

The use of vicarious liability in environmental law to enhance the legal conservation status of birds of prey

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SUMMARY

Vicarious liability has been introduced in Scottish environmental law to strengthen the fight against wildlife crime, in particular against birds of prey. Accordingly, landowners can now incur liability for wildlife crime perpetrated by the landowners' employees. Conservation organisations have lauded this development, and this raises the question of whether a similar application of vicarious liability in South African environmental law could enhance the legal conservation status of birds of prey. Vicarious liability is well established in the South African law of delict but is controversial in the context of criminal law. South African environmental law already makes provision for a form of vicarious liability, *inter alia* also against wildlife crime, but this liability is not strict like the traditional form of vicarious liability known in the law of delict and can accordingly only be referred to as vicarious liability in a wider sense. Unlike traditional strict vicarious liability, which is regarded as undesirable in criminal law by the courts and authors, the wider form of vicarious liability in environmental law may well pass constitutional muster. Nonetheless, the direct liability of a landowner, based on a statutory legal duty to prevent the perpetration of wildlife crime by its employees, would arguably be a more satisfactory solution.

1 Introduction

Wildlife crime remains a perennial problem in Scotland. Birds of prey, in particular, are frequently killed in contravention of environmental legislation.¹ The perpetrators of such transgressions often remain unidentified, but they are often assumed to be the employees of landowners rather than landowners themselves. Persecution of birds of prey in Scotland is often strongly associated with moorland managed to

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1 Avery *Fighting for Birds* (2012) 191-214; Whitfield and Fielding *Analyses of the fates of satellite tracked golden eagles in Scotland: Scottish Natural Heritage Commissioned Report 982* (2017) 122-123; Scottish Government "Wildlife management" <https://www.gov.scot/policies/wildlife-management/wildlife-crime/> (last accessed 2022-06-22); RSPB "Birdcrime report reveals worst year on record" 2021 <https://www.rspb.org.uk/about-the-rspb/about-us/media-centre/press-releases/birdcrime-2020/> (last accessed 2022-06-22).

optimise conditions for the hunting of grouse. On such moorland estates, gamekeepers are employed to manage the moors. To increase the number of grouse, some gamekeepers have been known to kill birds of prey illegally.² Vicarious liability, which may provisionally be understood as the liability of one person for the harmful conduct of another person in certain relationships such as that between an employer and an employee,³ has been introduced into environmental law by the Scottish legislature with the aim of holding landowners liable for such transgressions targeted at birds, mainly birds of prey.⁴ Conservation organisations, in particular those with a focus on the conservation of birds of prey, have lauded the introduction of vicarious liability as an important positive development in the ongoing fight against wildlife crime.⁵

In South Africa, wildlife crime is also a problem. Birds of prey and other predatory animals are often killed in contravention of environmental legislation if such animals are perceived to constitute a threat to human interests.⁶ Vicarious liability is well established in the South African law of delict,⁷ but is controversial in the context of criminal law.⁸ The question arises whether a need for vicarious liability for wildlife crime exists in South Africa, as in Scotland. In particular, the question comes to mind whether vicarious liability in South African environmental law can enhance the legal conservation status of birds of prey. This contribution sets out to explore these questions and provide some tentative answers. First, a brief overview is provided of the most

2 Thirgood et al “Raptors and red grouse: conservation conflicts and management solutions” 2000 *Conservation Biology* 95-104; RSPB “Birdcrime 2020” 2021 4-5; RSPB Scotland “The Illegal Killing of Birds of Prey in Scotland 2015-2017” (no date) 14-16.

3 In the context of delict, Neethling and Potgieter *Law of Delict* (2020) 444 define vicarious liability as the “strict liability of one person for the delict of another”. The provisional understanding of vicarious liability used here, in this contribution, deliberately omits any mention of strict liability, for reasons that are discussed in para 5 below.

4 Reid “Towards a biodiversity law: The changing face of wildlife law in Scotland” 2012 *Journal of International Wildlife Law & Policy* 216.

