predominantly male). In addition, and to suit the preference of participants, we had three informal discussions to clarify aspects of the law and policy and received two written responses that covered key areas covered within the research. Each of our interviews commenced with an explanation of the scope of the project, and clarification of what it did and did not cover. Participants were asked a core set of questions concerning their involvement in wildlife crime views on the state of wildlife law, and identification of areas of the law that caused any particular issues in the protection of wildlife (with specific examples requested) and that might be improved. In addition to the core questions, participants were invited to express their views on any additional issues or comments they wished the research team to consider. Our case studies are developed from a combination of these interviews and discussions and our secondary analysis.

## 2.4 Ethical issues

Empirical research conducted by research staff at ARU is subject to first obtaining ethical approval relevant to the research being conducted.

This research was reviewed by the School of Business and Law's Research Ethics Committee at ARU and ethical approval was granted before any field research was conducted. Our ethical approval covered: compliance with data protection regulations on accessing, storage and retention of data; ensuring consent for collection and use of any personal data; ensuring that all research participants were fully informed on the nature and parameters of the project and provided informed consent to participate before interviews could be conducted. Our ethical guidelines also dictated that considerations outside of the research focus should not be taken into account in how the data are presented or disseminated. Our research further adhered to the British Society of Criminology ethical guidelines.<sup>8</sup>

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<sup>8</sup> The British Society of Criminology's guidelines are available at: [CodeofEthics.pdf \(britsoccrim.org\)](https://www.britishecrcrim.org/codeofethics.pdf)

### 3. Summary of REA Literature, Studies and Case Law

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Our project is a mixed methods study combining socio-legal studies and criminology to identify both the problems of legislative construction and application of law and the practical problems of wildlife law enforcement (Nurse, 2015). In respect of our core research questions, our literature analysis presents the findings that address our research questions and where we have confidence in the material which we have assessed. Works included in our literature analysis are primarily those which have conducted original research or analysis, were peer-reviewed and scored either medium or high in terms of integrity or appropriateness.

#### 3.1. Wildlife Law in Context

Despite its importance as one of the highest value areas of crime globally (Wyatt, 2013; Nurse, 2015) wildlife crime is generally a fringe area of policing, aspects of which are commonly dealt with via administrative or civil law processes rather than the criminal justice system (Nurse, 2012). International wildlife law sets the framework for wildlife protection through a range of treaties and conventions that generally dictate that wildlife can continue to be exploited subject to sustainable use considerations and the provisions of ‘soft’ international environmental law that populations of wildlife should not be exploited to extinction.<sup>9</sup> However, the enforcement of wildlife protection is heavily dependent on domestic legislation that creates specific offences in law as ‘there is no binding international treaty for the protection of animals and thus no clear legal standard on animal protection’ (Nurse, 2013, p.7). Instead, regional and domestic legislation provide the specifics of wildlife protection and create specific offences in respect of prohibited methods of taking and killing wildlife, as well as classifying the specific levels of protection afforded to individual species. Thus, animal law distinguishes between companion animals and wildlife, with companion animals generally afforded a greater level of protection, and provides for ‘criminal anti-cruelty laws, the statutory and regulatory animal welfare laws, and animal management and control laws’ alongside conservation and protection law (Schaffner, 2011, p. 6). As a result, a variety of laws relating to wildlife exist, from those providing general protection (e.g. the Wildlife and Countryside Act 1981) through to those creating specific offences and dealing with specific species (e.g. the Protection of Badgers Act 1992).

The Wildlife and Countryside Act 1981, the primary law protecting wildlife in Britain, defines wildlife according to criteria that specifies wildlife as animals living ‘naturally’ in a wild state and excludes animals bred in captivity.<sup>10</sup> Separate legislation (e.g. the Animal Welfare Act 2006 and the associated devolved legislation) protects vertebrate animals who are commonly domesticated in the British Isles, under the control of man (on a temporary or permanent basis), and ‘not living in a wild state.’ However, it should be noted that legislative definitions of wildlife vary across jurisdictions and in academic discourse such that some definitions would exclude fish, and other definitions define wildlife as including both fauna and flora (see later discussion of CITES and UK endangered species legislation). UK wildlife law provides for general protection of wildlife, subject to a range

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<sup>9</sup> See, for example the World Charter for Nature 1982 and the principles contained in the Rio Convention on Biodiversity, 1992 <https://www.cbd.int/rio/> as well as other international law measures such as the Convention on Migratory Species (CMS) and the Convention on International Trade in Endangered Species CITES)

<sup>10</sup> For example, the guidance in the Act states that the definition of ‘wild bird’ in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless it has been lawfully released into the wild as part of a re-population or re-introduction programme.

of permissible actions that allow wildlife to be killed or taken for conservation management purposes (e.g. culling to maintain herd health or to conserve other wildlife), killing for legal (and regulated) sporting interests (e.g. shooting and fishing), or to protect farming or other commercial interests (e.g. the killing of so-called ‘pest’ species). Thus, for an act to be a wildlife crime under wildlife law, it must be:

1. something that is proscribed by legislation;
2. an act committed against or involving wildlife, e.g. wild birds, reptiles, fish, mammals, plants or trees which form part of a country’s natural environment or be of a species which are visitors in a wild state;
3. involve an offender (individual, corporate or state) who commits an unlawful act or is otherwise in breach of obligations towards wildlife.

(Nurse and Wyatt, 2020, p.7)

Wildlife laws often contain prohibited methods of killing or taking wildlife such as prohibitions on using snares or poison, or taking, harming or disturbing wildlife during the breeding season. Accordingly, wildlife law creates a range of offences whilst arguably allowing continued exploitation of wildlife.

The focus of this research is primarily on the current state of wildlife law and its effectiveness in protecting wildlife. The core policy approach to wildlife crime as articulated by green criminological analysis is based on a socio-legal justice system approach, primarily concerned with current criminal law and quality of associated investigations, law enforcement, prosecutions and convictions (White, 2012).<sup>11</sup> Akella and Allan argue that ‘investments in patrols, intelligence-led enforcement and multi-agency enforcement task forces will be ineffective in deterring wildlife crime, and essentially wasted if cases are not successfully prosecuted’ (2012, p.11). Yet the Law Commission’s review of wildlife law suggested that an over-reliance on use of criminal sanctions as the main response to wildlife harms was potentially problematic, accordingly there was a case for reform of the enforcement aspects of wildlife law. However, analysis of the literature and prior studies shows that wildlife crime has historically been seen and treated as a low-level offense and its increased sophistication involving organized crime and transnational operations has not been met with corresponding developments in effective enforcement. Evidence exists that effective enforcement in the form of intelligence and enforcement agency collaboration is not always supported by successful prosecutions or application of appropriate sanctions (Interpol, 2011). Instead, ‘low conviction rates are endemic in wildlife crime cases’ (Akella and Allan, 2012, p.11) and inconsistency in sanctions and the failure to utilize asset recovery mechanisms are also perceived as problems (ibid.). Previous research suggests such problems are an integral feature of poor wildlife law enforcement (Wyatt, 2013; Nurse, 2012; Zimmerman, 2003).

### **3.2 The Complexity and Consistency of Wildlife Law**

A key conclusion of the Law Commission’s research was that the UK’s wildlife law regime was

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<sup>11</sup> Green criminology is the study of environmental laws and criminality, which includes crimes affecting the environment and non-human nature. Criminology as an area of scholarship and analysis is taught on policing degrees in the UK with green criminology taught on criminology degrees, criminal justice degrees and investigative degrees and some qualifying law degrees.

unnecessarily complex consisting of a patchwork of legislation that has developed over time.<sup>12</sup> The consequence of this is that wildlife law is not easily understood by practitioners and policymakers. Arguably its very complexity is a factor in its poor enforcement. While it is generally recognised that wildlife crime requires dedicated knowledge as a specialist area of law that is generally not included in UK law degrees, there is a lack of specialist wildlife prosecutors resulting in a lack of capacity for investigators to engage with prosecutors with specialist knowledge relevant to their case (Brooman, 2017). Accordingly, there is a potential disconnect between the understanding of wildlife law held by investigators who may have specialised in the area and received training when taking up their roles, and prosecutors for whom wildlife law may be an unfamiliar area.

Recent research (Nurse and Harding, 2024) identified that the evidentiary requirements of wildlife law were not routinely taught to police with the consequence that wildlife law cases were sometimes poorly prepared. Research studies consistently show that numbers of wildlife crime prosecutions are low, numbers of convictions are even lower, initiating a vicious circle which is closed by low sentencing and then perpetuated (Maher and Sollund, 2016a).

Wildlife protection legislation is limited by the fundamental principle that such laws operate primarily based on sustainable use of wildlife. Accordingly, political considerations are central to the protection afforded to wildlife in law and policy. Wildlife protection and animal law risks conflicting with other rural policies such that wildlife protection laws might be seen by some communities as lacking legitimacy (von Essen and Allen, 2017).

Wildlife law serves several different purposes according to four key themes:

- **Control** – killing and management of wildlife so it does not interfere unduly with human interests.
- **Exploitation** – use of wildlife as a valuable natural asset.
- **Protection** – prohibition of acts which harm individual flora and fauna beyond a permitted level.
- **Conservation** – Implementing the public good and wildlife trust doctrines by applying legal protection to animals regarded as being in the common ownership of (or held in trust by) humanity.

(Nurse, 2015, Vincent 2014)

Thus, while wildlife is generally protected by conservation law, that protection is often limited rather than absolute. For example, certain wildlife might be deemed ‘pests’ that can be killed to protect food, farming, and livestock interests. ‘Pest’ classifications can be general such as the UK’s historic use of open general licences to allow the killing of designated wildlife species such as crows and rooks to protect crops, or to conserve other wildlife.<sup>13</sup> They can also be specific, such as the culling of badgers under licence which aimed to help control the spread of bovine tuberculosis (bTB) in cattle. Exploitation of wildlife can also include sporting and shooting interests, which in the UK context are legitimate, regulated industries with both game laws and wildlife law setting out relevant

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<sup>12</sup> See Appendix 1 for a summary of key points from the Law Commission’s analysis

<sup>13</sup> General Licences authorise the control of specified species without the need for a person to apply for a specific license for their proposed control. The licences specify certain types of permissible actions as well as the species to which permissible control methods apply. As long as a person is satisfied that they meet the conditions of the license

restrictions on the taking and killing of wildlife and game species.

The Law Commission's proposed draft bill was intended to replace the existing complex system. Since the publication of the Commission's report, several legislative changes have taken place resulting in further variation in legislation such that there are now differences between legislation in the constituent parts of the UK. For example, the Wildlife Management and Muirburn (Scotland) Act 2024 introduces new rules on the capture and killing of certain wild birds and animals, introducing a ban on the use of certain traps and snares in Scotland and the licensing of some wildlife traps. The Act's introductory text describes it as an Act of the Scottish Parliament:

to make provision for the management of wildlife through the prohibition of glue traps and snares and regulation of other wildlife traps and the licensing of land on which certain birds are to be killed or taken; and for the licensing of the making of muirburn; and for connected purposes.<sup>14</sup>

The Act amends the Wildlife and Countryside Act 1981 in respect of glue traps and essentially introduces a ban on the use and sale of snares and glue traps and regulation of other traps. The Act also introduces a licensing scheme for land where grouse are shot although there is arguably a lack of clarity on how the licensing scheme will work.<sup>15</sup> A ban on snares and glue traps also came into force in Wales on 17 October 2023 following the passing of the Agriculture (Wales) Act 2023. Accordingly, the law in England, Scotland and Wales is different in respect of traps with different levels of protection and wildlife control practices across the UK (see later case study) notwithstanding the provisions of the Glue Traps (Offences) Act 2022 which came into force in England in 2024. Differences in possible sanctions brought about by the licensing of grouse moors in Scotland should be harmonized as part of the review and strengthening of wildlife law.

### **3.3 Compatibility with International and European Law**

Analysis of international law to which the UK remains a signatory indicates a somewhat inconsistent picture of its implementation and enforcement. The REA examined literature that considered, for example application of CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) and the Bern Convention (also known as the Council of Europe's Convention on the Conservation of European Wildlife and Natural Habitats (1979)) and there is a level of consistency within the literature articulating concerns about the extent to which the UK focuses on some species but not others and in its application of wildlife law weighs human and commercial interests against wildlife ones in a manner that suggests wildlife concerns are sometimes marginalised. Wyatt's study identified that:

The UK is actively engaged in defending wildlife via the transposed legislation although the data show that the wildlife who are the focus of these efforts tend to be outside of the UK. This is somewhat the case in regard to enforcement as well, where there are continual efforts particularly in terms of CITES (which largely protects species outside of the UK),

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<sup>14</sup> Current text of the Act available at: <https://www.legislation.gov.uk/asp/2024/4/introduction/enacted>

<sup>15</sup> The licensing of grouse moors allows for sanctions to be imposed where grouse moors are involved in wildlife crime through the potential for licensing suspension. See, for example, NatureScot's guidance on licensing of grouse moors at: <https://www.nature.scot/professional-advice/protected-areas-and-species/licensing/licensing-news#:~:text=In%20July%20this%20year%20NatureScot%20introduced%20a%20licensing,to%20act%20as%20a%20deterrent%20to%20wildlife%20crime>. The lack of a similar licensing scheme in England and Wales points to differences in how the law in different parts of the UK controls shooting operations and imposes sanctions for offences.



but fewer prosecutions and convictions (Wyatt, 2021, p.30).

Of concern in this regard is the extent to which enforcement, for example, prioritises commercial activity but largely ignores welfare concerns and the large scale killing of wildlife for non-commercialised purposes. As Wyatt notes, ‘wildlife in the UK are overlooked, as is welfare outside of the transportation context’ (2021, p.30).

The Law Commission considered that several species (for example reptiles and amphibians) protected by the Bern Convention on the Conservation of European Wildlife and Natural Habitats are not (adequately) protected under UK domestic law (Law Commission, 2015, pp.60-61). The Commission considered there were potential gaps in the protection of marine wildlife, as well as in the extent of wildlife protection and consistency in wildlife protection. In 2018, the European Commission brought legal action against the UK alleging that the UK had failed to fulfil its obligations under the Habitats Directive (art.3(2), art.4(1) and Annexes II and III) by failing to designate sufficient sites for the protection of the harbour porpoise. In the case, *European Commission v United Kingdom of Great Britain and Northern Ireland* the European court upheld the Commission’s claim and confirmed that the United Kingdom had failed in its obligations.<sup>16</sup> The UK later proposed to designate six new sites for harbour porpoise protection. Subsequently, in June 2020 the Benyon Review into Highly Protected Marine Areas (HPMAs), an independent review commissioned by the UK Government in 2019 into marine protection, recommended the introduction of Highly Protected Marine Areas (HPMAs) to complement the existing MPA network, enabling greater recovery of the marine ecosystem.

Studies broadly indicate that where wildlife protection conflicts with commercial activities this can result in weaker protections for wildlife, for example for marine wildlife where weighting afforded to human interests allowed what would otherwise be considered unlawful disturbance (Nurse, 2023).

Our analysis of case law identified some areas where the interpretation of legislation highlights weak protection for wildlife. Table 2 highlights some key examples.

