Protection of Wild Mammals (Scotland) Bill
[AS INTRODUCED]

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Protection of Wild Mammals (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to protect wild mammals from being hunted with dogs; and for connected purposes.

1  Prohibition and offences

(1) A person must not hunt a wild mammal with a dog.

(2) A person who deliberately contravenes subsection (1) commits an offence.

(3) An owner or occupier of land who permits another person to enter or use it to hunt in contravention of subsection (1) commits an offence.

(4) An owner or keeper of a dog who permits another person to use it to hunt in contravention of subsection (1) commits an offence.

(5) A person who owns or keeps one or more dogs intending any of them to be used to hunt in contravention of subsection (1) commits an offence.

2  Exception: control and protection of species

(1) A person does not contravene section 1(1) by acting in accordance with a licence granted by the Scottish Ministers under this section.

(2) A licence may authorise an individual (or a group of individuals) to use a dog under close control to stalk a wild mammal, or flush it from cover above ground, for the purpose of—

(a) controlling the number of a particular species in a particular place in order to safeguard the welfare of that species there (in which case the licence must identify the species and the place);

(b) protecting livestock, fowl or game birds in a particular place from attack by wild mammals (in which case the licence must identify the place and the kind of mammal).

(3) A licence must identify, by name or description, the persons whose activities it authorises and may contain such conditions as the Scottish Ministers think appropriate (which may include requirements about when, or the way in which, the activities are to be carried out).

(4) An application for a licence—
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(a) may be made by any individual for whose activities the licence is sought;
(b) must be made in the way, and accompanied by the fee, from time to time determined by the Scottish Ministers (the fee being at the level which they consider will enable the expense falling on them as a result of this section to be met out of fee income);
(c) must be supported by such information as the Scottish Ministers reasonably require (generally or in a particular case);
(d) may be granted only if the Scottish Ministers are satisfied that the licence is necessary for the purpose in question and that each individual whose activities it is to authorise is a suitable person to carry them out (including possessing, or having at his or her disposal, appropriate marksmanship or other skills) and has a sufficient connection with the place in question.

(5) The Scottish Ministers must publish, in the way they think appropriate, every determination made under paragraph (b), and general requirement made under paragraph (c), of subsection (4).

(6) A licence may be granted for a period of up to one year; but if at any time the Scottish Ministers are no longer satisfied as described in subsection (4)(d), they may revoke it by giving written notice to one or more of the individuals who applied for it.

(7) An occupier of land (or an individual acting with the occupier’s permission) does not contravene section 1(1) by using a single dog under close control to—

(a) hunt a rabbit or rodent, or
(b) stalk, or flush from cover above ground, a fox or hare,
in order to protect livestock, fowl or game birds kept, or crops growing, on that land; or, in the case of a rabbit or hare, in order to provide (but not by way of sale or trade) food for human consumption.

(8) Subsections (1) and (7)(b) apply only to a person who, once a wild mammal is found or emerges from cover, acts to ensure that it is shot as soon as possible.

3 Exception: retrieval and location

(1) A person does not contravene section 1(1) by using a dog above ground in order to—

(a) retrieve a rabbit or hare which has been shot;
(b) locate a wild mammal which has escaped, or been released, from captivity (but only if that person acts to ensure that the mammal is captured or shot once it is located); or
(c) locate a wild mammal which that person reasonably believes is seriously injured other than as a result of hunting with a dog (but only if that person acts to ensure that the mammal, once located, is captured, treated or shot in order to relieve its suffering).

(2) Subsection (1)(b) does not apply if the mammal—

(a) is a fox or hare; or
(b) is a deer, boar or mink, unless it has escaped from a farm or zoo; or
(c) has been raised or released for the purpose of being hunted.
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4 Arrest, search and seizure

(1) A constable who suspects with reasonable cause that a person has committed, is committing or is about to commit an offence under this Act may without warrant—

(a) arrest that person;

(b) stop and search that person, if the constable suspects with reasonable cause that evidence in connection with the offence is to be found on that person;

(c) search or examine a vehicle, animal or article which appears to belong to, or be in the possession or control of, that person, if the constable suspects with reasonable cause that evidence in connection with the offence is to be found in or on it;

(d) seize and detain for the purpose of proceedings under this Act a vehicle, animal or article which may be evidence in connection with the offence or which may be made the subject of an order under Part II of the Proceeds of Crime (Scotland) Act 1995 (c.43).

(2) A constable may enter land (but not a dwelling house) in order to exercise a power given by subsection (1).

5 Proceedings and penalties

(1) A person guilty of an offence under this Act is liable on summary conviction to imprisonment for up to 6 months or a fine of up to level 5 on the standard scale or both.