5 RSPB Scotland “The Illegal Killing of Birds of Prey in Scotland 2015-2017” (no date) 8-9; BBC Wildlife Magazine “Scotland’s raptor persecution rates fall” 2018 <https://www.pressreader.com/uk/bbc-wildlife-magazine/20180926/281878709275250> (last accessed 2022-06-22). Orr-Ewing RSPB “Why vicarious liability is failing to have an impact in Scotland” 2019 <https://community.rspb.org.uk/ourwork/b/scotland/posts/vicarious-liability-is-failing-to-have-an-impact-in-scotland> (last accessed 2022-06-22) comments that the introduction of vicarious liability has resulted in few convictions, but makes allowance for the likelihood that it has (in conjunction with increased monitoring) driven a marked reduction in the illegal poisoning of birds of prey.

6 In respect of birds of prey, see e.g. Taylor, Peacock and Wanless (eds) *The Eskom Red Data Book of Birds of South Africa, Lesotho and Swaziland* (2015) 19-20.

7 Neethling and Potgieter (2020) 444-454.

8 Burchell *Principles of Criminal Law* (2016) 450; Hoctor *Snyman’s Criminal Law* (2021) 213.

important legislative provisions protecting wild birds in Scotland. The focus is first on the general provisions that are in force and then shifts to the introduction of vicarious liability. Second, a brief overview of the legal conservation status of the diurnal birds of prey⁹ in South Africa is provided, followed by a discussion, in which the suitability of vicarious liability for wildlife crime in South African environmental law is considered.

2 Conservation of wild birds in Scottish environmental law

2.1 General provisions

The most important wildlife conservation legislation in Scotland, and indeed in the United Kingdom, is the *Wildlife and Countryside Act 1981*.¹⁰ Due to devolution arrangements for Scotland and Wales,¹¹ two different versions of the Act exist, one in force in England and Wales and another in Scotland.¹² In this contribution, the focus is on the Scottish version. A number of provisions of this Act deal specifically with the protection of wild birds and are relevant here.

Section 1(1) provides:

- ... [I]f any person intentionally or recklessly –
- (a) kills, injures or takes any wild bird;
 - (b) takes, damages, destroys or otherwise interferes with the nest of a wild bird while that nest is in use or being built; or
 - (ba) at any other time, takes, damages, destroys or otherwise interferes with any nest habitually used by any wild bird included in Schedule A1;
 - (bb) obstructs or prevents any wild bird from using its nest;
 - (c) takes or destroys an egg of a wild bird
- he shall be guilty of an offence.

In addition to these basic protective provisions, bird species listed in Schedule 1 are given enhanced protection. In respect of the Schedule 1 species, section 1(5) provides that it is an offence to intentionally or recklessly disturb them while they are building a nest or are at or near their nests containing eggs or young, or intentionally or recklessly disturb dependent young of such birds. Several diurnal bird of prey species are

9 In this contribution, only the diurnal bird of prey species are dealt with. Owls, which are also birds of prey, are not dealt with here, purely to keep the scope of this contribution manageable.

10 See McManus *Environmental Law in Scotland* (2016) 290-312; and Reid *Nature Conservation Law* (2009) 105-144 for analysis and commentary.

11 McManus *Scottish Environmental Law Essentials* (2020) 6; Reid (2009) 65-69; see in general Walker *The Scottish Legal System* (2001) 239-271. For an overview of the legislative frameworks for nature conservation in the UK in general, see Fisher, Lange and Scotford *Environmental Law* (2019) 757-766.

12 Reid (2009) 67-68.

listed in Schedule 1.¹³ Furthermore, species listed in Schedules A1 and 1A enjoy even stricter protection in Scotland.¹⁴ It is an offence to intentionally or recklessly take, damage, destroy or interfere with any habitually used nest of these species at any time of the year, not only while the nest is in use or in the process of being built.¹⁵ In addition, section 1(5B) provides that it is an offence to intentionally or recklessly harass the species listed in Schedule 1A at any time.¹⁶

Section 5 makes the use of certain instruments for the killing or taking of wild birds an offence. For example, subsections (1)(a) and (b) prohibits the use of such items as a spring; trap; gin trap; snare; hook and line; electrical devices used for killing, stunning or frightening; poisonous or 'stupefying' substances; net; baited plank and bird lime or similar substances. Section 15A(1) makes the possession of pesticides that contain certain listed active ingredients an offence. It is well known that the use of poisons, such as those contained in pesticides, has been implicated in negative impacts on raptor populations around the world, irrespective of whether the raptors were the primary targets of the poisoning incidents or whether they were unintended secondary victims.¹⁷

Section 18 contains provisions aimed at securing convictions in instances where the proof of offences presents tough evidentiary challenges. Thus, subsection 18(a) provides that an attempt to commit an offence such as the aforementioned offences is an independent offence attracting the same penalties as the corresponding aforementioned offences. Subsection 18(b) makes the possession of any item intended to commit an offence such as the aforementioned offences an offence that is punishable in the same way.