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<sup>16</sup> *European Commission v United Kingdom of Great Britain and Northern Ireland* ECLI:EU:C:2017:334

**Table 2 Case Law: judicial application and clarification of protection for wildlife in the UK**

Cases	Judgement
<p><i>Sustainable Shetland v Scottish Ministers</i> 2015 SC (UKSC) 51</p> <p><b>Topic:</b> Interpretation and application of environmental law, particularly the Birds Directive (2009/147/EC), in the context of large-scale renewable energy projects</p>	<p>The case concerns a claim that Scottish Ministers failed to take proper account of the Birds Directive and did not adequately consider environmental impacts when granting consent for a large wind farm.</p> <p>The Supreme Court dismissed the appeal and noted that ministers had considered the impact on the affected birds (whimbrels) but were entitled to conclude that it was not significant. The case reinforces the idea that ministers can take into account the impact on wildlife but in granting development should take all material considerations into account including whether the impact on wildlife is perceived as minimal.</p>
<p><i>R (McMorn) v Natural England</i> [2016] LLR 151</p> <p><b>Topic:</b> Challenge to refusal of a license to kill common buzzards (a protected species).</p>	<p>The case concerned an application for a licence to kill common buzzards, a protected species under the Wildlife and Countryside Act 1981 and Council Directive 2009/147/EC (the Birds Directive).</p> <p>The court held that the decision to refuse the licence was unlawful due to an undisclosed policy and unlawfully taking into account public opinion. The decision to refuse the licence was quashed potentially leaving the way open for licences to be granted to kill protected birds under licence in shooting areas.</p>
<p><i>European Commission v United Kingdom of Great Britain and Northern Ireland</i> ECLI:EU:C:2017:334</p> <p><b>Topic:</b> The case concerned air pollution but has indirect implications for wildlife conservation.</p>	<p>The court concluded that the United Kingdom had failed in its environmental law obligations. It did so by failing to transpose correctly Articles 3(7) and 4(4) of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.</p>
<p><i>Raeshaw Farms Ltd v Scottish Natural Heritage</i> [2017] LLR 632</p> <p><b>Topic:</b> Restriction on the use of general licences.</p>	<p>The case concerns a challenge to a restriction placed on the use of general licences by Raeshaw Estate due to evidence of past wildlife crimes.</p> <p>The court held that the decision to restrict the licences was valid and within Scottish Natural Heritage's discretion. The court determined that the evidence of wildlife crimes supported the decision and emphasized the importance of evidence to the making of regulatory decisions under the Wildlife and Countryside Act 1981.</p>

<p><i>Regina (Seiont Gwyrfai and Llyfni Anglers' Society) v Natural Resources Wales</i>, [2018] 1 WLR 228</p> <p><b>Topic:</b> The case relates to pollution that potentially harmed wild fish.</p>	<p>This case concerned an appeal on the question of how the law defined environmental 'damage' within the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 which implemented the Environmental Liability Directive.</p> <p>The court held that 'damage' is limited to deterioration / worsening of the environmental situation. Environmental damage does not include preventing or decelerating an already damaged environmental state from achieving an acceptable environmental condition.</p>
<p><i>Thomson v Marine Management Organisation</i> [2019] EWHC 2368 (Admin)</p> <p><b>Topic:</b> Failure to consider habitats for seabed flora and fauna before granting a dredging licence.</p>	<p>The court held that the Marine Management Organisation (MMO) had not erred in law and that the law did not impose a mandatory requirement to consider topography and habitats. (s 71 of the Marine and Coastal Access Act 2009.)</p>
<p><i>R (on the application of Royal Society for the Protection of Birds) v Natural England; R (on the application of Avery v Natural England</i> [2019] EWHC 585</p> <p><i>R (on the application of Royal Society for the Protection of Birds) v Natural England; R (on the application of Avery v Natural England</i> [2021] (Appeal against original decision)</p> <p><b>Topic:</b> Balance between conservation efforts and regulatory frameworks governing wildlife protection</p>	<p>Both cases involved judicial review of the lawfulness of Natural England's decision to grant a licence for a trial of hen harrier brood management (Wildlife and Countryside Act 1981 and the Birds Directive are involved).</p> <p>The judicial reviews failed, and the court held that the brood management trial was lawful and proportionate to the need to gain knowledge on applying brood management as a tool for English hen harrier conservation.</p>
<p><i>Wild Justice v Natural Resources Wales (National Farmers' Union intervening)</i> [2021] EWHC 35</p> <p><b>Topic:</b> Limits of general licenses which permit certain species of wild birds to be killed</p>	<p>Challenge to the issuing of General Licences on the grounds that Natural Resources Wales lacked sufficient evidence that allowing the birds to be killed would achieve the purposes for which the licences were granted, and that the licences did not sufficiently specify the circumstances in which they could be used.</p> <p>The court dismissed the judicial review claim and concluded that NRW's approach to justification for the killing of wild birds under the licence was valid. The court also noted that it would not be practical for licences to cover all possible factual permutations that might apply when it is necessary to kill wild birds to protect other wild birds or</p>

	crops.
<p><i>R (DPP) v Northampton Magistrates Court</i> [2024] EWHC 2324 (Admin)</p> <p><b>Topic:</b> Evidentiary requirements for prosecuting badger crimes</p>	<p>The case concerned the evidence required to establish that a badger sett was active in order to charge certain Protection of Badgers Act offences.</p> <p>The High Court found that expert testimony is usually needed to prove the technical aspects of offences involving wildlife. In this case it was critical to establish that the badger sett in question was active, and that without expert evidence there was no real prospect of a conviction.</p>

### 3.4 Adequacy of Wildlife Law

A consistent theme in the literature concerns the adequacy of wildlife law and the extent to which current wildlife laws fail to provide effective wildlife protection. In relation to badger crime, for example, the Badger Trust highlights the disparity between the five-year sentences available for serious animal welfare offences involving companion animals while ‘similar animal cruelty committed against a wild badger can only be given a maximum of a 6- month prison sentence under the Protection of Badgers Act’ (Badger Trust, 2013, no page). The Law Commission’s analysis did not consider changing the regime on welfare grounds. However, the disparity in sentencing provisions is arguably an artificial one and more recent (devolved) legislation has sought to increase sentences for wildlife offences. Accordingly, there are differences in sentencing provisions for wildlife offences across the UK and there is a case to be made for UK Governments to coalesce towards upward harmonisation of sentencing provisions.

Sollund and Maher, in examining general perspectives on the law concerning the illegal wildlife trade (including European law), concluded that the enforcement response to the illegal wildlife trade ‘is often uninformed and uncoordinated, while legislation is complex and disjointed leading to uncertainty and leniency in punishment’ (Maher and Sollund 2016b, p.99).

The reality of UK wildlife law is that while it provides for general protection it also allows continued killing of wildlife where anthropocentric concerns are prioritised, and thus effective protection on paper is often subject to various exceptions and potential defences (Nurse, 2023). The licensed badger cull in England serves as an example where an otherwise protected animal can be killed to serve commercial interests and a perceived threat to livestock (Agnew and Agnew, 2016).

There are also persistent issues of wildlife crime that legislation and enforcement has thus far failed to address, including those situations where there is human-wildlife conflict. The problem can be characterised in the context in which (i) there is widespread illegal killing of raptors; (ii) raptor predation can limit grouse populations and reduce hunting revenues; and (iii) mitigation techniques are available but are either unacceptable to stakeholders or unproven in the field (Thurgood and Redpath, 2008). In this respect, there remains an issue concerning acceptance of the continued presence of protected wildlife and the legitimacy of wildlife protection laws (see *R (McMorn) v Natural England* [2016] LLR 151 discussed in Table 2.<sup>17</sup>

<sup>17</sup> The common buzzard is protected under the Wildlife and Countryside Act 1981. It cannot be killed or captured without a licence issued by Natural England. Statutory tests have to be satisfied before Natural England can issue such a licence. Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild

Our analysis of possible inconsistencies in the protection of wildlife extends also to differences between the regions of the UK in respect of the application of wildlife licences to authorise otherwise prohibited activities. This emerges as a theme in case law as well as in academic literature. Prior to Brexit UK wildlife laws (and the licences issues under them) needed to be compliant with EU law while post-Brexit the use of licences still needs to be compliant with international and European law to which the UK remains a party. This question becomes even more compelling in the post- Brexit era, where the UK has departed from EU environmental and wildlife protection and the notion of a shared European approach to wildlife protection although devolved wildlife laws allow for a country specific approach to wildlife protection and licensing policy can target country-specific needs. However, one problematic aspect of the licensing regime is the extent to which it has been based on the conception of pest species. Whether it is the control of magpies or carrion crows, badger cull, controlling deer overpopulation, maintaining feral cats, or the much wider task of wildlife law reform, the law needs less focus on which/whether animal species are “good” or “bad,” and more attention on the broader question of how to properly address human relationships and interactions with all forms of wildlife (Fitzgerald, 2014).

### **3.5 Hunting and Welfare Issues**

The Law Commission did not engage with issues under the Hunting Act 2004 because a review of this legislation was expressly excluded from its terms of reference. As the Commission noted, hunting with dogs is a politically polarised issue and by considering this issue, potentially its review would end up straying into political issues falling outside of its remit. The Hunting Act 2004 does not outlaw all hunting but instead creates specific offences in respect of hunting a wild mammal with dogs. However, hunting with dogs is a wildlife issue and one in which there is overlap with other areas of wildlife law, e.g. the Protection of Badgers Act 1992 and associated use of dogs to commit wildlife offences. Accordingly, there remain issues concerning the illegal killing of wild mammals as well as the existence of illegal forms of hunting (Weaver, 2023).<sup>18</sup>

While we recognize the issue of hunting of wild mammals as a welfare and wildlife crime issue and in respect of integration of wild mammal protection within our review of wildlife law, a full review of the Hunting Act 2004 (and associated legislation) is beyond the scope of this research and deserves its own dedicated review. We thus recommend a separate review of hunting legislation and detailed analysis of the extent to which the exemptions within hunting legislation should be retained or reviewed.

Wildlife law has been criticized for being hard to enforce and so far has not been effective in completely stopping the illegal hunting of wild mammals. Within our analysis of police and court prosecutions data, we also identify a small number of animal fighting prosecutions that relate to setting dogs on wild mammals where the cases have been prosecuted using the Animal Welfare Act 2006 rather than hunting legislation (see also section 5.1 case study on intentional harms). Accordingly, there is evidence that current wildlife law has not eliminated illegal killing of wild

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birds contains a general prohibition in Art 5 on the capture or killing of wild birds, the deliberate destruction or damaging of their nests or eggs and the deliberate disturbance of the birds especially during breeding or rearing. It requires Member States to establish a general system of protection for wild birds. Article 9 contains provisions permitting derogation from Art 5 to prevent serious damage to livestock (amongst other reasons).

<sup>18</sup> See also <https://theecologist.org/2021/oct/15/trail-hunting-smokescreen-admits-huntsman>

mammals with its associated welfare harms to wildlife and dogs.<sup>19</sup>

The law on hunting wild mammals has moved on since the Law Commission's review, particularly in respect of devolved legislation. In respect of hunting activities in England our analysis of prosecutions data identifies evidence of wider legislation being used to address hunting issues. For example, some hare coursing offences in England were dealt with by the Police, Crime, Sentencing and Courts Act 2022 which allows prosecution for trespass in pursuit of game. However, this legislation does not also apply in Scotland and the nature of these offences is such that they could be dealt with by hunting dogs legislation and wild mammal protection legislation. Our analysis of available police prosecutions data identifies 222 convictions for hare coursing in the period 2013 to 2023 (starting with 11 convictions in 2013 and 57 in 2023).

Hunting law in Scotland has also changed with the introduction of the Hunting with Dogs (Scotland) Act 2023 which repealed the Protection of Wild Mammals (Scotland) Act 2002. The Act makes it an offence to hunt wild mammals with dogs except in respect of a range of exceptions where a permitted number of dogs can be used under licence from NatureScot.

In our discussions with NGOs and prior research with prosecutors (Nurse, and Harding, 2024) the use of dogs for flushing out foxes has been raised as a possible defence against other offences (see section 5.2 protection of badger case study in this report). It is too early to assess the effectiveness of the Scottish ban on hunting with dogs but the continued use of dogs to flush out wild mammals raises a welfare concern. Any review of hunting legislation should examine this issue.

### **3.6 Licensing Issues and the Review of Levels of Protection**

The Law Commission's approach to licensing and levels of protection was based on an articulation of four themes described as follows:

The exploitation theme essentially deals with issues of controlling access to wildlife resources—primarily for the benefit of landowners; the control theme deals with issues where wildlife harms or interferes with other activities—but are not necessarily tied to an ownership interest either in land or in the wildlife at issue; the conservation theme shifts to a focus on broader societal interests; and the welfare theme does not prevent wildlife exploitation but tempers that ability with a duty on humans to avoid imposing unnecessary suffering on animals.

(Fitzgerald, 2014, p.91)

The Dubois et al. (2017) principles for managing human–wildlife conflict identified a need to modify human practices, when possible, to justify the need for control, to have clear and achievable outcome-based objectives and to cause the least harm to animals. The UK's current system of general licenses is arguably inconsistent with International and European Law principles and there is inconsistency in how statutory licenses are deployed in different parts of the UK. General licenses

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<sup>19</sup> The League Against Cruel Sports and other organizations have documented instances where illegal hunting has taken place under the guise of trail hunting [Trail Hunting | The League](#)

in the UK allow for the control of certain species without the need for individual applications or specific assessments. This broad approach can lead to inadequate oversight and insufficient consideration of the specific circumstances and conservation status of the species involved. An analysis of international law to which the UK remains a signatory indicates a somewhat inconsistent picture of its implementation and enforcement. Our analysis considered, for example, the application of CITES and the Bern Convention and concerns about the extent to which the UK focuses on some species but not others.

The presumption in international law is that of general protection for wildlife subject to sustainable use principles. International and European environmental law often emphasizes the precautionary principle, which requires that actions potentially harmful to the environment should be avoided, even if some cause-and-effect relationships are not fully established scientifically.<sup>20</sup> The broad and less restrictive nature of the UK's general licences seems not fully aligned with this principle, potentially allowing activities that could harm wildlife without sufficient precaution. In its application of wildlife law, the UK generally weighs human and commercial interests against wildlife ones in a manner that suggests wildlife concerns are sometimes marginalized. Of concern in this regard is the extent to which enforcement, for example, prioritises commercial activity but largely ignores welfare concerns and the large scale killing of wildlife for non-commercialised purposes.

In March 2021, the UK Government issued a general license review for wild birds. Indeed, the focus of this review is to establish a robust system of licensing that addresses the conflicts between the protection of wild birds and people's legitimate activities focusing specifically on assessing the necessity of licenses for the killing or taking of wild birds for specific purposes outlined in legislation, as well as increasing specificity in new general licenses.<sup>21</sup> This, however, goes now on a parallel and separate line from the judicial evolution in the EU. In fact, the EU's approach focuses on centralized, uniform application of laws with strict oversight, whereas the UK's approach is more permissive and pragmatic, allowing for broader, user-driven compliance within set conditions as well as balancing conservation needs with practical management considerations, our analysis, therefore, identifies concerns about the continued use of general licences, highlighting the complexities and inconsistencies in the UK's approach compared to international and European standards. General licences can be relied upon by any person without the need to justify their activity and without having to first prove any form of competence in wildlife control with the result that there are welfare harms associated with poorly carried out wildlife control (see section 5 case studies in this report). The literature and case law cast doubt on the consistency of general license use as well as the extent to which issues of necessity and the precautionary principle are properly applied when considering lethal methods of control. Overall, our analysis suggests a need for a clearer regulatory framework in the UK able to balance conservation with practical needs, that aligns more closely with international principles ensuring adequate oversight and protection for wildlife.<sup>22</sup>

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<sup>20</sup> The High Court in *R(Harris) v Environment Agency and Natural England* [2022] reaffirmed the importance of the precautionary principle to environmental law.

<sup>21</sup> [Wild Birds: General Licence Review - background and summary of survey responses \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004217/wild-birds-general-licence-review-background-and-summary-of-survey-responses.pdf)

<sup>22</sup> The Law Commission proposed that under its recommended new framework there should be a general power to introduce, remove or alter close seasons in any specified area and for any animal, other than wild birds listed in annex 2 to the Wild Birds Directive for which specific proposals were made. The intention was that the close seasons for deer and seals that existed at the time of the Commission's review would be brought within this general regime although the law has subsequently changed to remove these close seasons (see Table 3). The Commission's analysis recognized the

### 3.7 Legal Liability, the Mental Element and the Construction of Intent

The Law Commission identified a concern regarding the legal definition of 'intentional' actions that adversely affect wildlife. The Law Commission only partially addressed the issue by recommending reforms to modernize and simplify wildlife law. Our analysis aimed to evaluate the ongoing significance of this issue focusing on the challenges related to the interpretation of 'intentional' offences. For example, Section 9 (1) of the Wildlife & Countryside Act 1981 states that:

Subject to the provisions of this Part, if any person intentionally kills, injures or takes any wild animal included in Schedule 5, he shall be guilty of an offence.

On the face of it this seems relatively simple to assess in a case where a wild animal has clearly been killed, injured or taken. In theory the defendant would have a high hurdle to meet to show that they were not guilty of the offence. However, the word 'intentionally' means that the burden rests with the prosecution to prove beyond reasonable doubt that this was the defendant's objective and that any of the specified acts impacting on wildlife were carried out with specific intent. *Accidental* killing of a Schedule 5 bird does not meet the definition of the offence which is problematic where there is no penalty arising from accidental harm. To perhaps complicate the matter further, Section 9(4) creates an offence for any person to 'intentionally or recklessly' commit any further specified acts including disturbance of a wild animal at its place of shelter.<sup>23</sup> This additional wording requires consideration of how the legal tests of recklessness should be applied to wildlife issues.

