

SCOTTISH COURT QUASHES BEAVER KILLING LICENCES IN WILDLIFE PROTECTION CASE

On 21 October 2021, the Outer House of the Court of Session in Edinburgh ordered the revocation of beaver killing licences issued by NatureScot, Scotland's wildlife protection agency. In future, it must give detailed reasons for issuing licences to kill. Environmental charity, Trees for Life ("TFL") brought judicial review proceedings in 2020 against NatureScot and the Scottish Government. This marks a positive development for charitable organisations seeking to protect the environment, and highlights the continuing importance of EU legal principles in domestic environmental and administrative law.

BACKGROUND

TFL alleged that NatureScot, the organisation responsible for the protection of beavers in Scotland, had failed to apply the correct approach to licensing the killing of Scottish beavers.¹ In a precedent-setting [preliminary judgment](#), the court had exceptionally granted TFL significant costs protection and approved their crowdfunding of the proceedings.

DECISIONS MUST BE REASONED

In a legal first, Lady Carmichael found that NatureScot had breached its duty to give reasons for the issuing of licences to kill beavers in Scotland. As a result, all current licences were to be "reduced" (revoked) and NatureScot must now give detailed reasons for any future licences, specifically stating how a licence meets the legal tests set out in retained EU law.

While Lady Carmichael accepted that there was no duty to give reasons in the statutory language of the relevant regulations, the fact that they derived from EU legislation (the Habitats Directive) meant that general principles of EU law were applicable. This is the first time that section 6(3) of the European Union (Withdrawal) Act 2018, which provides for the interpretation of retained law in accordance with retained principles of EU law, has been applied to environmental legislation in Scotland.

Lady Carmichael found that the duty to provide reasons was a principle of retained EU law, applicable to the Habitats Directive. As well as forming a

Key take-aways

- Scottish charity Trees for Life brought a challenge to NatureScot's approach to the licensing of beaver killing in Scotland
- The court made an order revoking all extant licences and ordering NatureScot to give reasons for future licences
- The court found that important principles of EU law were still relevant to retained legislation
- An authority that made "automatic assumptions" that legal tests were fulfilled would be acting unlawfully

¹ In the petition of Trees for Life for Judicial Review [2021] CSOH 108

binding statement of law in Scotland, this conclusion will be persuasive to courts in England & Wales. This is noteworthy in light of the acceptance by the parties that there was no such duty in *Keir v Natural England*.²

THE DANGER OF ASSUMPTIONS

Lady Carmichael also addressed previous iterations of NatureScot's policy stating that legal tests will be automatically fulfilled in certain circumstances. The judgment stated that "*to approach matters that a licence can be granted automatically...is wrong as a matter of law*". This should serve as a cautionary tale to public decision-makers; the courts may not enforce a policy the effect of which is to pre-determine the outcome of what ought to be discretionary case by case decision-making.

SUPPORTING ENVIRONMENTAL STANDARDS ENFORCEMENT

The Court's judgment in this case will support those seeking to enforce environmental standards through the courts in order to protect the environment generally, and biodiversity in particular. In the course of hearing the case, the court was told by NatureScot that TFL "clearly" had standing to bring proceedings – a positive step for organisations seeking to enforce environmental and wildlife protection measures.

The court has set clear expectations of an authority fulfilling its obligations under environmental protection legislation. There are broad lessons for public authorities more widely, as well as those wishing to hold them to account and useful conclusions relating to the applicability of EU case law in domestic administrative law proceedings.

Clifford Chance was pleased to advise The Lifescape Project, a rewilding charity, which spearheaded the litigation with Trees for Life. Trees for Life were advised by Burness Paull LLP. The Clifford Chance team was composed of Roger Leese (Partner), Oliver Carroll (Associate), Saskia Mondon-Ballantyne (Associate), and Rahul Dev (Associate), all acting pro bono.

Find out more about our leading public law practice [here](#).

² [2021] EWHC 1059 (Admin).

CONTACTS



Roger Leese
Partner

T +44 20 7006 8710
E roger.leese
@cliffordchance.com



Elizabeth Morony
Partner

T +44 20 7006 8128
E elizabeth.morony
@cliffordchance.com



David Boyd
Senior Associate, Head
of Pro Bono for UK &
Ireland

T +44 20 7006 4432
E david.boyd
@cliffordchance.com



Oliver Carroll
Associate

T +44 20 7006 2146
E oliver.carroll
@cliffordchance.com



**Saskia Mondon-
Ballantyne**
Associate

T +44 20 7006 1943
E saskia.
mondonballantyne
@cliffordchance.com



Rahul Dev
Associate

T +44 20 7006 3521
E rahul.dev
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2021

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Delhi •
Dubai • Düsseldorf • Frankfurt • Hong Kong •
Istanbul • London • Luxembourg • Madrid •
Milan • Moscow • Munich • Newcastle • New
York • Paris • Perth • Prague • Rome • São
Paulo • Seoul • Shanghai • Singapore •
Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.