2 2 The introduction of vicarious liability

With effect from January 2012, the Scottish legislature introduced a new offence in the form of vicarious liability of landowners for crimes committed in respect of birds of prey. The *Wildlife and Natural*

13 They are the Osprey *Pandion haliaetus*, European Honey Buzzard *Pernis apivorus*, Golden Eagle *Aquila chrysaetos*, all Harrier (*Circus*) species, Northern Goshawk *Accipiter gentilis*, White-tailed Sea Eagle *Haliaeetus albicilla*, Red Kite *Milvus milvus*, Merlin *Falco columbarius*, Eurasian Hobby *Falco subbuteo*, Gyrfalcon *Falco rusticolus* and Peregrine Falcon *Falco peregrinus*. English and scientific bird names used here follow Del Hoyo and Collar *HBW and BirdLife International Illustrated Checklist of the Birds of the World Vol 1* (2014). Some of these English bird names differ somewhat from the names used in the Schedules.

14 Sch A1 lists the Golden Eagle and the White-tailed Sea Eagle; and sch 1A lists the Golden Eagle, Hen Harrier *Circus cyaneus*, White-tailed Sea Eagle and Red Kite.

15 *Wildlife and Countryside Act 1981* s 1(1)(ba).

16 S 1(5B).

17 Smits and Naidoo "Toxicology of Birds of Prey" in Sarasola, Grande and Negro (eds) *Birds of Prey: Biology and Conservation in the XVI Century* (2018) 229-250.

*Environment (Scotland) Act 2011*¹⁸ amends the *Wildlife and Countryside Act 1981* to provide that, in relation to land,

where... a person (A) commits a relevant offence while acting as an employee or agent of a person (B) who – (a) has a legal right to kill or take a wild bird on or over that land; or (b) manages or controls the exercise of any such right ... B is also guilty of the offence and liable to be proceeded against and punished accordingly.

Proceedings may be taken against B whether or not proceedings are taken against A. “Relevant offence” is defined¹⁹ as an offence under sections 1(1); 1(5); 1(5B); 5(1)(a) or (b); or 15A(1) of the *Wildlife and Countryside Act*; and an offence under section 18 of the same Act committed in relation to any of the aforementioned offences. It will be noted that these “relevant offences” are the offences dealing with the protection of wild birds, nests, and eggs; prohibition of certain methods of killing or taking wild birds; possession of pesticides; and attempts to commit such offences, that have been mentioned above.

The Act makes provision for a statutory defence:

In any proceedings under subsection (2), it is a defence for B to show –
(a) that B did not know that the offence was being committed by A; and
(b) that B took all reasonable steps and exercised all due diligence to prevent the offence being committed.”²⁰

3 The conservation status of birds of prey in South African environmental law

In South African law, the National Environmental Management: Biodiversity Act (NEMBA)²¹ contains the most important legislative provisions dealing with the conservation of species, including diurnal birds of prey.²² Under NEMBA,²³ the Threatened or Protected Species (TOPS) Regulations list fifteen diurnal bird of prey species that are

18 *The Wildlife and Natural Environment (Scotland) Act 2011*, s 24 inserts s 18A and s 18B into the *Wildlife and Countryside Act 1981*.

19 *Wildlife and Countryside Act 1981*, s 18A(6).

20 S 18A(3).

21 Act 10 of 2004.

22 Birds of prey are also protected under provincial legislation, such as Nature and Environmental Conservation Ordinance 19 of 1974 (Western Cape Province, Eastern Cape Province); Nature Conservation Ordinance 8 of 1969 (Free State); Nature Conservation Ordinance 15 of 1974 (KwaZulu-Natal); Kwa-Zulu Nature Conservation Act 29 of 1992 (KwaZulu-Natal); Transvaal Nature Conservation Ordinance 12 of 1983 (Gauteng; North-West Province); Mpumalanga Nature Conservation Act 10 of 1998 (Mpumalanga); and Limpopo Environmental Management Act 7 of 2003 (Limpopo). For an overview, see Knobel “The conservation status of eagles in South African law” 2013 *PELJ* 186-190. In this contribution, only national legislation is discussed.