We consider that wildlife law should be updated, and the new wildlife act strengthened to better apply the legal tests of recklessness to cover both (a) intentional and deliberate acts and (b) those acts that have negative effects on wildlife, where a broadly objective test should be applied concerning whether a 'reasonable' person would have known the risk to wildlife. However, the current law applies a subjective test and the problem with establishing recklessness is that if the test is too subjective, it becomes easy for guilty parties to avoid liability. Equally, if the test is too objective it can also lead to problems in establishing what would have been reasonable at the time and in the circumstances.<sup>24</sup> Our solution is to apply a combination of subjective and objective approaches to cases where wildlife harm occurs, similar to the two stage test for dishonesty (established in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67) and applied in *Booth and another v R* [2020] EWCA Crim 575) which focuses on the defendant's belief and the objective standard of dishonesty, without requiring the defendant to recognize their conduct as dishonest by those standards. Applied to wildlife cases and the issue of recklessness this test would ask i) What was the defendant's actual state of knowledge or belief as to the facts? (subjective); and ii) Was the defendant's conduct reckless and an unreasonable risk of wildlife harm by the standards of ordinary, decent people? (objective).<sup>25</sup>

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complexity of this area, and its recommendations were reflected in clause 160 of its draft bill. We support the Commission's proposal and recommend this provision be included in new legislation.

<sup>23</sup> Section 1(5) also makes it an offence for a person to 'intentionally or recklessly' disturb any wild bird included in Schedule 1 while it is building a nest or is in, on or near a nest containing eggs or young; or disturb the dependent young of such a bird.

<sup>24</sup> *R v G* [2004] 1 AC 1034 modifies the tests for recklessness. Previously the objective standard of recklessness that was set out in *R v Caldwell* [1981] AC 341 applied, the idea being that a reasonable person would recognise the risk and if they continued on their course of action, they were being reckless. Previously, *R v Cunningham* 1957] 2 QB 396 set a subjective test, considering whether the individual knew that what they were doing was problematic.

<sup>25</sup> The *Booth* objective test was devised via Lord Hoffman's test in the 2005 civil case of *Barlow Clowes International Ltd v Eurotrust International Ltd* [2005] UKPC 37 in which he considered: "Although a dishonest state of mind is a subjective



The law should also harmonise references to ‘wilfully’ or ‘intentionally’ in wildlife law with appropriate wording that not only reflects the requirements of EU law but also allows investigators to proceed with cases where an offence has clearly been committed, without also having to prove the wildlife knowledge or intentions towards wildlife of the offender. Thus, a definition that incorporates both accidental and deliberate disturbance and harm to wildlife and addresses the failure of an offender to modify their action when it should have been obvious that there would be consequences should be consistently applied across all wildlife legislation.

### 3.8 Vicarious Liability

In respect of issues of liability for causing wildlife offences there are differences in the law between Scotland and other parts of the UK. Scotland’s vicarious liability legislation, introduced in 2012, creates the offence of “causing or permitting” environmental harm and places an obligation of due diligence on employers allowing for prosecution of the landowner or manager where an employee persecutes birds of prey (or any protected species) on the land (Lennon, 2021).<sup>26</sup> Despite facing similar problems with raptor persecution, no such provisions exist in the rest of the UK, an example of differences in wildlife protection law across the UK. We note, however, that the literature is inconclusive on whether vicarious liability is working as well as it might in Scotland. Data on prosecutions shows a low level of conviction for the offence against a persistent level of bird of prey persecution on estates. In response to a question in the Scottish Parliament from Alison Johnstone MSP, the then Scottish Justice Minister stated that:

Up to 2017-18, which is the latest date for which information is available, four prosecutions involving relevant charges have been brought under section 18A of the Wildlife and Countryside Act 1981, and those have resulted in two convictions. One person was convicted of four charges in 2014-15 and another person was convicted of two charges in 2015-16.

The fact of only two convictions for vicarious liability elicited further questions about whether this was the effective strong measure it had originally been presented as. The Minister’s response was:

The question that Alison Johnstone asks is incredibly important. With regard to why there have been only two convictions in relation to vicarious liability since 2011, there are a number of reasons why it might not be appropriate to pursue a charge of vicarious liability. For example, in common with the position for other crimes, there are evidentiary thresholds that must be met before a case can be brought, and the Crown Office and Procurator Fiscal Service must also consider whether it would be in the public interest to pursue a conviction.

The member will, of course, be aware of the introduction of the Animal and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. Although that does not create new offences, it will look to increase the maximum fine and prison term that a court can impose on people who are found guilty of vicarious liability.

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mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant’s mental state would be characterised as dishonest [by ordinary, decent people] it is irrelevant that the defendant judges by different standards...”

<sup>26</sup> To illustrate the use of vicarious liability in bird of prey persecution cases, in 2014, a landowner was found vicariously liable and fined for his gamekeeper’s poisoning of a buzzard and possession of pesticides. The landowner was fined £625, and a six-figure sum was removed from his single farm subsidy (Lennan, 2021).

In discussing the prosecution of a gamekeeper for multiple wildlife offences in 2019, the RSPB queried why a vicarious liability charge was not raised and indicated that the offence was not being vigorously applied in bird of prey persecution cases (Orr-Ewing, 2019). While it is beyond the scope of this review to assess the merits of charging decisions, the proper application of the law and consistency in its enforcement are issues to consider. Despite the potential issues in application of vicarious liability we consider the law in this area should be harmonised across the UK for consistency in wildlife protection, to provide for additional sanctions and to harmonise preventative measures in wildlife crime, and set out further analysis in our case studies later in this report.

### 3.9 Enforcement and Reliance on the Criminal Law

The Law Commission's review suggested that UK wildlife law was over-reliant on use of the criminal law and required a more flexible approach that is more responsive to the nature of offending. The Commission's view was that revised wildlife law needed to increase variance in the use of enforcement penalties, consistent with the policy view that use of the criminal law and an increase in regulatory enforcement are potentially problematic for business. There is also a need to introduce robust sentencing guidelines to ensure consistency in sentencing and to ensure that wildlife harms are considered as a factor in sentencing.<sup>27</sup>

However, it should be noted that compliance with international law and enforcement perspectives does require active use of the criminal law to address wildlife crime issues. Although the United Kingdom is no longer a member of the EU, the Environmental Crime Directive (Council Directive 2008/99/EC, 2008) on the Protection of the Environment through Criminal Law [hereinafter ECD] requires member states to make certain offences that have the potential to cause serious damage to human health and the environment criminal offences, provided they are committed 'intentionally or at least with serious negligence,' with member states left free to define *inter alia* the exact meaning of 'serious negligence'.<sup>28</sup> The ECD requires that any criminal penalties should be 'effective, proportionate and dissuasive' (Article 5) the presumption being that they include both a punitive and deterrent element.<sup>29</sup> Lennan (2021) identifies that the ECD and the Environmental Liability Directive can effectively work in tandem by ensuring offenders are held liable through the use of 'punitive' civil sanctions, with non-compliance leading to criminal prosecution, arguably for intentional and deliberate offending and those crimes that involve violence and wilful destruction, use of criminal penalties should be the primary response. However, UK laws 'create a variable patchwork of prohibitions, that are narrower in reach, and with generally lower penalties, than those in the Environmental Crime Directive' (Clifford Chance, 2024, p.18)

The literature shows that wildlife crime prosecution does not generally make full use of available sentences and sentencing on wildlife and environmental crime is generally at the lower end of the scale. In his assessment of US environmental cases Lynch (2017) identified that the most likely

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<sup>27</sup> The Ministry of Justice conducted an independent sentencing review in 2024 and early 2025 which called for evidence to guide a re-evaluation of the sentencing framework. Details at: <https://consult.justice.gov.uk/digital-communications/independent-sentencing-review-2024-to-2025-cfe/>

<sup>28</sup> Offences included in Article 3 include the killing, destruction, possession or taking of specimens of protected wild fauna or flora species, trading in specimens of protected wild fauna or flora species or parts or derivatives and any conduct which causes the significant deterioration of a habitat within a protected site

<sup>29</sup> Directive (EU) 2024/1203 on the protection of the environment through criminal law, replaced Directives 2008/99/EC and 2009/123/EC and establishes minimum rules with regard to the definition of criminal offences and penalties and measures to be taken by EU Member States. Since the UK has now left the EU the Directive does not apply to the UK.

penalties are probation (86.4% of cases) and fine/ restitution (79.9%) across all wildlife laws. Lynch's analysis identified that where incarceration is employed, mean sentence lengths are small with the longest sentences given to offenders who also violated non- environmental laws as part of their offense (Lynch, 2017). However, Lynch also identified that few cases actually go to trial. In the wider literature, studies consistently show that environmental offenders (including those who commit wildlife crimes) receive more lenient treatment from criminal courts than non-environmental offenders (St John et al., 2012, Akella and Allen, 2012). Punishments for environmental crimes are more lenient than sanctions assigned to comparable non-environmental offenses when the environmental crime is ecological, but punishments are sometimes harsher when the environmental crime involves animals.

Studies also show that sentencing fails to apply deterrent options, in part because lesser offences are charged (e.g. animal welfare offences rather than CITES illegal trade offences) and due to a perceived lower threat by offenders (Cochran et al., 2018). Research for WWF-UK examined 174 illegal wildlife trade convictions between 1986 and 2013, identifying that most cases (74%) attracted non-custodial sentences, only 56% included a fine with the levels of fines mostly being less than or equal to £2,500 (86%). The research also found that 70% of fines were less than the wildlife product value and that where custodial sentences were imposed these tended to be less than ten months in duration (Wellsmith, 2017).

A wider range of penalty options already exists, particularly in relation to habitats offences. Environmental civil sanctions were introduced in England and Wales in 2008 through the Regulatory Enforcement and Sanctions Act 2008. This provides environmental regulators with the power to issue a civil sanction for several offences in place of criminal sanction (or ahead of criminal sanctions being used as a last resort). Analysis shows that 'such sanctions include fixed monetary penalties, remediation notices, stop notices and enforcement undertakings'. For example, Natural England has been able to use civil sanctions from January 2012 as an alternative to prosecution for a number of offences, 'including those relating to the habitats and nature conservation provisions from the Environmental Liability Directive 2004' (Caine and Broadbent, 2023, p.102). However, when considering the nature of the sanction there is arguably a need to distinguish between deliberate criminal activity that targets wildlife and potentially 'lesser' non-compliant activity. While the argument for reducing the burden of compliance on business so that for example, the costs of administration in relating to licensing and inspections are not perceived as prohibitive has some merit as responsive regulation, much wildlife offending constitutes deliberate action albeit involving a variety of criminal and other actors (Wyatt et al., 2020, Nurse, 2013, South and Wyatt, 2011). Accordingly, retention of criminal law sanctions remains necessary although our analysis is that wildlife law could be improved by incorporating a wider range of sanctions beyond the use of fines and prison sentences.

## **4. Legislative Repeal and the Post-Brexit Landscape**

Our analysis identifies that the picture of UK wildlife law remains one of complexity with the majority of the Law Commission's recommendations for simplification not yet implemented. Wildlife law has evolved since the Law Commission's reports, but our analysis concurs with the Commission's conclusions that various legislation can be repealed and integrated into a new *Wildlife Act*. Such new legislation could replace the Wildlife and Countryside Act 1981 as the UK's

overarching wildlife protection legislation. Repeal of those remaining pieces of legislation highlighted by the Law Commission and incorporation of all necessary provisions within new legislation would simplify and aid with enforcement of the core provisions of wildlife law.

#### **4.1. Key Legislation recommended for Repeal by the Law Commission**

We revisit the Law Commission's list of law for repeal and examine the current status of the relevant law as follows:

The Wildlife and Countryside Act 1981. As the primary legislation protecting wildlife in the UK, repeal of the Wildlife and Countryside Act 1981 and replacement with an updated overarching wildlife management and protection law would be the key to consolidation and strengthening of wildlife protection. The Act has been amended multiple times, leading to a complex legal framework that can be difficult to navigate, hindering effective implementation and enforcement.

The Countryside and Rights of Way (CROW) Act 2000 introduced the right to roam on certain lands and made significant changes to the protection of Sites of Special Scientific Interest (SSSIs). The Natural Environment and Rural Communities (NERC) Act 2006 further strengthened biodiversity conservation and introduced a duty for public authorities to consider biodiversity in their operations.

In Scotland, the Nature Conservation (Scotland) Act 2004 provides for wildlife protection in Scotland while the Wildlife and Natural Environment (Scotland) Act 2011 introduced additional measures for wildlife protection and management. Overall, there are ongoing discussions about whether further amendments or a complete overhaul might be necessary, also to align it to more recent legislation (e.g. Environment Act 2021) to create a more cohesive legal framework. In this regard, some aspects of the Act are considered outdated and not fully aligned with modern conservation needs where a more forward-looking earth justice approach is needed (Reid, 2012). Despite the protections offered by the Act, habitat loss and fragmentation continue to threaten many species, and the Act alone is not sufficient to address these broader issues.<sup>30</sup>

The Wildlife and Natural Environment Act (Northern Ireland) 2011 places a statutory duty on public bodies to conserve biodiversity and provides for wildlife protection. The Act also abolishes game licences and game dealers' licences, prohibits hare coursing events and creates wildlife crime offences.

#### **Table 3 - Summary on the status of legislation other than the Wildlife and Countryside Act 1981 identified as a candidate for repeal by the Law Commission. Acts are listed in alphabetical order.**

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<sup>30</sup> Protection of wild plants should be included in the new Wildlife Act consistent with the Law Commission's draft legislation and the definition of wildlife and including fauna and flora. Wider habitat and environmental protection are contained in wider environmental legislation.

<b>Legislation</b>	<b>Function</b>	<b>Repeal Status</b>
The Agriculture Act 1947	The Act includes provisions for the control of pests, which can have significant implications for wildlife. Animals to which this section applies are rabbits and hares, rodents, deer, foxes, moles and birds.	<p>It has been amended several times: Agriculture Act 1957; Agriculture Act 1986 (focused on environmental conservation, introducing measures to promote environmentally friendly farming practices); Agriculture (Miscellaneous Provisions) Act 1963; Agriculture Act 1993 and Fisheries Act 2020 which ensured alignment with modern environmental and conservation goals.</p> <p>Requires repeal and integration into new law.</p>
The Conservation of Habitats and Species Regulations 2010	Conservation of natural habitats and wild fauna and flora. Details the list of European Protected Species.	<p>This legislation has been repealed and replaced by the Conservation of Habitats and Species Regulations 2017.</p> <p>The 2017 regulations incorporate amendments to ensure the continued protection of habitats and species in the UK, especially following Brexit.</p>
The Conservation of Seals Act 1970	Conservation and population management of seals. The Act allowed unregulated shooting outside the breeding season, with potentially significant, unintentional impacts on regional populations.	<p>The Act has been repealed in Scotland but remains in force in other parts of the UK. In England and Wales, the Act has been amended by the Fisheries Act 2020 which made several changes, including the prohibition of certain methods of killing seals and the removal of close seasons for seals.</p> <p>Requires repeal and integration into new law.</p>

Deer Act 1991	Sections 1 – 4 of the Deer Act 1991 create certain offences regarding: Poaching of deer, taking or killing of deer in close season, taking or killing of deer at night, using certain weapons etc. to take or kill deer. Under section 5 it is also an offence to attempt to commit any of the offences at 2 – 4 in the list above	<p>The Deer Act 1991 has not been repealed but has been amended over the years to address various issues related to deer management and protection. Wildlife and Countryside Act 1981 (Amendment) included changes to the Deer Act to address issues such as poaching and the use of prohibited weapons (Some species, such as the red deer and roe deer, are also protected under the Wildlife and Countryside Act 1981). While the Natural Environment and Rural Communities Act 2006 made further amendments to enhance the protection of deer and address enforcement issues. The Deer (Scotland) Act 1996, although specific to Scotland, made amendments to the Deer Act 1991 to improve deer management practices.</p> <p>Requires repeal and integration into new law.</p>
The Destructive Imported Animals Act 1932	Makes provisions for prohibiting or controlling the importation into and the keeping within Great Britain of destructive non- indigenous animals, and provisions for exterminating any such animals which may be at large.	<p>The Act has been amended but not fully repealed to address specific issues. For example, the Destructive Imported Animals Act 1932 (Amendment) Regulations 1992 updated the act to exclude importation from EU member states.</p> <p>The act was repealed in Scotland on 2 July 2012 by the Wildlife and Natural Environment (Scotland) Act 2011. In other parts of the UK, the Act remains in force with the amendments applied.</p> <p>Requires repeal and integration into new law.</p>

The Hares Preservation Act 1892	Prohibits the sale of hares from March to July but does nothing to prevent them being shot. Indeed, most shoots take place in February when females are already pregnant or nursing dependent young	Still in force, England only. <sup>31</sup> Repealed in Scotland on 29 June 2011 by the Wildlife and Natural Environment (Scotland) Act 2011.  Requires repeal and integration into any new law.
The Import of Live Fish (England and Wales) Act 1980	Regulates import of fish	This Act has been amended several times to address evolving needs and regulatory requirements. The Aquatic Animal Health (England and Wales) Regulations 2009, for example, introduced changes in relation to biosecurity measures and the management of aquatic animal health.  Requires repeal and integration into new law to ensure alignment with broader environmental and conservation goals.
The Pests Act 1954	Allows destruction or control of rabbits and other animals and birds, and the use, sale and possession of (approved) spring traps for killing or taking animals.	Some measures superseded by the Glue Traps Offences Act 2022 (GT(O)A 2022), the Wildlife Management and Muirburn (Scotland) Act 2024 and the Agriculture (Wales) Act 2023  Requires repeal and integration into new law.
The Prevention of Damage by Rabbits Act 1939	Makes provision for the prevention of damage by rabbits; and allows the use of poison and spring traps above ground for the purpose of killing hares or rabbits, subject to conditions.	This Act has been updated several times to reflect changes in pest control practices and regulations. For example, sections repealed and modified by Agriculture Act 1947 and Pests Act 1954, section 6(2) was repealed in 1993  Requires repeal and integration into new law.

<sup>31</sup> There have been discussions and proposals to repeal the act in England and Wales as well. For instance, the Hares (Closed Season) Bill introduced in 2022 aimed to establish a closed season for hares and proposed the repeal of the Hares Preservation Act 1892. However, the act remained in force, but it is considered outdated and there are ongoing discussions about its relevance and effectiveness

The Protection of Badgers Act 1992	The Act is principally one of welfare as opposed to conservation. Under the Act it is an offence to take, injure or kill a badger or be in possession of a dead badger, cruelly ill-treat a badger or dig for a badger or use certain items to take or kill it, carry out certain acts with the intention of interfering with a badger sett (or being reckless as to those effects), sell or possess a live badger, mark or ring a live badger (except as authorised by a licence).	Has been amended by the Wildlife and Natural Environment (Scotland) Act 2011 which made several changes to the Protection of Badgers Act 1992, including the addition of new offences and the strengthening of existing protections; and the Nature Conservation (Scotland) Act 2004 which repealed certain sections and adding new provisions to improve badger protection.  Requires repeal and integration into new law
The Weeds Act 1959	Allows control of weeds considered harmful to agriculture.	Still in force. Requires repeal and integration into new law.

## 4.2 Post-Brexit/retained legislation

After Brexit the UK set up a series of legislative changes with the intention of adapting laws (that implemented European law) to exclusively national needs. This was not confined to a change in transferring executive functions (for example from the EU Commission to UK authorities) but also to the substance of the regulations, adapting them to the UK's post-Brexit context. Despite Brexit meaning that some EU sources for wildlife law, like the Habitats Directive and Birds Directive, no longer directly apply in the UK (thus applicable overarching principles can legitimately differ where these are devolved matters), some of the most significant changes concern the type of influence that EU law still has on UK wildlife legislation. Some areas, such as wildlife protections, have stayed broadly the same, without opportunities taken to introduce improvements. As we note elsewhere in this report, the post-Brexit EU Environmental Crime Directive provides for a wider range of prohibitions than are found in UK law. Schoonover (2024) identified divergence from EU pesticide standards as one area of concern while Horton suggested that 'the UK is falling behind the EU on almost every area of environmental regulation, as the bloc strengthens its legislation while the UK weakens it' (2024, no page). Post-Brexit, the UK is also no longer subject to the scrutiny of the European Commission over compliance with international (EU) environmental or wildlife law, or the jurisdiction of the Court of Justice for the European Union (CJEU) who have previously identified areas where the UK has not met its international obligations.

The Retained EU Law (REUL) Act allows the UK government to review, amend, or repeal EU-derived laws, making it easier for present and future governments to weaken or remove legal protection of species, habitats, and the environment with limited consultation and without appropriate parliamentary scrutiny. This is intended to streamline the process of updating or



removing laws that are considered outdated or unsuitable for the UK's needs post-Brexit. Since 1 January 2024, the status of what was previously known as retained EU law has changed due to the implementation of the Retained EU Law (Revocation and Reform) Act 2023. Retained EU law has been reclassified as “assimilated law.” This means that while the laws remain part of the UK legal framework, they are no longer interpreted in line with EU principles. The principles and interpretations that were previously applied under EU law have been removed. This change aims to give UK courts and authorities more flexibility in interpreting these laws independently of EU jurisprudence. Table 4 provides an overview of post- Brexit EU wildlife protection as it applies in the UK.

**Table 4: Evolution of wildlife legislation in the UK after Brexit**

<b>EU Protection</b>	<b>Current Validity</b>	<b>Evolution (current provisions)</b>
Habitats Directive (Council Directive 92/43/EEC)	Assimilated law (retained in domestic law)	<p>The Conservation of Habitats and Species Regulations 2017</p> <p>The Conservation of Offshore Marine Habitats and Species Regulations 2017</p>
Habitats Directive (Council Directive 92/43/EEC)	Assimilated law (retained in domestic law)	<p>The Conservation of Habitats and Species Regulations 2017 (as amended)</p> <p>The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019</p> <p>The Wildlife and Countryside Act 1981</p> <p>The Conservation of Offshore Marine Habitats and Species Regulations 2017</p>

	The Retained EU Law (Revocation and Reform) Act 2023 (REUL Act)	It provides the framework for how retained EU law is managed in the UK post- Brexit. This includes the potential revocation, amendment, or replacement of retained EU laws to better suit UK- specific needs and priorities.
EU's Natura 2000 ecological network (Special Protection Areas (SPAs) designated under the Birds Directive and Special Areas of Conservation (SACs) designated under the Habitats Directive)	SACs and SPAs no longer form part of the EU's Natura 2000 network	UK National Site Network
Environmental Impact Assessment (EIA) Directive	Implemented	Town and Country Planning (Environmental Impact Assessment) Regulations 2017  The UK has retained the core principles of the EIA Directive to ensure continued protection of the environment after Brexit
Marine Strategy Framework Directive	Implemented	The Marine Strategy Regulations 2010 Post-Brexit, the UK has made technical amendments to ensure that the legislation remains operable and effective.  This includes replacing references to "Member States" with references to the UK and removing requirements to report to the European Commission

## 5. Case Studies: outcome

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As part of our analysis, we identified several areas where there is a strong basis for law reform, on the basis of ineffective or weak wildlife protection. In some cases, this is due to ambiguous wording within legislation, in other cases this is due to the practical challenges of enforcing legislation that indicate a need to review and strengthen wildlife laws. Our case studies were developed through a combination of our interviews and other discussions and analysis of the law and case law. Table 1 (earlier in this report) provides a key to our interviewees and evidence from the interviews is presented (anonymously) within this case study discussion.

### 5.1 The Deliberate Nature of Wildlife Mammal Crime.

Several of our interviewees highlighted the problematic nature of wildlife law as not being adequate for the task of dealing with deliberate criminal behaviour. The Law Commission noted that wildlife law was over-reliant on the criminal law, but our interviewees note that the deliberate nature of wildlife criminality requires a criminal law (and criminal justice) response that recognizes intent to harm wildlife and wild mammals in particular, and that is also responsive to repeat and persistent offending.

Chief Inspector Kevin Lacks-Kelly, head of the UK National Wildlife Crime Unit upon reflecting on his 22 years as a wildlife crime enforcer says.

I have policed in this area for the most of my professional life and some things simply do not change. What really lets our animals down is the lack of meaningful growth led investment in this area, Despite the NWCU continually showing the links between wildlife crime and serious and organised crime, and more recently vulnerability and Violence Against Women and Girls. Wildlife crime is a serious area of criminality that the public want us to be operating at our best in this class, but our response is not growing at the pace that other areas of policing are with the correct level of investment. Couple this problem with the lack of credible datasets to analyse and understand wildlife crime, delivering in this area has never been harder for our WCO's given the current social and economic pressures.

To make a difference that will protect our natural environment for generations to come we must level up investment in prevention and enforcement. Furthermore, we must strive towards notifiable crime status for wildlife crimes, then we can have a true and accurate picture of demand that is not subject to spin or interpretation from those who deny wildlife crime or inflate or deflate the figures. Beyond this we must look at legislation. To have our officers across the country working with legislation from the 1820's is truly unacceptable. Many of the failed cases we see are down to loopholes, lack of expertise in the court room and the exploitation of the current legislation. We have a number of examples that see badger, bird of prey and fox killers evade justice.

As our commitment solidifies and our strategic oversight grows, so does the capabilities of the criminals and criminal gangs that benefit from committing wildlife crime. Because of the afore mentioned reasons we often find ourselves behind the criminal

curve, this is illustrated in the tragic and obscene UK wide investigations into organised primate torture resulting in custodial sentences up and down the country. These instances are not isolated as in 2024 alone we have seen investigations leading to the seizure of almost 60,000.00 rare bird eggs trafficked from around the world, and on a local level we are seeing criminal gangs deploying en-masse to simply overwhelm the police response and have free reign to commit hare coursing crimes, or the targeted killings of rare birds of prey or the smoke screen put up to conceal illegal hunting. There is a lot to be proud of as we have reduced wildlife crime significantly in some areas but this is just stemming the tide. Evolving issues have always been present but the rate they continue to evolve, as our tools are becoming outdated is a concern. We need to stand together to give a voice to the voiceless and not just call for change, we need to work as a collective and be the change.

The link to other offences is an important aspect of wildlife crime and we identify dog welfare and the link between animal welfare offences and wildlife offences as a factor to consider in wildlife crime prosecution.

**Offences** – The Wild Mammals (Protection) Act 1996 makes it an offence if any person mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates any wild mammal with intent to inflict unnecessary suffering. The Act applies to all wild mammals. The Police, Crime, Sentencing and Courts Act 2022 creates additional offences in England in respect of hares. A person commits an offence if they trespass on land with the intention of (a) using a dog to search for or to pursue a hare, (b) facilitating or encouraging the use of a dog to search for or to pursue a hare, or (c) enabling another person to observe the use of a dog to search for or to pursue hares.

**Analysis** – The offences identified above are indicative of deliberate offences against wild mammals but is not an exhaustive list (for example, see also sections 5.2 and 5.3). The chasing of wild mammals with dogs raises animal welfare concerns in respect of fear and stress caused to the chased animal as well as sometimes suffering injury during the activity. When chased, hares and other mammals may suffer extreme stress during the chase and can be forced to experience conditions which are far outside their normal limits. When chased, wild mammals may run for their lives to the point of exhaustion. Echoing the points made by Chief Inspector Lacks-Kelly our other interviewees also highlighted areas of concern, as follows:

I think there are a lot of people out there who are doing stuff to wildlife, whether it's shooting or hunting or badger baiting or whatever, that know exactly what they're doing and know it's against the law and are using the fact that the law isn't consolidated and maybe using the fact that they're just going to get a slap on the wrist, rather than anything dramatic, they, they're using that too, and obviously you know, most wildlife crime occurs out of people's sight, which is much more difficult to investigate than companion animal welfare.

...if you're looking at one wildlife crime area which has been relatively successful. Which has been led by the police, which is hare coursing and the reason why that has been successful is not because everybody loves hares, and nobody wants to see hare

coursing happening. It is because of the side effects of hare coursing, which has a big impact on burglary rates on antisocial behaviour on, farmer impacts, some of which is very well known. You know, they, go out and course the hares and at the same time case the joint to see where if they've got any new tractors and what they could come back and nick later on so that that impact is very well known and the police's enforcement work on hare coursing was essentially driven by getting down the rates of rural burglary and antisocial behaviour in areas and it's worked. I think that those two things together. But you needed those two things together to come together, because otherwise that it would not have been a priority for the police in Lincolnshire, Norfolk and Suffolk (NGO1).

The lack of legal protection for some wild mammals was also highlighted in our interviews as one investigative interviewee pointed out:

I guess the one thing that would help more than anything else is to have some sort of legal status for the fox. Protection for the fox that it is one of the most abused animals that we come across really. I mean, even in a domestic environment, we've had people use catch traps to get foxes in their back garden, they try and drown them, they try and shoot them with an air rifle. You know, people think they have carte blanche with the fox to do exactly what they want (NGO3).

**Proposed Reform** - The continued killing of wild mammals continues without an established need for control and a lack of monitoring of control methods as well as through deliberate illegal activity. Within our proposed new wildlife act, wild mammal control through hunting and predator control operations should be subject to the need to justify lethal methods of control. To facilitate this, a suggestion emerging from our interviews was to provide the fox (and other hunted mammals) with legal protection under the Wildlife and Countryside Act 1981 (and any replacement legislation) so that the general presumption is that these animals are protected under the law and cannot be killed or taken except in specific exempt or licensed circumstances. We recommend that the protective schedules in any new legislation should provide all wild mammals with a level of legal protection such that any taking or killing requires justification and that methods of control are subject to ethical principles of wildlife management.

Chief Inspector Lacks-Kelly's analysis points to lack of knowledge of wildlife law among practitioners, and to the fragmented nature of the law. In addition to our proposed reforms of the content of the law and its consolidation we also identify a need for training and guidance on the law for investigators and prosecutors and we later make recommendations for provision of appropriate training and guidance, alongside our core law reform recommendations.

Our case studies identify the following core candidate areas for reform in order of welfare priority as follows:

## 5.2 Snares and Other Traps

The use of snares and other traps for perceived ‘pest’ control and predator management is an identified area where there are country specific differences in wildlife law. The Wildlife & Countryside Act 1981 generally outlaws the use of self-locking snares that cause considerable animal welfare problems and animal suffering, however:

- free-running snares are currently still permitted in England, subject to provisions that they are checked regularly (i.e. once every 24 hours) and any non-target and otherwise protected species caught in snares or traps are immediately released. The welfare of target species caught in traps should also be considered.
- there are requirements that traps should not be set in any manner that makes it likely that they would catch non-target species
- snaring remains legal in England in respect of animals not included in Schedules 6 or 6ZA of the Wildlife and Countryside Act 1981
- free-running snares are still legal in Northern Ireland with the requirement that snares should be checked regularly (i.e. once every 24 hours).

The law has changed since the introduction of the Wildlife and Countryside Act 1981 and the devolution of wildlife matters so that the law on snares and traps varies across the UK. Free-running snares are still legal in England and Northern Ireland but there is a ban on snares in Wales following introduction of the Agriculture (Wales) Act 2023 and a ban on use and sales in Scotland brought about by the Wildlife Management and Muirburn (Scotland) Act 2024. The Muirburn Act arguably introduces a complete ban on snares through its wording that makes it ‘an offence to use a snare to trap a wild animal, or in any way that is likely to injure a wild animal.’ The Welsh ban is a total ban and also includes a ban on the use of glue traps.

NGO4, one of our investigative interviewees, expressed concerns about the use of snares.

What I would want to avoid would be any self-regulation or general licences... the top topic, I probably get more calls from the RSPCA or the police is about general licences. Because they get it all the time misunderstood, and I'll give you an example now of a welfare issue. [Say] I've a problem with squirrels in my garden, so I go out and buy a live cage trap and I can legally catch a squirrel. Yeah, go down the garden centre buy one off the Internet or whatever. Can't release it. So I could have to put it to sleep. So we then get the phone calls. Well, what do I do with my squirrel now? So, we say well take it to the vet, euthanize it because it's the only humane method we can approve. So, you know there's aspects there of half the things. So you can legally do something like I can go buy a Larsen trap and use it in my garden under the general licence because my mate told me I could, without actually having to read the general licence and I do all the RSPCA's training now on general licences. It's tedious to be honest because it's... the problem with the general licences is that people don't read them. The professional gamekeeper, the professional farmer [looking after] his lambs, his sheep, whatever will read them when they're he's getting it right, we'll what he is. But if I go buy a Larsen trap and put it in my back garden because I don't like Magpies. It's not a reason for you to have a Larsen trap, but until somebody complaints are concerned, you knock on the door. Well, I didn't know that I needed [to comply with] a general licence? My mate said it was OK. So, there's a fundamental issue with general licencing regulation anyway, because they're not, they're not enforced... There's that element of I wouldn't want to see self [regulation].

I think with snaring, there's so much around snaring that is understood. But when we look at snaring, being banned...but it is connected to animal welfare because dogs and other animals get caught in it. The industry have got it wrong because the code of practice specifically says it should be a breakaway [type of snare], and the code of practice, Defra approved, backed by all the major organisations using snares... I know there is people still using snares that are not the breakaway design because if you buy a snare, it lasts a few years, you don't need to replace it. We brought in a code of practice but when I've interviewed people on the snaring cases I've had [people are still in possession or and using old snares] ...

.... I think the long-term solution is to regulate the sale of the traps, because if you're using a trap, why would you not have to do a certificate? They've done the training course now to use it. Why should I buy a squirrel trap, a cage trap for a squirrel with no guidance at all? What do I do with the squirrel when I've caught it? So there's a need long term for perhaps some sale regulation that you have to show you can demonstrate the use of it. And you know, because through a professional body, through a farm or something that'll be easy, but the people using them in the back gardens, it's fraught with potential issues because if they do catch a magpie what are they're doing with it? Are they taking it down the road, letting it go, and it's flying back again? I think we've had cases where people drowned squirrels in buckets of water, you know? (NGO4).

**Offences** – The Wildlife and Countryside Act 1981 prohibits the use of any trap or snare for the purposes of killing, taking or restraining any wild animal in Schedules 6 or 6ZA (section 11(2)(a) of the Act). Regulation 41 of the 1994 Conservation Regulations prohibits the use of traps that are non-selective according to their principle or conditions of use for taking or killing of protected animals. Section 11(1) WCA 1981 prohibits the killing or taking of any wild animal by means of setting in position any self-locking snare "calculated" to cause injury to any wild animal; using a self-locking snare; using a bow, crossbow or explosive other than firearm ammunition to kill any wild animal; using any live mammal or bird as a decoy in order to kill or take any wild animal; knowingly causing or permitting such an act to be done.<sup>32</sup> However, the Larsen trap, a live cage trap that allows the use of a decoy bird to trap other wild birds is legal for use under the terms of a general licence. Larsen traps are used in crow and magpie control although a potential concern is their (mis)use to take non-target species as well as concerns about the welfare of target birds and the decoy bird. As our interview data shows, our interviewees also expressed concern about the use of Larsen traps as a general trapping and control mechanism rather than in cases where there was an identified conservation or crop protection issue.

Under section 11(2)(b) of the Wildlife and Countryside Act 1981 it is also an offence to set in position any trap or snare calculated to cause bodily injury to any wild animal in Schedules 6 or 6ZA. In addition, under section 2(b) of the Animal Welfare Act 2006 (AWA) animals are protected by the provisions of the AWA where they are '*under the control of man, whether on a permanent or temporary basis*'. Guidance issued by Natural England confirms that persons carrying out pest control activities will be responsible for the welfare of caught animals, as

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<sup>32</sup> The Law Commission's draft 2015 Bill listed as 'regulated' items/methods: Bows and crossbows. Explosives. Poison. Snares. Spring traps. Using a live mammal or bird, or any other live animal which is blind or mutilated, as a decoy. Revised wildlife law should so far as is possible 'future proof' the law in terms of new methods of taking wildlife.

protected animals under section 2(b) AWA. Thus, any animals caught in traps fall within the remit of the obligations contained within the AWA. Subsections 4(1) and (2) of the AWA provide for two specific offences where a person's acts or omissions causes unnecessary suffering to either a protected animal or to an animal the person is responsible for. These subsections are applicable to those who trap animals and extend to non-target species.

Since 31 July 2024 it has been against the law to use glue traps to catch rodents in England, unless licensed. Changes in the law brought about by the Glue Traps (Offences) Act 2022 created new offences of setting a glue trap in England for the purpose of catching a rodent and setting a glue trap in England in a manner which gives rise to a risk that a rodent will become caught in the glue trap. The new law restricts the use of glue traps to professional pest controllers involved in rodent control management and specifies that licences must only be used in exceptional circumstances, and where all other methods of rodent control have failed or are not practical. Glue traps are banned in Ireland under the Wildlife Act 1976 except where authorized. Scotland and Wales have both banned sale and use of glue traps.

**Analysis** – Our recommendation, based on evidence of the harm they cause to animal welfare, is for a UK-wide ban on both the sale and use of all glue traps and snares to trap animals. Snares can be an indiscriminate method of control with the risk that they capture non-target species. Unless snares are of a breakaway type and are regularly checked to release any captured wildlife, they also risk causing unnecessary suffering to animals caught in snares and traps. In research commissioned by the anti-snaring campaign Professor Stephen Harris commented:

The use of snares in the UK does not meet acceptable standards of animal welfare or any of the principles for ethical wildlife control established by a committee of international experts. Some methods used to kill wild animals have such extreme effects on their welfare that, regardless of the potential benefits, their use is never justified: snaring is such a method. All the available data show that the only way to stop extremely high levels of non -target capture, illegal use and misuse of snares, address animal welfare concerns, and recognise that wild animals are sentient beings, is to prohibit the manufacture, sale, possession and use of snares in the UK (Harris, 2022, p.61).

Snares are currently a legitimate form of fox and rabbit control in England where Defra has published a code of practice for fox control that recommends that snares are inspected twice daily. The snaring of any protected species in England is not permitted unless a specific licence has been granted under section 16 of the Wildlife & Countryside Act 1981. In England, the remaining provisions of the Wildlife & Countryside Act 1981 specify that any person who sets a snare in position must inspect it at least once in every 24 hours to see whether any animal is caught by the snare; and to ensure that the snare remains free running.<sup>33</sup>

Potential problems exist in determining that the placing of a snare or trap was *intended* to take or kill prohibited species rather than species that may legitimately be killed or taken without the need for a specific licence. The Law Commission considered the issue of 'intent' within its analysis of wildlife law and noted that Section 1 of the Wildlife and Countryside Act 1981 – the provision intended to transpose article 5 of the Wild Birds Directive – transposes 'deliberate' with the term 'intentional'. In domestic criminal law, a defendant acts intentionally with regard to a result if he or she acted in order to bring about that result. A jury may also find that the

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<sup>33</sup> There is no clear definition of a self-locking snare in the Wildlife & Countryside Act 1981 and arguably the onus would be on the prosecution to prove that a snare was of a self-locking nature.



defendant intended the result if it was a virtually certain outcome of his or her conduct and that he or she foresaw that as being the case. Thus, knowledge of the presence of protected species (e.g. polecats) and knowledge of the likelihood that they would be caught in traps could identify a risk of harm to a species protected from trapping if the trapping activity were to take place. But there is a high bar to prove that an offence has been committed.

Based on the case law, the Law Commission concluded that acceptance of a risk went beyond mere appreciation that a risk existed and also incorporated ‘conscious acceptance’ of the risk (Law Commission 2015, p.71). As a result, the law arguably considers the level of knowledge that a perpetrator had and whether armed with that knowledge they still took a decision to act. In doing so, this is clearly a ‘deliberate’ and intentional act. But the criminal law does sometimes capture persons who are aware of a risk but do not take action to avert it. The Law Commission argued that this lower threshold should be applied in trapping cases.

The Law Commission recommended:

that the term “deliberate” in the context of the Bern Convention, the Habitats Directive and the Wild Birds Directive should be defined in domestic criminal law in line with the CJEU’s ruling in *Commission v Spain*<sup>34</sup> (Recommendation 25); and that under the new regulatory framework a person should be found to have acted “deliberately” if (1) he or she intended to commit the prohibited result; (2) his or her actions presented a serious risk to animals of the relevant species unless reasonable precautions were taken and he or she was aware that that was the case but failed to take reasonable precautions; or (3) his or her actions presented a serious risk to animals of the relevant species whether or not reasonable precautions were taken, and he or she was aware that that was the case (Recommendation 26).

The wording of the legislation is perceived as creating some challenges in respect of prosecuting trapping offences. However, where intent to commit trapping offences cannot be proved but the affected wildlife is under control of man, Animal Welfare Act 2006 offences might be charged instead.

**Proposed Reform** - Our proposal is for a ban on the sale and use of glue traps and snares that protects all species from snaring. The new wildlife act (and any regulations issued under it) should also include provisions requiring the use of methods that wherever possible minimize the suffering involved in killing or capture of wild animals. If the Government proposes a ban that doesn’t cover all species, given potential issues with proving knowledge or intention and determining that otherwise protected species were the target of any trapping or snaring operation we suggest that the wording of intent, calculation and likelihood to be used in new legislation includes the wording of ‘knowingly or recklessly’ to cover both intent and negligent acts. This provides for implementation of the Law Commission’s suggestion that the law should criminalise (1) intention to trap a protected species by a prohibited method; (2) acting with awareness of serious risk to a protected species and failing to take reasonable precautions against that risk; and (3) acting with awareness of a serious risk to a protected species in situations where reasonable precautions could not mitigate that risk. The revised framework within the new wildlife law should also require the use of methods that, wherever possible, minimise the suffering involved in killing or capture of wild animals. This includes clarifying and updating the basis for testing and approving traps in the Pests Act 1954 (to be repealed and integrated into the new law) and removing the existing

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<sup>34</sup> Case C-278/20 *Commission v Spain* ECLI:EU:C:2022:503

exemptions for mole, rat and mouse traps.<sup>35</sup>

The main issue to address is that of harmonisation of the law on sale and use of traps and snares to strengthen wildlife protection. Use of snares should be banned in England and Northern Ireland to catch up with the law in Scotland and Wales. A UK-wide ban on the sale and use of snares and glue traps should provide for consistent animal welfare protections across the UK and address welfare concerns about the use of these traps.

### 5.3 Badger Protection<sup>36</sup>

The Protection of Badgers Act 1992 provides for general protection for badgers and is the main legislation used to prosecute badger baiting, badger digging and badger disturbance cases. Badgers are a European protected species and enjoy protection as native UK wildlife. But there remains a persistent problem of badger persecution in the UK and police and court prosecutions data identifies that badger offences are prosecuted using a range of legislation and involve a range of different offences including shooting, snares, poisoning and illegal action and harms caused by development. Our investigations interviewees provided some examples. NGO2 an investigations specialist commented as follows:

one of the first things really is the police powers of entry onto land under the Badgers Act. So, that initial getting on to farmland or wherever where you've got the site of a badger sett that's been dug or anything like that because then that power is available under the Hunting Act. So, I think it would be nice to balance that out to give the police that ability to enter land for their initial investigations...

[In respect of charging animal fighting offences for badger digging] there's a stated case around because it's about the intention to fight the animals and whether it becomes a protective space protected species under the act. So, you have to show that it's under the control of man. So simply putting a terrier into a badger sett wouldn't be enough to get you a Section 8 Animal Welfare Act case. You could obviously if the terrier's got injuries and we can't say categorically they're from a badger, but a vet could say, you know, could give an opinion as to around as to what caused those injuries or we could go, we could try and do a Section 4 under the Animal Welfare Act for the injuries to the dog, actually, an offence of causing a dog to enter a badger sett. If you can't say it's an active sett then that will

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<sup>35</sup> The Law Commission's draft wildlife bill allows for pest control orders to be issued that would allow the killing, capture or destruction of wild birds or other animals (Section 83 of the draft bill). Schedule 29 of the Commission's draft bill lists the following as those species for which a pests' order can be issued: rabbits, hares, 'other rodents', deer, foxes and moles. Poison can be used in pest control operations subject to certain conditions. Our recommendation is for non-lethal methods to be used wherever possible and that methods that minimise animal suffering are incorporated into any orders for wildlife control.

<sup>36</sup> As part of reviewing the wider wildlife law enforcement regime there is also a need for reviewing wildlife law policy issues. In respect of badgers, the badger intervention policy raises ongoing issues surrounding the badger cull with a suggestion that culling should continue as a targeted intervention where badgers are allegedly part of a local disease problem. See for example: <https://www.gov.uk/government/consultations/bovine-tb-future-badger-control-policy-and-cattle-measure-proposals> Yet the evidence for badgers as a source/cause of bovine tb remains questionable as does the efficacy of a culling programme where other solutions are available. Policy requires clarity on the evidence thresholds for these targeted interventions.

probably fall by the wayside (NGO2).

The issue of whether a badger sett is active was highlighted as a problem area by another interviewee:

So, the badger sett has to be in current use. Now. There's work to be done on what current use is now, there's a stated case in the Scottish cases that stated that to prioritise [prove] current use has to be more than one sign. So, if you just found footprints, that's not enough. So, you have to look for signs and expert opinions to prove its in current use. So, if I put a trail camera up right on the entrance, I've come up right on the entrance to that Badger sett and a badger walks past, that's not classed as current use under the current use guidelines So I could have footage of badgers, that's a badger sett really active on a camera. But that is irrelevant because it's not classed as current use. But again, this comes back down to what I've said all along is training, understanding and support. So, if I'm a Badger Group member and I'm saying, 'they've dug it and I've got evidence, I've got badgers and it's on my camera'. Great, it's circumstantial, but it's not evidence of current use (NGO4).

Another investigative interviewee agreed, stating:

There was one case, name [of] which escapes me at the moment, where a sett was not considered to be an active badger sett because no one had checked it. You know, in the sort of the day immediately before the incident. And yet it had been under, you know, because these badger enthusiasts monitor setts as you probably know, it had been one that was regularly monitored by the badger people, it was known to be active up until about two weeks prior to the incident, but when the person was charged with interfering with a sett...

It was a police case...but I believe that they didn't get a badger expert in to confirm that the sett was active on the day of the incident. So that makes it quite a high bar (NGO3).

**Offences** – Section 1 of the Protection of Badgers Act 1992 makes it an offence to wilfully kill, injure or take a badger. Section 2 of the Act creates cruelty offences including the offence of digging for a badger. The Act specifies that if in any proceedings for a badger digging offence there is evidence 'from which it could reasonably be concluded that at the material time the accused was digging for a badger, he shall be presumed to have been digging for a badger unless the contrary is shown'. Section 3 creates offences of interfering with badger setts. In respect of the dogs involved in badger digging offences the Animal Welfare Act 2006 and the associated duty of animal welfare applies to the dogs as protected animals but not to the badgers unless and until they are under the control of man.<sup>37</sup>

**Analysis** – Badger baiting and badger digging offences involve causing unnecessary suffering to a badger. Badger digging consists of cornering a badger in its sett and setting dogs on it. In

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<sup>37</sup> Section 2 of the Animal Welfare Act 2006 defines a protected animal as an animal that is domesticated (e.g. dogs) or which is 'under the control of man whether on a permanent or temporary basis'. See also Section 2 of the Welfare of Animals Act (Northern Ireland) 2011 and Section 17 of the Animal Health and Welfare (Scotland) Act 2006.

badger baiting ‘badgers are disabled in various ways then dogs are pitted against them’ (Martin, 2010, p.20). The object of the exercise is to inflict injury on the badger and the fight will often lead to the death of the badger as well as causing injuries to the dogs. The stopping of badger setts which has been linked to fox hunting results in badgers being trapped and unable to move which can result in badgers suffocating and/or starving. Badger digging, badger baiting and the stopping of badger setts cause suffering and compromise animal welfare. The wording of the legislation creates some challenges in respect of prosecuting badger offences, particularly in cases where it may be known that badger digging was taking place but where evidence collected by investigators and presented at court is insufficient to establish a causal link between the activity and harm to a badger. Under the Wildlife and Countryside Act, if a constable suspects with reasonable cause that a person is committing or has committed an offence, he may enter any premises other than a dwelling. An equivalent power is not contained within the Protection of Badgers Act and this inhibits the ability to promptly investigate allegations of illegal interference with badger setts. Two issues are illustrated in our analysis. First, as the case law indicates and our interviewees identified, the wording of section 2 and 3 of the Protection of Badgers Act requires prosecutors to establish that the incident site is/was an active badger sett. A possible defense exists in respect of those caught at a site being able to argue that they were digging for other animals and/or exercising dogs as ‘pest’ control. Prosecutors need to collect and present evidence of the site being an active sett and ideally of the presence of badgers in order to create the ‘reasonable’ assumption indicated by the wording of section 2.<sup>38</sup> Any inability to establish the site as a badger sett arguably means the prosecution has not met its evidentiary burden for a section 3 charge and our analysis of cases identifies some potential shortcomings in this regard. Analysis of cases during our research identifies a number of cases of suspected and identified badger digging where Animal Welfare Act 2006 offences are charged instead in respect of injuries caused to dogs during badger digging incidents. This is the case even in cases where veterinary professionals indicate that the injuries caused to dogs are consistent with the dogs fighting a badger. However, Section 4 of the Animal Welfare Act (and its associated devolved legislation) creates an offence where a person’s acts or omissions cause unnecessary suffering to a protected animal. Accordingly, the prosecution threshold is lower, if the dog has injuries and therefore is suffering, this offence is made out irrespective of whether the Protection of Badgers Act offence can be proven.

**Proposed reform** – the requirement to establish that a badger sett is active and the question of what is required to establish that a person is digging for badgers on the basis of circumstances at the scene are problematic. Reforming the law to allow for prosecution of offences at an ‘established’ or ‘documented’ badger sett and operating a reverse burden of proof is one potential solution. The wording relating to proceedings at court should also be strengthened to clarify what constitutes evidence that would make it ‘reasonable’ to conclude that badger offences were taking place. In principle the evidence of dog injuries consistent with having fought a badger would seem to be sufficient. But evidence that the ‘lesser’ AWA offences are being charged is suggestive that this may not be the case. The wording should make specific reference to badger-related injuries and equipment capable of being used to commit badger offences.

## 5.4 European Protected Species, Habitat Protection and Development

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<sup>38</sup> See earlier discussion of *R (DPP) v Northampton Magistrates Court* [2004] EWHC 2324 (Admin)

The Conservation of Habitats and Species Regulations 2017 provides for the protection of European Protected Species in England and Wales.<sup>39</sup> In principle, action that impacts negatively on these species is prohibited, but our analysis identifies some inadequacies in the application of the regulations and in effective habitat and species protection where wildlife and habitat protection conflicts with development.

Our interviewees provided several examples to illustrate this point. LP1 a commercial lawyer who has been involved in several cases involving development that has impact on wildlife summarized the situation as follows:

So, if a developer wants to develop a site, say for example a disused quarry, that's got quite significant or potential significant habitats, valuable habitats for newts or other protected species, like bats, then they automatically go to a planning consultant. The planning consultant will say to them, to the developer, you need to do XYZ. So, one of those will be to obtain an ecological assessment, because when it goes through to planning, they want to know all about whether there's any protected species on there and what you are going to do as part of your development, mainly mitigate now or to protect....

So, what normally happens then is the ecologist will go out and do an assessment and we'll say certain areas of that particular site are suitable habitats for great crested newts, for example, or we've seen bats there or we've seen, you know, protected birds. Birds don't tend to get the level of protection that great crested newts do or the concerns around protecting them unless they're nesting birds and then obviously, there's mitigation has to go in there.... So the ecologist will do the full report, he gives that to the normally the planning consultant and also to the developer, and that's when it then all starts to fall down because that ecologist will make recommendations to go back out and do a different type of assessment to assess how many, say for example, great crested newts are using that site and for bats what are they using it for? You know, nurseries, roosting. How important is it to them number of bats to do further surveys basically. So, what tends to happen in that period is that a lot of developers then don't follow through the recommendations of the ecologist....

Other scenarios that can happen are that [the ecologist] go back and check and the buildings have been demolished or the hedge rows cleared and so they are then under a professional duty to report it to the police. And most of them do, unless there's, you know, any sort of collusion between the ecologist and the company. But a lot of them do tend to fall out at that point and then the police pick it up. So, then you're in the realms of all the evidential difficulties that arise from that (LP1).

On the question of why guidance was not always followed, LP1 commented:

The fines are so low, and wildlife crime is not highlighted very much in the news that they think it's worth it from their perspective, from a developer's perspective, they don't

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<sup>39</sup> See also Scotland's Habitat Regulation 1994 (as amended) and the Conservation (Natural Habitats, etc.) (Amendment) Regulations (Northern Ireland) 1995 (as amended) and The Conservation (Natural Habitats &c.) (Amendment) Regulations 2007

want to spend more money on the ecologist report. They don't want a delay of six months to demolish the site, to wait for bats to come back to the roost, and so they just go ahead and do it anyway (LP1).

Discussing a particular case where a developer failed to get the required licences, LP1 also identified challenges in taking enforcement action:

The planning team were looking at contravention of planning conditions for which he [the developer] can be prosecuted by the planners, and then they're also under duty as public body, if they become aware of somebody committing a criminal offence, they have to involve the other regulators.... So [where there are breaches of planning conditions] they can enforce and whether they will enforce these, I think again is down to resources and looking at, you know, is this worth taking enforcement action? How many bats were there if it already said one or two in the report, then no, it's not worth it. But I think Bellway Homes were destroying large bat roosts and resulted in that big fine of £600,000. So, I think a lot of the time you know, if it's only low numbers of bats, I think, oh, it's probably not worth spending that money on it. But then if you put all that together, you know how many small populations of bats and batteries and the habitats are being disturbed, you know, destroyed and where do you draw the line really?

It's a very frustrating area to be involved in for both trying to bring the prosecution and it's well, it's easier for like lawyers to find loopholes to defend these. You can get most of them thrown out (LP1).

NGO3, one of our investigative interviewees also highlighted issues of developers ignoring requirements as follows:

...we've heard of cases involving things like, you know developers who are renovating a property, and they knocked down all the House Martins nests from under the eaves. And when we try and investigate the circumstances. It's just really difficult to prove intention because they just say we didn't realise it was an active nest or a nest in use and we didn't mean to knock it down anyway, it just got accidentally knocked down in the course of the development. And of course, you know full well that previously the same firm's previously been advised about not being allowed to disturb nests in use...

The developers will just actually just take their chances, and they just go ahead and ignore the advice that they've been given on the basis that they'll probably still make more money from the development than they'll lose because of any financial penalty...

I do wonder whether that's going to lead to a reduction in vigilance with things like natural habitats and bat roosts and badger setts. You know, if the drive is for, get it developed, get them built come what may... It could have a consequence for the wildlife and [for] environmental protection. I would have thought. (NGO3)

**Offences** – Section 42 of the Regulations defines the European Protected species while section 43 creates offences in relation to harms caused to European protected species. The prohibited acts include deliberate capture, injury or killing of any wild animal of a European protected

species, deliberate disturbance of a European protected species, deliberately taking or destroying the eggs of such an animal, or damage or destruction of a breeding site or resting place of a European protected species. Thus, development that impacts negatively on a European protected species through destruction of habitats would be illegal.

Our analysis of prosecutions data identifies this as a problem that has resulted in several prosecutions for damage or destruction of bat roosts in England and Wales. The law requires that where roosts are likely to be damaged or destroyed during building development projects it is necessary to first gain a derogation licence permitting these activities from Natural England, NatureScot, Natural Resources Wales or the Department of Agriculture, Environment and Rural Affairs (Northern Ireland Executive). Licences will only be granted if the works are in the public interest, if there is no satisfactory alternative and if there will be no detrimental impact on the favourable conservation status of the species concerned. The underlying presumption is that development that has an adverse effect on the species will not be approved and therefore should not take place. Enforcement would likely be under planning legislation (e.g. Town and Country Planning Act 1990 and conditions imposed on development) where local authorities have discretion over whether to enforce and the type of enforcement to take.

**Analysis** – Habitat loss from development can impact on the welfare of individual animals removed from safe habitats. In general terms habitat loss from development can impact on safe movement of protected animals and force them to find new habitat. It can also restrict natural behaviours and deny animals access to food, water and shelter, ultimately causing unnecessary suffering. If bats or other European protected Species are disturbed during hibernation or when offspring are being born and raised, this can negatively impact on local populations (Stone et al., 2013). Legislation requires that mitigation activities should be put in place to minimise harms to European protected species, but the evidence suggests that these are not always observed. In the case of bats, Collins et al (2020) ‘investigated the implementation and effectiveness of bat roost mitigation in building developments completed between 2006 and 2014 in England and Wales’ (2020, p.19). They assessed 2,333 proposed new roosts and access points and found that ‘61% of these were installed precisely as proposed, 1% were damaged, 19% deviated from what was proposed, 11% were absent, and enhancements accounted for the remaining 8% of the sample’ (Collins et al., 2020, p.21). Their findings are consistent with those of other studies that found variation in efficacy of bat roost mitigation/compensation and that highlighted the importance of roost retention or modification over roost loss. In our preliminary analysis of wildlife prosecutions over a five-year period (2019 to 2023) we identified at least 13 convictions where the requirement for mitigation measures was identified as part of the planning approval, but these were ignored and development that harmed habitats and species commenced without first putting effective mitigation in place, primarily relating to the destruction of bat roosts. In most cases the need for a European Protected Species Mitigation license was identified at the permission stage but was ignored by the developer and enforcement action was only taken after the destruction came to light. Indicative of these is the case of Bellway Homes, a housing developer who admitted destroying a breeding site for soprano pipistrelle bats in Greenwich, south-east London in 2018. The company was reportedly fined £600,000 for knowingly demolishing the roost of a protected bat species after bats were found at their development site and the developers were told they would need a Natural England European Protected Species licence for work to demolish buildings on the site. The BBC reported that ‘Bellway Homes unsuccessfully attempted to remove the need for a licence from the planning requirements. Without a licence, the developer carried out demolition work on the site between 17 March and 17 August 2018’ (BBC News

2020). This renders the development unlawful and also left the developer liable to prosecution for the wildlife crime. The fine was reported as one of the largest ever for a UK wildlife crime.

LP1 raises a valid point about how decisions on whether to prosecute are taken, linked to the Gravity Factor Matrix developed by the Association of Chief Police Officers (ACPO, now the National Police Chiefs Council) and that takes into account the changes in out of court disposals introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and incorporating revised caution guidance from the Ministry of Justice.<sup>40</sup> A range of factors are taken into account in deciding whether to charge, caution or conditionally caution an offender and the seriousness of the offence and previous history of the offender are factors taken into account. Thus, as LP1 indicates, an offence involving a small number of wildlife and what might be perceived as minimal wildlife harm or minor habitat destruction might be subject to a decision not to prosecute.

**Proposed Reform** - The Law Commission's report, in connection with the exercise of local authorities' functions under the Town and Country Planning Act 1990, concluded that local authorities granting development consent were not bound to be satisfied that the authorised development would not result in a breach of article 12 of the Habitats Directive. Accordingly, they should grant planning permission unless they conclude that the proposed development would both be likely to offend article 12 and be unlikely to be licensed pursuant to the derogation regime authorised by the Directive. Articles 12 and 16 of the Habitats Directive deal with the strict protection regime for listed animal species.<sup>41</sup> This implies that planning permissions, even if they potentially harm habitats that do not fall within the ambit of article 12, should be tolerated. However, our analysis identifies two issues in relation to the granting of planning permissions that affect wildlife, first the permissibility of development that harms wildlife and secondly the lack of effective monitoring of mitigation efforts. The cases of *Sustainable Shetland v Scottish Ministers* 2015 SC (UKSC) 51 and *The Royal Society for the Protection of Birds* discussed earlier in this report highlight the need for careful consideration of environmental impacts when granting planning permissions that impact negatively on wildlife. The cases of unlawful development that impact negatively on protected species also highlight an issue concerning lack of monitoring and an apparent presumption that development can proceed. In this regard, the planning system risks failing wildlife through inadequate control on development affecting wildlife.

The new Labour government's proposed review of the planning system should also strengthen the protection of the environment and protected species from harmful development.<sup>42</sup> In respect of smaller development and European Protected Species, currently the system risks operating in an advisory capacity such that it is possible to carry out development without first *demonstrating* that appropriate mitigation techniques have been adopted. We recommend an amendment to the permission process so that mitigation is a compulsory element that must be satisfied before

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<sup>40</sup> See for example Crown Prosecution Service (CPS) guidance on *Cautioning and Diversion* which refers to the National Decision Making Model and the College of Policing Gravity Factor Matrix, and the linked College of Policing guidance available at: <https://www.college.police.uk/app/prosecution-and-case-management/possible-justice-outcomes-following-investigation>

<sup>41</sup> [The Habitats Directive - European Commission \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003L0061&from.do=fulltext&tid=302&pid=139)

<sup>42</sup> See Proposed reforms to the National Planning Policy Framework and other changes to the planning system. Available at: <https://www.gov.uk/government/consultations/proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system>



development can commence. Monitoring of development should also be strengthened to ensure that development that does not properly implement mitigation measures can be halted.

### **5.5 Culpability for Offences and ‘cause and permit’ clauses.**

Literature and the available crime data continue to show problems of illegal persecution of protected wildlife on shooting estates and a wider problem. Data from the Scottish Government show that there was a total of 22 incidents of birds of prey poisonings over the period 2017-18 to 2021-22 (Scottish Government 2024). Our interviewees identified that:

... bird of prey persecution is effectively being pushed back to its core areas and those core areas are you know, in essence, the grouse shooting areas. And in terms of the cases that do get caught and do get convicted, you can see that there's a huge proportion of the cases that are associated with game shooting of one type or another. And the feeling was that the people who are doing it are the staff but they're doing it with a nod on a wink from their managers and land owners and so forth, and therefore the vicarious liability was essentially introduced as a way of trying to discourage the owners and kind of senior managers of shooting estates and so forth to think that they were going to be on the line as opposed to not really caring if they're gamekeeper or their farm worker or their estate worker got done because they could easily buy another one (NGO 5)

Regarding enforcement and how to address offending, our informal discussions and analysis of law and enforcement perspectives identified a need to look at different approaches to persistent offending linked persistent offending.

...So that with offences, like coursing and things like that as to whether you bring in another type of sentencing to try and inhibit their activities because whether I think wherever you've got offences that are just dealt with from a fine point of view, they're not particularly restrictive. People pay the fine and then just generally go and just carry on doing what they're doing. So, if there is other things that you can bring in... (NGO2).

**Offences** - Scotland's vicarious liability legislation, introduced in 2012, created an offence of “causing or permitting” environmental harm and places an obligation of due diligence on employers. This is in line with Article 6 of Directive 2008/99/EC on the Protection of the Environment through Criminal Law, regarding making legal persons liable for environmental crimes. Vicarious liability has been applied to raptor persecution in Scotland. As mentioned earlier there are trapping offences relating to snares ‘calculated’ to cause injury to wildlife. DEFRA's Code of practice on snaring specifies that a snare should not be set on land without the permission of the landowner or occupier (Defra, 2012, p.4). Where landowners or game managers have caused someone to set a trap calculated to cause injury to wildlife arguably, they are complicit in the offence.

**Analysis** – Persecution of birds of prey and predator control activities can be indiscriminate and cause unnecessary suffering to wildlife. The use of poisoned baits whilst thought to be declining consists of laying poison out in the open for scavengers such as bird of prey to eat. Some poisons take some time to kill after ingesting causing considerable unnecessary suffering, whilst others can be quickly absorbed through the skin whilst still causing suffering to animals who encounter poisons. Poisons placed on baits laid out in the open may come into contact with non- target

species including companion animals. Evidence exists that gamekeepers working on managed shooting estates are involved in illegal persecution. Raptors are persecuted due to their alleged negative impact on gamebird species and the perception that they are a threat to healthy gamebird populations for shooting (Park et al., 2008; Valkama et al., 2005). Burnside et al. (2021) identified that employment-related pressure induces raptor persecution, consistent with previous research that has identified economic and job-related pressure as a significant aspect in the commission of wildlife crimes related to employment (Nurse, 2013). In Scotland vicarious liability has been applied to offences in section 11 of the Wildlife and Countryside Act 1981, mainly relating to the trapping and snaring of animals. However, legal analysis suggests that it is ‘only those who hold or manage bird rights over land who can be liable and clearly section 11 offences are not limited to the exercise of bird rights’ (Donachie, 2020).

There remain some issues with vicarious liability for wildlife offences, which thus far has only seen two convictions in Scotland. Our NGO stakeholders advise that the Crown’s approach to vicarious liability is that prosecution of the individual who committed the offence must first be secured before a prosecution for vicarious liability can be pursued. Consistent with other areas of ‘corporate crime’ there are potential defences where the employer can argue that they have taken appropriate steps to ensure employees are aware of their legal responsibilities and have acted with due diligence. The corporate crime literature refers to *creative compliance* and *constructive compliance* where corporations deploy policies that shift responsibility from the corporation onto the individual employee. Thus, a shooting estate could write something into an employee’s contract that specifies adherence to wildlife law whilst continuing to exert informal pressures on staff to kill protected birds of prey for fear of losing their employment (Nurse, 2013). The essence of creative compliance is that it can be defended as *not* noncompliance (McBarnet, 2006). A further challenge with Scotland’s vicarious liability conception is that it is linked to wildlife rights and land rights and in some cases the ultimate owner of the rights may be some way removed from the actions on the ground and the direct managerial influence.<sup>43</sup>

Scotland’s Muirburn Bill has introduced a licensing system for shooting estates that has potential to address this issue. Whilst the precise details of the system have yet to be confirmed, the law imposes a civil burden of proof such that the licensing authority only has to be satisfied that an offence has been committed in order to impose a sanction<sup>44</sup>

The key issue is one of inconsistency, as vicarious liability has not been applied across the UK leading to differences in the preventative measures and sanctions available for bird of prey persecution. But illegal bird of prey persecution is not confined to only one part of the UK.

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<sup>43</sup> Wildlife rights are broadly defined as being those rights held by anyone who either has the legal right to kill or take wild birds or a person who manages or controls the exercise of that right. See for example, the Due Diligence Good Practice Guide by Scottish Land and Estates. Available at: [https://www.scottishlandandestates.co.uk/sites/default/files/library/Wildlife%20%26%20Country%20Act%201981%20Due%20Diligence%20good%20practice%20guide%20VL\\_guidance\\_4\\_12-signed%20%28with%20extract%20line%20on%20page%206%29.pdf](https://www.scottishlandandestates.co.uk/sites/default/files/library/Wildlife%20%26%20Country%20Act%201981%20Due%20Diligence%20good%20practice%20guide%20VL_guidance_4_12-signed%20%28with%20extract%20line%20on%20page%206%29.pdf)

<sup>44</sup> See the revised explanatory notes to the Bill which state that ‘grounds for suspension or revocation include a failure to comply with conditions of the licence, where the relevant authority is satisfied that a relevant offence has been committed. Relevant offences are listed in inserted section 16AA(11) and broadly cover related wildlife offences (such as offences under Part 1 of the 1981 Act relating to the killing and taking of wild birds and wild animals). These offences have been identified as being relevant as the grouse moor management review was undertaken to examine ongoing evidence of raptor persecution on or around grouse moors’

There remains a persistent problem of raptor persecution in England and Wales, and we recommend extending the vicarious liability notion across the UK. This should extend beyond offences involving wild birds to also incorporate trapping and snaring activities involving other protected wildlife. There is a case for also extending Scotland's licensing scheme to England in the interests of consistency in wildlife protection and management of wildlife control and shooting activities.

