



defra

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Food and Rural Affairs

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Mr B Addison
(via email - request-15756-
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Our ref WCA/B Addison
Date 10 August 2009

Dear Mr Addison,

Thank you for your e-mail of 2nd August, 2009 to Defra's Helpline, in which you make three points about the Wildlife and Countryside Act 1981. I have been asked to reply.

(1) In the attestation DEFRA officers take it states you are to uphold fundamental human rights, this oath is then broken by any enforcement of the wildlife and countryside act which contradicts human rights by stating that a suspect is guilty until he proves himself innocent.

I am not sure what "attestation" you mean here. In the exercise of their duties, officers are of course obliged to act lawfully, which includes complying with "fundamental human rights" (in the sense of those guaranteed by the European Convention on Human Rights) (see s.6 of the Human Rights Act 1998). In addition, section 3(1) of that Act provided that: "So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights."

From what you say about the Wildlife and Countryside Act 1981, I infer you to mean the compatibility with Article 6(2) ECHR of the burden on the defendant to prove particular elements of certain defences under the 1981 Act (see, e.g., ss.10(3) and (4) and 11(6) and (7))? Article 6(2) provides that "[e]veryone charged with a criminal offence shall be presumed innocent until proved guilty according to law". The presumption of innocence under common law requires the prosecution to prove all the elements of an offence, and to show that any defence or exception to it is without foundation. However, statutory offences contain many exceptions to this, by placing a "reverse" burden of proof on a defendant so as e.g. to show that a particular defence or exception applies.

When, by way of the Human Rights Act 1998, the European Convention on Human Rights was made a source of English law, it was conjectured that the Convention's Article 6(2) might see a retreat from the imposition of reverse burdens in statutory offences.

The case of *Kebilene* [2002] 2 AC 326 caused some to believe that the courts would use the interpretative requirement in s.3 of the Human Rights Act to treat reverse burdens of proof as – at most – evidential burdens. However, the decision of the House of Lords in



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Johnstone [2003] UKHL 37 (involving a trademark offence carrying a substantial term of imprisonment) restated the principle of due deference to the will of Parliament and cautioned against any ready finding that the imposition of a reverse burden was a disproportionate response to the mischief proscribed by the offence. Article 6(2) ECHR did not stand alone: it was subsumed within the guarantee of fair trial provided by Article 6 as a whole. A reverse burden did not necessarily preclude a fair trial: it could be a proportionate response to a serious and current social or commercial mischief.

(2) The most significant clause of the Statute of Tallage is Chapter Four, where the Crown promises never to impose laws that infringe any common law rights or liberties, the wildlife and countryside act also contradicts this law. Furthermore "We will and grant for us and our heirs," states King Edward's Act, "that all clerks and laymen of our land shall have all their laws, liberties and free customs as largely and wholly as they have used to have the same at any time when they had them best and most fully; and if any statutes have been made by us or our ancestors, or any customs brought in contrary to them, or any manner of article contained in this present charter, we will and grant that each manner of statutes and customs shall be void and frustrate for evermore." That clearly states the wildlife and countryside act is void. It does not apply!

Chapter 4 of the Statute Concerning Tallage (1297) was repealed by the Statute Law (Repeals) Act 1969. (The only surviving part of the 1297 Statute would appear to be Chapter 1:

"No tallage or aid without assent of Parliament

No Tallage or Aid shall be taken or levied by Us or our Heirs in our Realm, without the good will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other Freemen of the Land."

Tallage was an occasional tax levied by the King on Crown lands and royal towns; it continued to be demanded until 1340, when Edward III agreed that the consent of Parliament should first be obtained.)

Consequently, I do not think you can derive any support for your assertion that the Wildlife and Countryside Act 1981 is void from a provision that was repealed well before that Act was enacted.

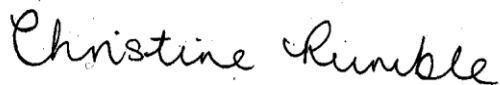
(3) To take this further there is the fact that DEFRA is a COMPANY, registered to the companies house (registration numbers found are: UC6035210, UC6248538 and UC4631666) which means they can only have authority over any member of public through form of contract. This means that defra enforcement officers who claim right to enter private property do not unless you give them consent. enforcement of the wildlife and countryside act also needs consent, not only for you to have authority but also for the statute to have "force of law". This means that the wildlife and countryside act is defunct and has to lawful power! Can you please confirm this or prove otherwise.

This argument appears to be founded upon a false premise. Defra is not – contrary to your assertion – a “company”, registered at Companies House. It is a Government Department, through which the Secretary of State (a “body corporate” for the purposes of giving that office legal personality) performs functions falling within those subject areas,

and accountable only to Parliament and the courts. (I would also confirm that an Executive Agency, such as “Animal Health”, remains constitutionally a part of its parent Department.) I have been unable to trace the company registration numbers to which you refer¹.

As a UK Government Department, Defra exercises authority over “members of the public”, in any particular case, primarily on the basis of statute law and the rules made under it: apart from matters of employment or commerce with named individuals (and hence no longer a relationship with “the public” at large), that legal relationship would hardly ever be one founded upon (private) contract.

Yours sincerely,



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¹ Of the three company registration numbers you cite, I would first of all note that no such numbers listed at Companies House appear to have the prefix “UC”. Upon checking your cited numbers minus that prefix, only one – 6035210 – produced a result, for a company called Carojan Limited, with a registered office in West Sussex, the nature of its business being “other software consultancy and supply”.

Checking also against the name “DEFRA” produced (near-name) references to a DEFRA LIMITED and a DEFRA LIMITED, both dissolved, and neither of them linked to this Department. A check against the name “Animal Health” produced a reference to “Animal Health UK Limited”, but with a number different to any you cite and, again, not I think linked to the Executive Agency known as “Animal Health”.