



defra

Department for Environment
Food and Rural Affairs

Telephone 0117 372 6170
Website www.defra.gov.uk

Your ref

Our ref

Date 9 September 2009

B. Addison Esq.,
(via email - ben.addison [request-15756-d3a61ab3@whatdotheyknow.com])

Dear Mr Addison,

Freedom of Information request - Wildlife and Countryside Act (the defunct act)

Thank you for your e-mail of 21st August, 2009.

I emailed you on 26 August seeking clarification of your email, but I have not received a reply. I am therefore responding to your email as far as it can be understood.

We don't understand your demand that any reply to you should be made "on oath". No procedure exists for this; nor is it necessary.

"... If you claim that DEFRA officers indeed take no oath of allegiance then who grants you [DEFRA] the authority which you claim?"

Defra's political, legal and constitutional authority derives from the Crown, as represented by the duly constituted Government of the day: that is to say Her Majesty's Ministers collectively, whose several responsibilities are divided up between various functional Ministries or Departments – of which Defra is one. The basic principles of accountability of Ministers and civil servants are as follows:

each Minister is responsible to Parliament for the conduct of his Department, and for the actions carried out by his Department in pursuit of Government policies or in the discharge of responsibilities laid upon him as a Minister;

a Minister is accountable to Parliament, in the sense that he has a duty to explain in Parliament the exercise of his powers and duties and to give an account to Parliament of what is done by him in his capacity as a Minister or by his Department;

civil servants are responsible to their Ministers for their actions and conduct.

"... You also state you are obliged to act Lawfully, this therefore does not include statutes, which are not law, merely given force of law (hence



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the difference between Legal and Lawful.) Does this mean you will enforce law over statutes?”

The premise of this statement appears to be that statutes are not “law”, or that there is some other, higher “law” which overrules them. The English legal system recognises several sources of law, including both the common law and statutes. The common law comprises the substantive laws and procedural rules declared by judges (in courts of sufficient seniority) in judgments that will bind any court that has subsequently to determine the same question. Statutes are examples of (primary) legislation, being the legislative declarations of Parliament. An Act of Parliament becomes valid through being approved (after debate) in the House of Commons and (with some exceptions under processes laid down by the Parliament Acts 1911-1949) the House of Lords; it then receives the Royal Assent from the Queen.

In terms of the interplay between the two, statutes have the power to change the established common law, but the common law cannot overrule statutes. A statute can only be overruled or amended by another, later statute. This relationship reflects the legal and political doctrine known as “Parliamentary Sovereignty” – the recognition and acceptance that Parliament is the supreme law-making authority in the land. That authority has been limited by our subjugation to the European Union and the European Convention on Human Rights. Nevertheless, save for these possible limitations (themselves assumed as the result of statute – the European Communities Act 1972 and the Human Rights Act 1998), judges must apply statutes even if they are contrary to established common law. We do not, therefore, accept your assertion that statute law is subordinate to the common law: in fact the reverse is the case.

For a straightforward example of the subordination of common law to statute, see e.g. the offence of murder and the “year and a day” rule. Under the common law, for the offence of murder to have been committed the victim of the “murderer’s” assault had to die of the injuries sustained in that assault within a year and a day of his receiving them; thereafter, the common law “conclusively presumed” that a later death could not have been caused by that assault. That presumption was abolished by statute – the Law Reform (Year and a Day Rule) Act 1996: i.e. the common law rule was abolished, to be replaced by a provision under statute. That latter provision is now “the law” in relation to “fatal offences” (including murder) and the question of when injuries alleged to have caused a death were sustained.

(The distinction between what is “legal” and what is “lawful” in part reflects the distinction between criminal law and civil law. Thus a criminal offence is an example of an “illegal” action; a civil “offence”, such as e.g. breach of contract, is “unlawful”.)

Defra will therefore seek to enforce “the law” – insofar as it falls within Defra’s responsibilities – whether it is contained in the common law or (which is more likely) in statute.

“... Also it is in common law (see many common law books i.e. Odger’s The Common Law of England volume 1) that a man is innocent until his guilt is

proven, this being law over-rules statute making the contradiction of it in the Wildlife and countryside Act void, is this not correct?"

It is a principle of the common law that a person is to be deemed innocent (of a criminal charge) until his guilt is proved beyond all reasonable doubt. However, as was explained in our previous letter, statutory offences contain many exceptions to this, and statute law (see above) can overrule the common law. So it is not correct to say that any provision of the Wildlife and Countryside Act 1981 which contradicts that principle is therefore void.

"... Although you state that the reverse burden is purely an "evidential burden" that still contradicts law, including the fact that "Equality before the law is paramount and mandatory" (a maxim in law) and also the stigmatisation and damage to a man's reputation is unlawful too, is this not correct?"

Again, we do not agree that an evidential burden "contradicts law": it is itself a burden imposed by the law, in this case statute law.

"... If it is also nothing more than an evidential burden then why is property seized and privacy broken before a trial by jury, this is unlawful and contradicts our unalienable rights which again over-rule statute law?"