**Proposed Reform** - that the principle of vicarious liability introduced in Scotland by the Wildlife and Natural Environment (Scotland) Act 2011 should be extended across the UK. Wildlife law should be revised to make it an offence to 'cause and permit' another to commit an offence where a person has or manages rights over wildlife on their land. This should be extended to cover trapping and snaring activities that often involve considerable animal welfare concerns.

## 5.6 Online Wildlife Abuse

Several of our interviewees identified online abuse of wildlife as an emergent issue that might not be adequately addressed by current wildlife law. In 2023 the existence of a global network that allegedly produced and distributed videos of monkeys being tortured and killed was uncovered (Carter, 2023). In November 2024 two British women who were part of this network were convicted and sentenced to two years in prison in relation to offences committed abroad (BBC News 2024). Evidence of animal abuse contained in videos, WhatsApp group messages and posted on social media are regularly seized by investigators and can be used as part of a prosecution case to prove participation in offences. However, there are questions concerning the extent to which UK law adequately deals with online exploitation of animals, particularly in respect of whether and to what extent the distribution of images showing wildlife abuse is a distinct offence and can be prosecuted as such. NGO2, one of our investigative interviewees considered this issue as follows:

... a lot of the material we get now involves social media and things like that. So, people recording what they do Whether it's badger digging, killing foxes or whatever, and whilst you know a lot of the time, they do fall under the bracket of the animal welfare legislation because they're obviously confined. There's a lot of, obviously the new [cases] where we're at now is all about documenting what people do, capturing it, uploading it and sharing it with each other. Whether that would be incorporated into wildlife legislation or not, I don't know.

He further explained:

we did a case in Lancashire a couple of years ago. And that was a group of young lads who were going out with their dogs, and they were they were killing anything. Badgers, fox, deer, domestic cats and what they were doing was they were filming it and then putting it on TikTok. So, they were compiling these videos, setting it to music and then sharing it across TikTok, and fundamentally that was our evidence against them... with dog fighting, there's a piece of [law] in the Animal Welfare Act, the section 8 there it is written in there about it being illegal to share imagery depicting dog fights. However, that part of the legislation was never enacted, for whatever reason. It's just sat there. And now it's more relevant than when it came out in 2006. It's just so relevant now and most of our cases now involve the sharing of some sort of imagery across social media.

...either causing dogs to enter, then digging into setts, filming the dogs fighting with

badgers, that sort of stuff ... a lot of the time they're shared on WhatsApp, WhatsApp tends to be their sort of favourite platform, so they're shared directly with each other. Rather than put up for public consumption on a site, I mean sometimes that happens where they'll put it up on Facebook or on TikTok and things like that. But a lot of our cases stem around them sharing the footage with each other across platforms like mainly WhatsApp, but sometimes Telegram and things like that, but generally, mainly WhatsApp (NGO2).

Our policy interviewee commented on potential issues with the extent to which the Online Safety Act 2023 might address this issue.

So, what people tend to forget with the Online Safety Act is they think this is going to solve all their problems. It's not the onus of this Online Safety Act is it to say to the social media companies moderators, that these issues you need to make sure that your platform is not showing these issues. And then there's a there's a lengthy line of the issues including Section 4. Offences under the Animal Welfare Act. So who knows how this will be enforced by Ofcom? And work with this. So, the act itself is pretty clear. Whether or not and how the social media companies react to it is still unclear, and also how then Ofcom react to the social media companies is also unclear. You know that there are obvious penalties in there, there are offences. But whether and how Ofcom enforce those still remains to be seen (NGO1).

Online activities that encourage, assist or commission acts of animal cruelty could encourage further acts of cruelty or result in the prolonging of animal harm or unnecessary suffering for 'entertainment' purposes. Distribution of animal suffering images may result in content being made available which 'may distress a user, or cause them to engage in harmful or illegal behaviours and activities themselves' (Ofcom 2024, p.15). In addition, prior research has highlighted links between exposure to animal abuse and later interpersonal violence. The law should address the behaviours of those who derive enjoyment from wildlife suffering and should be preventative and punitive in respect of those who possess images of animal abuse and who cause unnecessary suffering.

**Offences** – The Animal Welfare Act 2006 contains offences relating to animal fighting. Section 8(3) of the Act creates offences in relation to supplying a video of an animal fight, publishing a video of an animal fight, showing a video of an animal fight to another or possessing a video of an animal fight with intent to supply it. However, this section of the Act has not yet been brought into force.<sup>45</sup>

The Online Safety Act 2023 makes providers of online services legally responsible for keeping people safe when they're online. Schedule 7 of the Act identifies priority offences which includes offences under section 4(1) of the Animal Welfare Act 2006 (unnecessary suffering of an animal).

**Analysis** – Most but not all the online animal welfare and cruelty scenarios identified by our interviewees involve forms of animal fighting. In principle if implemented, the Section 8 Animal Welfare Act 2006 provisions on video of animal fighting would cover circumstances such as where a person films dogs being set on and fighting another animal such as a badger, although

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<sup>45</sup> Offences in the Animal Welfare Act 2006 only come into force by order of the Secretary of State (see section 68 of the Act). However, the order which brought the rest of the animal fighting offences contained in section 8 of the Act into force left out the subsections on video recordings.

the AWA applies only to offences that take place in Great Britain.<sup>46</sup> However, more direct cruelty incidents involving wildlife would be caught by other provisions of the Animal Welfare Act 2006 as where wildlife comes under the control of man it becomes a protected animal covered by the Act's welfare provisions.

The Online Safety Act 2023 offers a wider conception on wildlife abuse online. In principle, the posting and distribution of materials depicting acts of animal cruelty which would contravene section 4(1) of the Animal Welfare Act, would constitute an offence under the Online Safety Act if the Act is interpreted so that the harm caused to the animal has been carried out with the intention to create images or videos and distributing them online. However, Ofcom's 2024 consultation on the Online Safety Act identifies that the cruelty caused to animals cannot be committed solely in respect of content. As Ofcom puts it 'although online content can clearly depict an act of animal cruelty that would amount to an offence, the content cannot itself cause suffering to an animal' (Ofcom 2024, p.9). Accordingly, the offence would apply if the act of cruelty was broadcast live, but in respect of pre-recorded acts of cruelty (such as a badger digging or hare coursing video that is distributed online after the event) there might not be an obligation on the service provider to take action. Arguably the offence would apply in circumstances where the act was recorded and distributed explicitly to encourage or conspire to commit wildlife cruelty.

Ofcom's consultation document further states there is 'a risk that if a service provider looked at the animal cruelty offence in isolation, it may conclude that a pre-recorded depiction of a real animal being tortured was not illegal content and therefore it may not realise it should remove such content' (ibid.). Ofcom's proposed solution is to include the distribution of obscene material under s127(1) of the 2003 Communications Act as a non-priority offence, to cover the harms to people viewing such material that would not be covered by the priority offence under the Animal Welfare Act. However, there is a risk that by shifting the focus onto the Communications Act as a non-priority offence under the Online Safety Act much online wildlife and animal cruelty would not be captured adequately as an offence that would be pursued via the Online Safety Act.

**Proposed Reform** – The main issue to address is that possession of animal abuse images and the use of social media to encourage wildlife abuse or disseminate images of animal suffering should be specific offenses, rather than there being a need to establish a link between causing or committing the abuse and the images. The video recordings provisions of the Animal Welfare Act 2006 should be written into new wildlife law but pending introduction of a new wildlife act, section 8(3) of the Animal Welfare Act 2006 should be implemented so that offences relating to creating, distribution and possession of images of an animal fight come into force.<sup>47</sup> The definition of 'animal fight' in the act means 'an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting', this remains sufficient to cover acts of badger baiting and badger digging. However, as indicated in our discussion of badger offences this raises the prospect that proof of engagement with an active badger sett may be required.

To address issues around offences under s127(1) of the Communications Act this should be incorporated as a Priority Offence in Schedule 7 of the Online Safety Act 2023 alongside the unnecessary suffering provisions of S4(1) of the Animal Welfare Act.

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<sup>46</sup> Section 8(4)(a) of the Animal Welfare Act specifies that the prohibition on video recordings does not apply if the video recording is of an animal fight that takes place outside Great Britain.

<sup>47</sup> This could be achieved by secondary legislation, an Order issued by the Secretary of State (see Section 68(3) of the Animal Welfare Act 2006).

## 6. Conclusions

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Our research identifies several issues relating to contemporary wildlife law. The majority of the recommendations made by the Law Commission have not been implemented, notwithstanding changes brought about by the Infrastructure Act 2015. In addition, the implementation of Brexit and the passing of further legislation since publication of the Commission's report has further added to the fractured nature of UK wildlife law. Based on the evidence contained in the academic literature we analysed, our analysis of the issues raised in the Law Commission's review and our preliminary review of the policy literature we draw the following conclusions:

### 6.1 Wildlife Law Consolidation, Integration and Reform

Our key finding is that the Law Commission's conclusion that the UK's wildlife law regime requires reform remains valid. A key conclusion of the Law Commission's research and analysis was that the UK's wildlife law regime was unnecessarily complex consisting of a patchwork of legislation that has developed over time. The consequence of this is that wildlife law is not easily understood by practitioners and policymakers. Arguably its very complexity is a factor in its poor enforcement. The Law Commission proposed introducing either a single statute or a pair of materially similar statutes that would replace the existing complex system.

Since the publication of the Commission's report, several legislative changes have taken place resulting in further variation in legislation such that there are now significant differences between legislation and the classification of specific offending in the constituent parts of the UK. Scottish wildlife law appears to be stronger than that of England and Wales and Northern Ireland.<sup>48</sup> Accordingly, we conclude that there is a need for consolidation of wildlife law to coordinate the current disparate wildlife law framework into a single statute that harmonises the levels of protection across UK wildlife. The revised legislation should adopt an animal-centred approach to wildlife harms and the level of protection given to animals such that the law considers actual harm to wildlife as an aggravating factor to be considered when determining sanctions and also incorporates ethical principles on wildlife management (Dubois et al., 2017).

#### 6.1.2 Secondary Legislation

Our preference is for new primary legislation to achieve strengthened wildlife protection. However, we acknowledge that some issues highlighted in this research can be addressed through secondary legislation in the interim or in the event that parliamentary time cannot be found for new primary legislation. For example, powers to issue General Licences are provided to the Secretary of State under the provisions of relevant wildlife law, and licences can be amended to better incorporate ethical wildlife management principles into wildlife management licencing through additional or new conditions. Implementing the video recordings provisions in Section 8 of the Animal Welfare Act 2006 can also be implemented via secondary legislation (an order issued by the Secretary of State). We also conclude that there is a case for better protection for hunted mammals which can be achieved by adding certain mammals to the relevant Schedules of wildlife law to provide them with relevant protection.

### 6.2 Compatibility with International and European Law Obligations

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<sup>48</sup> We should also note that the Scottish Law Commission's Eleventh Programme of Law Reform (2023 to 2027) contains a project on the consolidation of nature conservation legislation.

Analysis of international law to which the UK remains a signatory indicates a somewhat inconsistent picture of its implementation and enforcement. Our analysis considered, for example, application of CITES and the Bern Convention and concerns about the extent to which the UK focuses on some species but not others. In its application of wildlife law, the UK generally weighs human and commercial interests against wildlife ones in a manner that suggests wildlife concerns are sometimes marginalised. Of concern in this regard is the extent to which enforcement, for example, prioritises commercial activity but largely ignores welfare concerns and the large scale killing of wildlife for non-commercialised purposes. The presumption in international law is that of general protection for wildlife subject to sustainable use principles. The Dubois et al. (2017) principles for managing human–wildlife conflict identified a need to modify human practices, when possible, to justify the need for control, to have clear and achievable outcome-based objectives and to cause the least harm to animals.

Our analysis of case law has also identified some weaknesses in the application and enforcement of planning law where development gives rise to offences under the Conservation of Habitats and Species Regulations. In particular, where development results in the destruction of the habitats of European protected species. In our preliminary analysis of wildlife prosecutions from court and police data over a five- year period (2019 to 2023) we identified at least 13 cases where offences under section 43 of the Regulations had resulted in convictions, primarily relating to the destruction of bat roosts. In most cases the need for a European Protected Species Mitigation license was identified at the permission stage but was ignored by the developer and enforcement action was only taken after the destruction came to light. In this regard, the planning system risks failing wildlife through inadequate control on development affecting wildlife. The current system arguably operates in an advisory capacity such that it is possible to carry out development without first demonstrating that appropriate mitigation techniques have been adopted. However, wildlife protection principles and the precautionary principle would suggest that harm to wildlife should be a last resort and planning law should incorporate these ideas by making mitigation a compulsory element that must be satisfied before development commences.

### **6.3 Licensing and Levels of Protection**

The UK's current system of general licenses is arguably inconsistent with International and European Law principles and there is inconsistency in how statutory licenses are deployed in different parts of the UK. Consistent with the principle that wildlife control mechanisms must be justified before being deployed, and that protection of wildlife should in principle take priority, we conclude that wildlife law and policy must be based on situation specific concerns and not general labels such as ‘pest species’ or ideological, anthropocentric perspectives on wildlife control. Accordingly, we conclude on welfare grounds and on the basis that human-wildlife conflict should be subject to stricter controls, wildlife law should not retain general licences that allow for generic wildlife control. Instead, a revised licensing scheme should operate according to a presumption that unless imminent threat to a species or significant impact on a commercial interest can be demonstrated, lethal control of otherwise protected wildlife would be unlawful. We acknowledge that there will be resource implications of any increased monitoring and evaluation process and further evaluation of these implications may be necessary.

### **6.4. Adequacy of Wildlife Law**

A consistent theme in the literature concerns the adequacy of wildlife law and the extent to which

current wildlife law provisions provide for effective wildlife protection. Our analysis identifies the disparity between the protection afforded to companion animals and that afforded to wildlife as well as differences in sentencing provisions. The duty to animal welfare is explicit in respect of companion animals (protected animals under the Animal Welfare Act 2006 and devolved legislation) but is less explicit and arguably poorly applied in respect of wildlife. The higher levels of penalty generally allowed for animal welfare offences in comparison to wildlife offences (with exceptions) also denotes a situation where companion animal welfare offences are arguably seen as more serious.

## **6.5 Gaps and Loopholes**

Our analysis of wildlife law identifies that it provides for general levels of protection and creates a range of offences in respect of prohibited acts that impact on wildlife. But the detail of wildlife law is such that its protection for wildlife is limited in respect of managing human- wildlife conflict, that the wording of legislation is at times ambiguous or allows for continued exploitation of wildlife, and that some reforms are needed to implement animal welfare protections within wildlife law.

The issue of how the law defines 'intentional' activity flagged by the Law Commission has only partially been addressed. We consider that wildlife law can be reviewed to better apply the legal tests of recklessness to cover both intentional and deliberate acts and those acts that have negative effects on wildlife where an objective test should be applied concerning whether a 'reasonable' person would have known the risk to wildlife as well as subjective consideration of whether the person had knowingly taken a risk to harm wildlife.

Our analysis identified differences in how the different parts of the UK approach issues of liability for wildlife offences. Scotland's vicarious liability legislation, introduced in 2012, creates a new offence of "causing or permitting" environmental harm and places an obligation of due diligence on employers. This is in line with Article 6 of Directive 2008/99/EC on the Protection of the Environment through Criminal Law, regarding making legal persons liable for environmental crimes. Vicarious liability has been applied to raptor persecution in Scotland. However, it has not been applied across the UK. But there remains a persistent problem of raptor persecution in England and Wales, and we recommend extending the vicarious liability notion across the UK. This should extend beyond offences involving wild birds to also incorporate trapping and snaring activities involving other protected wildlife.

## **6.6 Enforcement**

The Law Commission contended that the enforcement regime was too reliant on the criminal law. Considering applicable European legislation and international perspectives on the objectives of wildlife law there is an argument for applying a range of enforcement approaches, including restorative sanctions, whilst ensuring that wildlife crime is treated as serious crime in line with international perspectives. Our previous research has identified that use of criminal law is required when dealing with deliberate criminal activity involving wildlife. To address enforcement issues there should also be consistency in relation to police powers of entry onto land to conduct investigations. New wildlife law should harmonise these so that issues such as the lack of power to enter land under the Protection of Badgers Act are addressed. The new offences under the Police, Crime and Sentencing Act 2022 and the associated additional



sanctions available under that Act (including recovery and disqualification orders) should apply across the UK.