23 NEMBA, s 56, read with the Threatened or Protected Species Regulations, GNR152 in GG29657 of 23 February 2007 (TOPS Regulations) and the Lists

protected: one species as Critically Endangered; five species as Endangered; eight as Vulnerable; and one as Protected.²⁴ Section 57(1) of NEMBA provides that in respect of any listed threatened or protected species, the carrying out of a “restricted activity” without a permit is prohibited. The restricted activities are defined to include hunting, capturing, or killing a living specimen by any means, method, or device whatsoever; injuring a living specimen with intent to hunt, catch, capture, or kill; importing or exporting; having in possession; breeding; translocating; and selling or trading any specimen, and “specimen” is defined to include an egg.²⁵ Section 101(1)(a) of NEMBA provides that a contravention of or failure to comply with section 57(1) is an offence.

Under the National Environmental Management: Protected Areas Act (NEMPAA),²⁶ a network of protected areas is established in South Africa. Such protected areas, particularly the largest ones such as the Kruger National Park and Kgalagadi Transfrontier Park, make a very important contribution to the conservation of diurnal birds of prey.²⁷ However, the mobility of birds of prey means that even bird-of-prey populations breeding in large national parks remain vulnerable. Vultures, for instance, forage widely and can be killed in large numbers by placing poisoned carcasses outside protected areas, even in neighbouring countries.²⁸ Other birds of prey are also vulnerable. Adult eagles breeding in large national parks mostly stay in their territories, but young eagles disperse widely, also outside the parks, where many of them are killed. If this happens at a sufficiently large scale, even eagle populations inside the largest protected areas can decline, because too few young, unattached birds are available to replace adult, territory-holding birds when they die.²⁹ For such reasons, even the largest protected areas cannot, on their own, guarantee the survival of many bird of prey species, and effective conservation of birds of prey outside protected areas remains essential.

of Critically Endangered, Endangered, Vulnerable and Protected Species, GNR151 in GG29657 of 23 February 2007. New TOPS Regulations were published in March 2015 but are not in force yet: Threatened or Protected Species Regulations, GN255 in GG38600 of 31 March 2015. A new Threatened or Protected Species list was published at the same time: Publication of Lists of Species that are Threatened or Protected; Activities that are Prohibited and Exemption from Restriction, GN256 in GG38600 of 31 March 2015.

24 In the 2015 TOPS list, which is not in force yet, 11 diurnal bird of prey species are listed: 3 species as critically endangered and 8 as endangered.

25 NEMBA s 1.

26 Act 57 of 2003.

27 Taylor, Peacock and Wanless (2015) 22.

28 Taylor, Peacock and Wanless (2015) 22, 64, 69, and 181.

29 Taylor, Peacock and Wanless (2015) 115.

4 Vicarious liability in South African environmental law

In South African environmental law, the most important instance of vicarious liability is created by the National Environmental Management Act (NEMA).³⁰ Section 34(5) provides:

Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, and the act or omission of the manager, agent or employee occurred because the employer failed to take all reasonable steps to prevent the act or omission in question, then the employer shall be guilty of said offence and, save that no penalty other than a fine may be imposed if a conviction is based on this subsection, liable on conviction to the penalty specified in the relevant law, ... and proof of such act or omission by a manager, agent or employee shall constitute *prima facie* evidence that the employer is guilty under this subsection.

Schedule 3, in turn, lists various pieces of legislation that make provision for a number of environmental offences, including section 57(1) read with section 101(1)(a) of NEMBA. As seen, section 57(1) of NEMBA prohibits the carrying out of a "restricted activity" in respect of any listed threatened or protected species, and section 101(1)(a) of NEMBA provides that a contravention of or failure to comply with section 57(1) is an offence. Thus section 34(5) of NEMA, read with the legislation listed in Schedule 3, already makes provision for vicarious liability (at least in a wide sense) for wildlife crime, similar to that in Scotland. The existence of an employment relationship is not sufficient for liability under these provisions. In addition, the employer must have failed to take all reasonable steps to prevent the act or omission in question.³¹

5 Discussion

As seen, conservation organisations in Scotland have lauded the introduction of vicarious liability as a positive development in the fight against wildlife crime, particularly to enhance the protection of birds of prey. This raises the question of whether there is a need for vicarious liability to combat wildlife crime, directed against birds of prey and other forms of wildlife, in South Africa.