Presumably, you refer to powers of seizure, rights of entry, etc. contained in statute? These are consistent with Article 1 of the First Protocol to the European Convention on Human Rights, which states that:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions *except in the public interest and subject to the conditions provided for by law ...*" – in this case, law contained in statute.

An "inalienable" right that was not qualified in this way would prohibit e.g. the seizure of a "murderer's" weapon (as evidence) for the purposes of his trial by jury, until after he had been found guilty at that trial

"... Do you understand the use of "legal fictions"? Do you understand what a "person" is?"

Presumably, in this context, you mean "persons" recognised by the law, whether "natural persons" (i.e. human beings) or "legal persons", being bodies, institutions, companies etc. on which the law confers legal personality, on both of which the law confers rights and obligations, such as the ability to sue and be sued?

"... As for Defra being a company I would have expected a thorough search by yourself, you did not search the full name of the company [Department for Environment, Food and Rural Affairs] which will turn up with a positive result."

We previously checked against "Defra" because that was the acronym you used in your e-mail of 2nd August. We also checked against the three company registration numbers you cited, finding (as we reported to you) no reference to two of them while the third (6035210) related to a "CaroJan Ltd", with which Defra has no links.

We have now checked the Companies House list of companies in the name of "Department for Environment, Food and Rural Affairs" and again – and as expected – found no such name registered.

"... As you then go on to state "a "body corporate" for the purposes of giving that office legal personality" this confuses me ..."

In our previous reply we said that the office of "the Secretary of State" was a "body corporate": i.e. that the law recognises that office as a legal person, and thus having legal rights and obligations.

"... you need a legal fiction to prosecute a legal fiction (i.e a legal personality, persons) ..."

We do not understand what you mean by this.

"... A legal Personality is itself a corporation, which therefore follows company law, contracts, joinders are needed to enact any authority on another legal fiction (i.e Mr Benjamin Addison) which again confirms what i stated. Is this not correct?"

By "corporation", we take it you mean to include any body corporate. A legal person is a "non-natural" person who is yet recognised by the law as having legal rights and responsibilities. Such a legal person is not necessarily a "corporation" (or body corporate): it might be e.g. a sovereign state, or an institution established under international law – or anything else that the law recognises as a "legal person" with "legal personality". It would not necessarily be subject to "company law", which applies primarily to bodies registered under the Companies Acts and their officers. Anyone who enters a contract, whether a natural person or a legal person, is subject to contract law – not just "companies". We do not understand your point about "joinders", or your suggestion that "Mr Benjamin Addison" is a "legal fiction"; he is instead a "natural person". Therefore, we do not think that what you have stated is correct.

"... Also if any prosecution under the Wildlife and countryside act is taken is it not a criminal case?"

We agree that a prosecution under the Wildlife and Countryside Act 1981 would be a criminal case.

“... If it is then who is the injured party? The state is not injured by a limited take of birds of prey as the american system of wild-take has proven?”

To the extent that a criminal offence has been committed, there need not be an “injured party”. The social mischief is the contravention of the rule of law, in the maintenance of which all who are subject to the law have an interest.

“... Also given the fact i have never voted surely no statute law can apply to me especially unless i consent and understand (legalese- stand-under) as i have not consented to any statute or to be governed by the current government (again see definition of statute in blacks law dictionary)?”

The law applies to everyone who falls within its scope, be they persons entitled to vote (whether or not they do so) or not (including minors, prisoners, the mentally impaired, certain foreigners, and indeed “legal persons”). The legal system simply doesn't (and couldn't) work in the way you suggest.

“... For the last time i wish to state the reply should be written on oath and all information contained should be in plain english as opposed to legalese or any other coded communication.”

This reply is not made on oath, but to the best of our knowledge what is said in it is true. We trust that it is sufficiently self-explanatory.

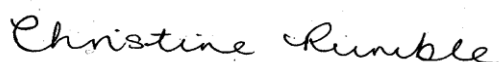
“... You are a civil servant who works for every member of public and these requests are in the public interest.”

As has been explained above, a civil servant works primarily for the Government of the day. We do not consider that these requests are in fact in the “public interest”.

Your e-mail of 2nd August originally came to us with a “freedom of information” heading. We consider that your latest e-mail does not contain a request for information that we hold (other than by way of answers to your various arguments) , and so your correspondence does not fall under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

I note that you have sent an email dated 3 September requesting an internal review. I assume that this response has addressed any issues that you would have wished to raise in your internal review. However, if that is not the case, please let us know. I attach an Annex setting out the internal review procedure, including the appropriate contact details.

Yours sincerely,



Christine Rumble
Acting Head of Wildlife Crime, Zoos and Birds Policy

Direct Line 0117 372 6170

Fax 0117 372 8688

Email Christine.rumble@defra.gsi.gov.uk

Annex A

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision within 40 working days of the date of this letter. Please write to Clive Porro, Head of Defra's Information Rights Team at, Area1B Ergon House, Horseferry Road, London SW1P 2AL, (email: informationrights@defra.gsi.gov.uk) who will arrange for an internal review of your case. Details of Defra's complaints procedure can be found at: <http://www.defra.gov.uk/corporate/complain/info.htm>

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF