

Red tape and regulation: rolling back environmental enforcement in contemporary Britain

Angus Nurse assesses the coalition's approach to controlling environmental wrongdoing

On coming to power in 2010, David Cameron wanted the coalition to be 'the greenest government ever' (Randerson, 2010). Prior to the 2010 general election, the Conservative policy document *It's Time to fight back* proposed a more punitive law enforcement regime, based on increased discipline in schools, the end of the early release scheme for prisoners, increased prison building, more police officers and an extension of stop and search powers. Yet in power, the coalition's approach to environmental crime betrays not only a failure to recognise environmental and wildlife offences as 'real' crime but an apparent belief that environmental offending is technical, 'low level', and can be dealt with through administrative and civil remedies rather than as mainstream criminal justice. Schaffner (2011) identifies that legislative policy depends on the manner in which legal rules are interpreted by regulatory authorities. Thus the importance given to environmental crimes within legal systems is dependent on a number of issues; beyond the basic text of any legislation, the scope and jurisdiction of the regulatory bodies

responsible for environmental crimes are factors and this reflects the social construction of environmental issues (particularly animal harm) and their place within public policy. Such attitudes change over time so that environmental crimes may become an issue of core importance in public policy when the public demands it, or are considered to be a fringe issues. However, given the wide ranging scope of environmental and wildlife crime and their links to other crimes there is an argument for integrating environmental crimes within mainstream criminal justice policy.

The coalition's approach betrays a failure to recognise environmental and wildlife offences as 'real' crime

Light regulation

Conservatives generally believe in smaller government, with a broadly authoritarian approach to crime, but also incorporate law enforcement perspectives that emphasise personal choice and free enterprise, in keeping with ideological liberalist perspectives. Thus regulations seen as stifling private enterprise and impacting negatively on business owners are generally resisted, including environmental regulation. Instead, self-regulation is seen as a route to compliance and environmental regulation is generally weaker in conservative-based

governments, allowing business to continue operating under a lighter environmental regulatory regime and generally permitting the killing of animals where considered necessary to protect business interests.

The government's *Red Tape Challenge* agenda reveals such thinking, seemingly driven by an ideological belief that environmental crimes can be dealt with through administrative regimes. The *Challenge* suggests that there are 159 regulations relating to biodiversity, wildlife management, landscape, countryside and recreation and raises questions about the desirability of retaining the scale of regulation and current enforcement regime (Cabinet Office, 2011). Self-regulation is raised as one option for dealing with environmental problems, despite its palpable failure in other areas of corporate wrongdoing. While self-regulation may be effective in the case of those reputable companies who operate responsibly and see preservation of their industry as within their best interests, it is less effective in the case of rogue companies, those who see environmental regulation purely in terms of its negative impact on profits and those whose attitudes towards wildlife view animal exploitation as victimless crime, to be subjected to a less rigorous enforcement regime than 'real' crimes. Professional public regulation with both willingness and authority to scrutinise environmentally non-compliant industry practices, and consideration of environmental and wildlife crimes as part of overall criminal justice are thus more desirable ways of dealing with such criminality than self or no regulation. While the government questions whether environmental and wildlife regulations should be scrapped or their purpose achieved through non-regulatory means, what is needed is to take what is good in existing environmental and wildlife law enforcement and to develop proper and effective (and effectively enforced) legislation that recognises environmental crimes as part of mainstream criminal justice, and not solely as an environmental problem.

Dealing with environmental crimes

White (2008) identifies three main perspectives as the desired approach to environmental crime:

1. The socio-legal approach
2. The regulatory approach
3. The social action approach

While reliance on a socio-legal (law enforcement) approach as the main public policy response to environmental crime is potentially flawed, one clear advantage of this approach is its emphasis on use of the criminal law as it is presently constituted (ibid). The regulatory approach relies on social regulation, incorporating the active involvement of NGOs. The

regulatory approach is arguably successful in utilising the vigilance of bodies like the League against Cruel Sports (LACS), RSPB, and RSPCA

as active investigators, although their role could be seen to have developed, and in some cases increased, as a result of failures in public enforcement. However, such approach recognises that a constellation of measures may be required to address environmental harm (ibid) and that a pure law enforcement approach is only a partial solution. It thus provides for intervention from, for example, animal welfare professionals in companion and domestic animal abuse and the use of NGOs as specialist scientific and legal advisers.

Reviews

Currently the government is reviewing UK wildlife laws with both Select Committee consideration of wildlife crime and the Law Commission's consultation on wildlife law reform, with a view to Law Commission proposals for a single *Wildlife Management Bill* being ready by mid 2014 for Parliamentary consideration.

Separately, the coalition agreement contains a commitment to a vote on repeal of the *Hunting Act 2004*. The Law Commission suggests that 'criminalising regulatory transgressions may not always be the appropriate way of ensuring beneficial outcomes. It may be better to provide the non-compliant individual or organisation with advice or guidance' (Law Commission, 2012). This is consistent with the coalition's approach which is generally based on reducing the regulatory burden (Department for Business, 2010). Risk-based regulation, in accordance with the 2005 Hampton Principles, suggests that UK regimes for achieving compliance with business

regulations through regulatory inspections and enforcement are generally complex and ineffective. According to the Law Commission the government's

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approach is generally that regulation should only be resorted to where 'satisfactory outcomes cannot be achieved by alternative, self-regulatory, or non-regulatory approaches' (Law Commission, 2012).

Enforcement

Environmental crimes are currently enforced reactively in the UK and, in the case of wildlife crime, enforcement significantly relies on NGOs contributing to investigative work. In the absence of investigative and prosecutions units like the US Fish and Wildlife Service, UK wildlife law enforcement is largely ad-hoc and subject to different levels of resource allocation, dependent on the priorities existing in different parts of the country. While the UK has an excellent network of Police Wildlife Crime Officers (PCWOs), many of them carry out their duties in addition to their 'main' duties.

Both public and, seemingly, governmental perceptions are that charity support is an integral part of

the environmental enforcement system. But this aspect of the 'Big Society' fails to take into account dwindling charity resources, the link between environmental crimes and other crimes, and the need for environmental crime to be considered as mainstream crime and dealt with by mainstream criminal justice agencies. These problems are exacerbated by the recent economic crisis and the government's austerity measures, which have resulted in pressure on policing budgets and are affecting the role of PWCOs, with several forces cutting the role (Select Committee on Environmental Audit, 2012).

Coalition policy on environmental and wildlife crimes risks considerably weakening enforcement in this area. Even a voluntary, NGO-led wildlife enforcement system needs resources. However, a statutory system reflecting a political will to commit the money and manpower necessary to crackdown on an area of crime which is expensive, time-consuming to address, and which often ranks high on the list of public priorities for law enforcement, would be better. ■

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