In Scotland, a typical aim with vicarious liability in an environmental law context would be to hold the owner(s) of a grouse moor liable for wildlife crime committed by a gamekeeper employed to manage the moorland, and typically the relevant crime would be the killing of birds

³⁰ Act 107 of 1989.

³¹ Kidd "Administrative law and implementation of environmental law" in King, Strydom and Retief (eds) *Environmental Management in South Africa* (2018) 246.

of prey that are perceived to be a threat to the grouse population. A typical South African scenario where one would want to hold a landowner vicariously liable, would be where an employee of the owner of a small stock farm kills birds of prey that are perceived to prey on the livestock. Another typical South African scenario would be where an employee on a small stock farm or a game farm puts out poisoned bait to kill other predators such as leopards or jackals, but the poisoned bait is found by scavenging birds of prey and they are killed instead of the target animals. The bird of prey species involved in such scenarios would typically either be large eagles that are sufficiently powerful to catch lambs,³² or scavenging birds of prey.³³ Ten such species are listed in the TOPS regulations,³⁴ and their declining population trends, and urgent conservation needs, are clearly established by scientific evidence.³⁵ This supports an argument in favour of vicarious liability to give the most comprehensive legal protection to those bird of prey species.

However, it is important to consider that the imposition of strict liability, in the sense of liability for which fault is not required, is controversial in South African criminal law. In *S v Coetzee*,³⁶ O'Regan J declared that the principle that "people who are not at fault should not be deprived of their freedom" is fundamental to democratic societies. Although some instances of strict criminal liability have been created by the legislature,³⁷ Burchell argues that "strict or no-fault liability is constitutionally unacceptable with regard to any crimes and offences, whether of a common-law or statutory origin or whether defined as 'regulatory' in nature or not".³⁸ Strict liability is arguably incompatible with the constitutional rights to a fair trial, and freedom and security of the person.³⁹ A further objection to strict liability in criminal law is its incompatibility with the deterrent, preventive, retributive, and reformative theories of punishment.⁴⁰ Because vicarious liability is

32 Such as the Martial Eagle *Polemaetus bellicosus*; see Taylor, Peacock and Wanless (2015) 113-115.

33 Such as various species of vulture, the Bateleur *Terathopius ecaudatus*, and Tawny Eagle *Aquila rapax*; see Taylor, Peacock and Wanless (2015) 55-70, 93-94, 116-118, and 404.

34 As Critically Endangered: Egyptian Vulture *Neophron percnopterus*; as Endangered: Bearded Vulture *Gypaetus barbatus*, Lappet-faced Vulture *Torgos tracheliotos*, White-backed Vulture *Gyps africanus*, Cape Vulture *Gyps coprotheres*, and Hooded Vulture *Necrosyrtes monachus*; as Vulnerable: White-headed Vulture *Aegyptius occipitalis*, Bateleur *Terathopius ecaudatus*, Tawny Eagle *Aquila rapax*, and Martial Eagle *Polemaetus bellicosus*.

35 See the sources cited in footnotes 32 and 33.

36 1997 3 SA 527 (CC) paras 162-167.

37 Burchell (2016) 438-444.

38 Burchell (2016) 31; see also Burchell (2016) 438-444; and Hctor (2021) 209.

39 As provided for in ss 35(3) and 12(1) of the Constitution of the Republic of South Africa, 1996. See Hctor (2021) 209.

40 Hctor (2021) 212. For a discussion of key arguments against strict liability in the context of environmental law in general, see Lees "Environmental law and criminal law" in Lees and Viñuales (eds) *The Oxford Handbook of Comparative Environmental Law* (2019) 1131-1132.

usually considered to be a form of strict liability, the imposition of vicarious liability in the field of criminal law is also suspect in South Africa. In this regard, Burchell submits: “[T]here is no justification for the remnants of statutorily imposed vicarious liability in criminal provisions or in the common law of crime”.⁴¹

Here it is important to reflect for a moment on the relationship between vicarious liability and strict liability - in the sense of liability for which fault is not required. In the introduction to this contribution, vicarious liability was deliberately defined somewhat imprecisely as the liability of one person for the harmful conduct of another person in certain specified relationships, without reference to strict liability. It is now necessary to get clarity on the role of strict liability in this context. In trend-setting South African delict texts, vicarious liability is regarded as a species of strict liability.⁴² Thus, to cite an example with reference to the employment relationship, fault on the part of the employer is not regarded as a prerequisite for the employer’s liability for the delict of the employee.⁴³ In South African criminal law the position is perhaps less clear.⁴⁴ The pertinent question here is whether vicarious liability in the field of environmental law may consistently be classified as a form of strict liability.

If the Scottish example of vicarious liability for wildlife crime is analysed for this purpose, doubt arises whether it truly is a form of strict, in the sense of no-fault, liability. It will be recalled that a defence is available to the landowner to show that he or she did not know that the offence was being committed by the employee or agent and that the landowner took all reasonable steps and exercised all due diligence to prevent the offence from being committed. This defence introduces a reasonableness standard, albeit somewhat indirectly, into the newly created instance of vicarious liability. This reasonableness standard is arguably a fault standard.⁴⁵

As seen, in South African law the existence of an employment relationship is not sufficient for the vicarious liability under the provisions of NEMA but, in addition, the employer must have failed to take all reasonable steps to prevent the act or omission in question.⁴⁶ Kidd points out that if the accused employer can raise evidence that he or she took steps to prevent the offence, the state will be required to prove, beyond reasonable doubt, that those steps were not all the reasonable

41 Burchell (2016) 450; see also Hoctor (2021) 212-213.

42 See, e.g., Neethling and Potgieter (2020) 389.

43 Neethling and Potgieter (2020) 390.

44 See, e.g., Burchell (2016) 450.

45 See, e.g., Herring *Criminal Law* (2021) 85 who, writing on English law, allows that strict liability can include a fault element. On fault and strict liability in general, see further Herring (2021) 66-95.

46 Kidd (2018) 246.

steps that could have been taken. This arguably means that the employer's right to a fair trial will not be contravened.⁴⁷ Furthermore, because a fine is the only form of punishment provided, the employer's right to freedom is not in jeopardy.⁴⁸ In addition, one can argue that the requirement that the employer must have failed to take all reasonable preventative steps effectively introduces a fault standard for the liability of the employer.⁴⁹

After conducting a survey of instances of vicarious liability in South African environmental law, and a comparative study of vicarious liability in various Anglo-American jurisdictions, Kidd concludes that such vicarious liability (of the non-strict variety) will not necessarily fall foul of a constitutional challenge.⁵⁰ Nonetheless, Kidd argues persuasively that such vicarious liability is not necessary to reach the aim of preventing employers from hiding behind the acts of their employees. The imposition of direct liability on the employers could serve the same purpose. Thus, he argues, the legislature could provide that the employer has a duty to take all reasonable care to prevent an employee from contravening relevant provisions and that failure on the part of the employer to carry out such a duty constitutes an offence.⁵¹

6 Conclusion

In view of the gravity of the threat against birds of prey, there does seem to be a need to impose criminal liability on landowners whose employees have committed wildlife crime aimed against birds of prey. In Scotland, the introduction of vicarious liability into the *Wildlife and Countryside Act 1981* is an attempt to fulfil this need. In South African law, section 34(5) of NEMA, read with the legislation listed in Schedule 3, such as section 57(1) read with section 101(1)(a) of NEMBA, can serve a similar purpose. The time-honoured principle that criminal liability should always be based on the fault of the accused remains an important consideration that militates against the adoption of vicarious liability for criminal provisions such as those typically utilised in environmental legislation. However, analysis of existing instances of vicarious liability in environmental law reveals that such liability is not necessarily strict in the no-fault sense and that such liability may well pass constitutional muster. Nonetheless, Kidd suggests that the legislature should replace such instances of vicarious liability (in a wider sense) with direct liability of employers in terms of a statutory duty to take reasonable steps to prevent their employees from perpetrating relevant environmental

47 Kidd "Vicarious liability for environmental offences" 2003 *Obiter* 187; Kidd (2018) 246.

48 Kidd 2003 *Obiter* 187; Kidd (2018) 246.

49 To avoid a finding of negligence, an alleged offender must take reasonable steps to prevent reasonably foreseeable harm; see Burchell (2016) 419.

50 Kidd 2003 *Obiter* 186-191.

51 Kidd 2003 *Obiter* 192-193; Kidd (2018) 246-247.

offences.⁵² This view is persuasive and arguably indicates the best way forward to deal with employers in furtherance of the aim to prevent or minimise wildlife crime.

⁵² See para 5 above.