## 7. Recommendations

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Based on our analysis of the law and relevant case law we make the following recommendations:

**Recommendation 1: A single statute** - That UK wildlife law be coordinated into a single statute that strengthens levels of protection across UK wildlife and adopts an animal-centred approach to wildlife harms, particularly in the context of how offences are constructed. In addition to the focus on the prohibited act (e.g. the taking of wildlife or placing of a trap calculated to cause injury to wildlife) the law reflects the idea that actual harm to wildlife is an aggravating factor in the application of sanctions. Existing wildlife law should be replaced with a new integrated *Wildlife Act* that addresses wildlife protection, wildlife conservation and wildlife management within its constituent parts. New law should be accompanied by repeal and integration of other legislation identified as suitable for repeal in the Law Commission's analysis and that can also be incorporated into the new legislation. As part of the repeal and replacement, wildlife law should be reviewed to ensure compatibility with international law and to ensure that new wildlife law is compatible with international obligations.

**Recommendation 2: Wildlife and Planning Law** - The government's proposed review of the National Planning Policy Framework and any subsequent changes to laws on planning for development of housing and buildings should also strengthen the protection of the environment and protected species from harmful development. Currently the system operates in a manner in which it is possible to carry out development without first *demonstrating* that appropriate mitigation techniques have been adopted. We recommend an amendment to the permission process so that mitigation is a compulsory element that must be satisfied before development can commence.

**Recommendation 3: Licensing and wildlife control provisions** - We recommend that the General Licence system across the UK should be further reviewed and updated adopting the precautionary principle to lethal wildlife control measures and adopting ethical principles into wildlife management. Wildlife law and policy should be based on situation specific concerns and not general labels such as 'pest species' or ideological, anthropocentric perspectives on wildlife control. There should be a presumption that unless imminent threat to a species (or significant impact on a commercial interest) can be demonstrated, lethal control of otherwise protected wildlife would be unlawful.

**Recommendation 4: Consistent penalties** - The disparity between penalties for wildlife crime and companion animal/animal abuse offences should be eliminated. Penalties for wildlife crimes should be reviewed and strengthened to be consistent with the higher levels of sentencing available for animal welfare offences rather than these higher-level sentences being reserved for a limited number of offences (e.g. CITES import and trade offences). Wildlife law should also be reviewed to ensure consistency in penalties and sentencing options across the different parts of the UK.

**Recommendation 5: Harmonization on sale, use of glue traps and snares** - The law on sale and use of glue traps and snares should be harmonised across the UK to reflect the changes brought about by the Wildlife Management and Muirburn (Scotland) Act 2024 and the ban on

snare and traps which came into force in Wales on 17 October 2023 following the passing of the Agriculture (Wales) Act 2023. Our recommendation is for a UK-wide ban on the sale and use of wire snares and glue traps to implement welfare concerns about the use and sale of these traps.

**Recommendation 6: Stricter Liability** - that wildlife law is reviewed and updated to better apply the legal tests of recklessness to cover both intentional and deliberate acts to cover both intentional and deliberate acts and those acts that have negative effects on wildlife where an objective test should be applied concerning whether a 'reasonable' person would have known the risks to wildlife. Accordingly, we recommend that wildlife law be reviewed and strengthened to ensure that its definition of offences and harm to wildlife prohibits intentional and deliberate acts causing harm to wildlife, and negligent acts and omissions where a reasonable person would or should have known there was a risk to wildlife. Wildlife law should also incorporate the precautionary principle prohibiting acts with the potential to harm wildlife.

**Recommendation 7: Vicarious liability:** - that the principle of vicarious liability introduced in Scotland in 2012 by the Wildlife and Natural Environment (Scotland) Act 2011 should be applied across the UK and incorporated into a new Wildlife Act. Our recommendation is that the new wildlife law should make it an offence to 'cause and permit' another to commit an offence where a person has or manages rights over wildlife on their land. This law on vicarious liability should apply not just to wild birds but should also incorporate trapping and snaring activities that affect other wildlife and often involve considerable animal welfare concerns.

**Recommendation 8: Criminal law** – The enforcement regime for wildlife crime retains the use of the criminal law but also includes other enforcement approaches including enforcement tools such as enforceable undertakings that can be used to require commercial operators to repair the harm they cause. Criminal law sanctions should apply in respect of offences that are deliberate and directed at wildlife such as illegal poisoning or snaring. The new law should specify the range of sanctions to be used and that are applicable to each offence. For example, enforceable undertakings and restorative sanctions may be applicable in cases such as development or commercial activity that, for example, harms or alters habitats but does not directly kill or harm wildlife. The purpose of the sanction might be to restore the habitat or mitigate the harmful effects of the development or activity and to change business behaviour to prevent further offending, whereas deliberate illegal killing of wildlife would more appropriately be dealt with via a criminal sanction.

**Recommendation 9: Notifiable Wildlife Offences** – Wildlife crimes should be given notifiable status so that they are properly recorded, and appropriate resources can be allocated.

**Recommendation 10:** Training and guidance on wildlife law should be available to wildlife crime enforcers, prosecutors and the judiciary (primarily the magistracy) including access to continuing professional development.

In addition to our recommendations on the content and nature of wildlife law, we also recognise that UK wildlife law is an area where there is a lack of training and guidance provided to investigators and prosecutors. Thus, problems may occur in the implementation of wildlife law

(Nurse and Harding 2024) and in addition to our recommendation on training for wildlife crime enforcers (Recommendation 10) we make additional recommendations for further work in this area as follows:

- A. Wildlife law and wildlife crime should be incorporated into the Police Education Qualification Framework (PEQF) which specifies the content of police training degrees to provide for general knowledge of wildlife crime among new police officers.
- B. Wildlife law course provision for investigators and legal practitioners should be reviewed via an audit of existing provision and a review of the content of available courses and there should be further research that develops wildlife law guidance for investigators and prosecutors. Guidance should be user-led in its development to ensure it meets the needs and preferences of investigators and practitioners.

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## 9. Appendix 1: The Law Commission Review: Key Points

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The Law Commission noted the following about UK wildlife law in its 2015 Wildlife Law Report:

‘In the last two centuries wildlife legislation has developed in a piecemeal fashion, often in reaction to specific pressures on domestic legislation, whether local or international. The result is that the current legislation governing the control, exploitation, welfare and conservation of wild animals and plants in England and Wales has become unnecessarily complex and inconsistent. While the enactment of the Wildlife and Countryside Act 1981 was substantially driven by the Wild Birds Directive, it retained, to a large extent, the structure and policy preferences of earlier legislation, such as the Protection of Birds Act 1954. We accept that a certain level of complexity is, in part, an inevitable consequence of the breadth of wildlife law. The natural environment is a complex system and the law concerning it needs to apply in a range of different situations and reflect a range of (potentially competing) interests. In many cases, however, there appears to be little obvious rationale for the existing complexity.’

While the following is not an exhaustive analysis of the Law Commission’s proposals, it provides a summary of key issues from the Commission’s analysis that have been considered in our review.

1. The Law Commission proposed introducing either a single statute or a pair of materially similar statutes that would replace the existing complex system. This proposal was accompanied by a list of legislation suitable for repeal and integration into the new statute.
2. The Law Commission suggested that the current wildlife law regime was over-reliant in use of the criminal law.
3. The Commission elected not to include the Wild Mammals (Protection) Act 1996 so as to create a new animal welfare code applicable both to wildlife and animals living under control of man. In this regard, wildlife law is largely silent on issues of welfare except in respect of prohibition on cruel or inhumane methods of taking wildlife and regulatory requirements on humane killing of wildlife (e.g. licensed trapping). While it is acknowledged that society generally accepts a more stringent welfare regime for companion animals and livestock in part due to their reliance on humans, our review considers that wildlife should provide for effective animal welfare, notwithstanding the reality that wildlife is generally viewed as an exploitable resource.
4. The Commission did not engage with issues under the Hunting Act 2004 because a review of this legislation was expressly excluded from its terms of reference. As the Commission noted, hunting with dogs is a politically polarised issue. But it remains a wildlife law issue and one in which there is overlap with other areas of wildlife law e.g. the Protection of Badgers Act 1992 and the Animal Welfare Act 2006 (in respect of injury to dogs use in hunting activities. Accordingly, our review incorporates some discussion of Hunting Issues.
5. The Commission recommended an express duty to give reasons in writing in connection with decisions to grant or refuse a licence that involves activity that impacts on wildlife. Our analysis (including analysis of case law) links this issue to the weight given to competing interests and the need to justify adverse impacts on wildlife. Since the

Commission's review there have been legal challenges and changes to the system of General Licences.

6. The Commission assessed aspects of the general power to introduce, remove or alter close seasons except for birds listed in Annex 2 of the Wild Bird Directive, subject to the order making process and conservation imperatives in Articles 11 and 14 of the Habitats Directive. The Commission identified a requirement to give reasons to depart from scientific advice with the presumption that any such decisions would be subject to Judicial Review.
7. The Commission identified that the Wild Birds Directive and the Habitats Directive consistently couch primary prohibitions in terms of 'deliberate' action. The Commission refers to the use of the term 'recklessness' as potentially resulting in unnecessary criminalization of legitimate economic activities and has reached a conclusion on how to interpret actions based on a subjective test that rests on intention and awareness of risk. Our analysis reflects the contention that this is too narrow and there is room for either an objective test based on prior case law or a two-stage test similar to that now employed in the criminal law for dishonesty. The consideration of actions that harm wildlife should consider 'rogue' wildlife control and those who might be deemed incompetent.
8. The Commission's discussion of disturbance issues identified the disturbance principle as being disturbance that has a negative impact on the conservation of a species and not that impacting on an individual specimen. In considering the intentions of international and European wildlife law and the consideration of individual criminal acts arguably both are required: the general protection principle relevant to the Bern Convention, Birds Directive and Habitat Directive as well as individual wildlife protection

## 10. Appendix 2: Key UK Wildlife Law

In UK law, wildlife is generally defined as any non-domesticated non-human animals. For example, the Wildlife and Countryside Act 1981, the primary law protecting wildlife in Britain, defines wildlife according to criteria that specifies wildlife as animals living ‘naturally’ in a wild state and excludes animals bred in captivity.<sup>49</sup> Separate legislation (e.g. the Animal Welfare Act 2006) protects companion animals. UK wildlife law provides for general protection of wildlife, subject to a range of permissible actions that allow wildlife to be killed or taken for conservation management purposes (e.g. culling to maintain herd health or to conserve other wildlife), killing for legal (and regulated) sporting interests (e.g. shooting and fishing), or to protect farming or other commercial interests (e.g. the killing of so-called ‘pest’ species). However, wildlife laws often contain prohibited methods of killing or taking wildlife such as prohibitions on using snares, poison or taking or harming or disturbing wildlife during the breeding season. Accordingly, wildlife law creates a range of offences whilst arguably allowing continued exploitation of wildlife. Wildlife crime can broadly be defined in respect of acts that are proscribed by legislation and that are committed against or involving wildlife, e.g. wild birds, reptiles, fish, mammals, plants or trees which form part of a country’s natural environment or be of a species which are visitors in a wild state. Prosecuting wildlife crimes requires an offender (individual, corporate or state) who commits the unlawful act or is otherwise in breach of obligations towards wildlife (Nurse and Wyatt, 2020, p.7).

These elements clarify that wildlife crime is a social construction as it relates to violation of *existing* laws. Accordingly, laws can be changed, which can reconfigure what is considered to be a crime according to contemporary conceptions. For example, the United Kingdom historically allowed hunting wildlife such as foxes with dogs, but this practice was banned in 2005 with the implementation of the Hunting with Dogs Act 2004. However, this Act could simply be repealed by the government and hunting with dogs could become legalised again. The socio-legal classification of crime as defined as by the criminal law (Situ and Emmons, 2000, p.3) also means that any behaviour not prohibited by law is not a crime. Thus, for example, the killing of wildlife within regulated hunting activities (e.g. trophy hunting) or ‘pest’ control does not constitute a crime as long as the regulatory provisions are complied with (e.g. not using any prohibited methods of taking wildlife, compliance with humane killing methods). In this context, wildlife crime has clearly defined notions of victimisation in respect of the non-human animals that may be killed, taken or otherwise exploited, and those which may not.

**Table 5 – Legislation Overview**

Legislation/Policy	Description
Wildlife and Countryside Act 1981	This is the primary law protecting wildlife in Britain, defines wildlife according to criteria that specifies wildlife as animals living ‘naturally’ in a wild state and excludes animals bred in captivity. The Act provides for general protection for wildlife and creates specified offences relating to wildlife harm including prohibited methods of taking or killing

<sup>49</sup> For example, the guidance in the Act states that the definition of ‘wild bird’ in section 27(1) is to be read as not including any bird which is shown to have been bred in captivity unless it has been lawfully released into the wild as part of a re-population or re-introduction programme.

	wildlife`
Deer Act 1991	Reformed the Deer Act 1980 and introduced protective regulation relating to the safeguarding of all six deer species present in the UK. The Act set closed seasons for all six species making it a criminal offence to take or kill any deer within this season, the legislation also banned use of specific weapons and articles in which to trap, snare, or poison deer. The Act made it illegal to hunt deer at night. Exceptions to offences permitted in some circumstances e.g. where the deer is on private land, where the deer poses a threat to public health and safety, and also where the deer becomes invasive to natural habitats and heritage (in England).
Protection of Badgers Act (1992)	<p>Consolidates badger protection and creates offences in respect of:</p> <ul style="list-style-type: none"> <li>● Killing, injuring, or taking of a badger.</li> <li>● Ill-treatment or cruelty to a badger.</li> <li>● Interfering with a badger sett (home) by causing damage, destruction, obstruction, or forcing a dog to enter a sett (highlighting the involvement of dogs in badger baiting).</li> <li>● Sale or possession of a live badger.</li> </ul> <p>Marking or ringing a badger (e.g., attaching a tag or other forms of marking devices).</p>
Wild Mammals (Protection) Act 1996	Makes it a criminal offence if any person inflicts or is intent on inflicting suffering on a wild mammal through methods such as mutilation, kicking, beating, impaling, stabbing, burning, stoning, crushing, drowning, dragging, or asphyxiating. A possible defence exists if the offence can be argued as a method of mercy-killing or carried out for the control of pests.
Protection of Wild Mammals (Scotland) Act 2002	Bans the use of dogs in hunting wild mammals such as foxes, mink, hares and deer. Contains exceptions in respect of stalking and flushing from cover, use of dogs in falconry and shooting and searching for a wild mammal with no intention of harming that mammal.

Hunting Act 2004	Bans the use of dogs in hunting wild mammals such as foxes, mink, hares and deer, however it does not ban the use of dogs in the hunting process (such as flushing out and finding wild animals).
Natural Environment and Rural Communities Act 2006	The Act was primarily intended to implement key aspects of the Government's 2004 rural strategy. It reorganised public bodies involved in rural policy and delivery, and placed a duty to conserve biodiversity on public authorities.
Wildlife and Natural Environment (Scotland) Act 2011	Provides protection for Scottish wildlife and specifies prohibited methods of taking or killing wild birds and specially protected animals. The Act amends earlier environmental legislation, including the Wildlife and Countryside Act 1981 and the Deer Act 1996.
Control of Trade in Endangered Species Regulations 2018	Implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The UK's earlier COTES Regulations implemented Council Regulation (EC) No 338/97. Following the UK's departure from the EU new COTES regulations were implemented.
Ivory Act 2018	Bans dealing in ivory except in certain specified circumstances. In 2023 the Government extended the protection afforded under the Ivory Act 2018 to five additional species, the hippopotamus, walrus, narwhal, killer whale and sperm whale (Doornbos and Nurse, 2023).
Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020	An Act of the Scottish Parliament to increase penalties for the most serious animal welfare offences and to provide for fixed penalties in relation to animal welfare offences generally.

Animal Welfare (Sentience) Act 2022	The 2022 Act recognises animals as sentient beings and compels the respective governments (England, Wales, Scotland and Northern Ireland) to have “all due regard” to the ways in which any future policy might have an adverse effect on the welfare of animals in this context.
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These legislative provisions provide for general protection for wildlife whilst also creating specific offences in relation to prohibited methods of taking or killing wildlife and restricting the extent to which wildlife can be exploited. Accordingly, the investigation and enforcement of wildlife crimes relates to identification of specific offences and proving both the *actus reus* and relevant *mens rea* of the offence (Horder, 2016).