(2) If an offence by a body corporate is proved to have been committed with the consent or connivance of, or as a result of neglect by, an officer of the body, the officer as well as the body is guilty of the offence.

(3) “Officer” means a director, manager, secretary or other similar officer, and includes a person purporting to act in that capacity or in accordance with whose directions or instructions the officers of the body are accustomed to act.

(4) Where the affairs of a body corporate are managed by its members, subsection (2) applies to the conduct of a member in connection with his or her functions of management as if the member were an officer.

(5) If an offence committed by a partnership is proved to have been committed with the consent or connivance of, or as a result of neglect by, a partner, the partner as well as the partnership is guilty of the offence.

(6) In proceedings for an offence under section 1(2), the burden of proving that section 2(1) or (7) or 3(1) applies is on the person charged.

(7) In proceedings for an offence under section 1(3), (4) or (5), it is a defence for the person charged to prove that at the time of the alleged offence he or she reasonably believed that section 2(1) or (7) or 3(1) applied (or would apply) to the hunting in question.

6 Disqualification orders

(1) The court convicting a person of an offence under section 1 may, in addition to dealing with the offender in any other way, make an order (“a disqualification order”) disqualifying the offender, for the period specified in the order, from having custody of any dog (or of any dog of the kind described in the order).
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(2) A disqualification order may also impose such requirements as the court thinks fit in relation to a dog which was in the offender’s custody when the offence was committed or which has been in the offender’s custody at any time since then, and may in particular—

(a) require any person who has custody of the dog to deliver it up to a specified person;

(b) require the offender to pay specified amounts to specified persons for the care of the dog from the time it is delivered up (or detained under section 4(1)(d)) until permanent arrangements are made for its care or disposal.

(3) A person who—

(a) has custody of a dog in contravention of a disqualification order; or

(b) fails to comply with a requirement imposed on him or her under subsection (2),

commits an offence.

(4) A person against whom a disqualification order has been made may, no earlier than one year after the date of the order, apply to the court which made the order for a direction ending the disqualification from such date as the court thinks appropriate; and if the application is refused, no further application in relation to that order may be made earlier than one year after the date of the refusal.

(5) In considering an application under subsection (4), the court must take account of all the circumstances including the applicant’s character and his or her conduct since the order was made.

(6) If a disqualification order imposes a requirement in relation to a dog not owned by the offender, the owner may appeal to the High Court against that requirement.

(7) An appeal under subsection (6) is competent only if lodged within 7 days of the date of the order (or such longer period as the High Court thinks just, taking particular account of the date on which the order came to the owner’s attention).

Meaning of expressions

In this Act—

“to hunt” includes to search for or course;

“occupier” includes any person who has control of land;

“owner” (of land) does not include a creditor in a heritable security who is not in possession of the security subjects;

“wild mammal” includes a wild mammal which has escaped, or been released, from captivity, and any mammal which is living wild.

Consequential amendments and repeals

The consequential amendments and repeals set out in the schedule have effect.

Short title and commencement

(1) This Act may be cited as the Protection of Wild Mammals (Scotland) Act 2000.

(2) This Act comes into force at the end of the period of two months beginning on the day it receives Royal Assent.
### SCHEDULE

*(introduced by section 8)*

**CONSEQUENTIAL AMENDMENTS AND REPEALS**

<table>
<thead>
<tr>
<th>Act</th>
<th>Section/Paragraph</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Game (Scotland) Act 1832 (c.68)</strong></td>
<td>1</td>
<td>Section 4 of the Game (Scotland) Act 1832 (provisions about trespassers not to apply to persons hunting) is repealed.</td>
</tr>
<tr>
<td><strong>Game Licences Act 1860 (c.90)</strong></td>
<td>2</td>
<td>In section 5 of the Game Licences Act 1860 (exceptions and exemptions), exceptions 3 and 4 (so far as extending to Scotland) are repealed.</td>
</tr>
<tr>
<td><strong>Protection of Animals (Scotland) Act 1912 (c.14)</strong></td>
<td>3</td>
<td>Section 1(3)(b) of the Protection of Animals (Scotland) Act 1912 (exception for hunting of captive animal) is repealed.</td>
</tr>
<tr>
<td><strong>Dogs (Protection of Livestock) Act 1953 (c.28)</strong></td>
<td>4</td>
<td>In section 1(2A)(b) of the Dogs (Protection of Livestock) Act 1953 (dogs which may be at large in vicinity of sheep), so far as extending to Scotland, for “pack of hounds” substitute “dog lawfully used to hunt”.</td>
</tr>
<tr>
<td><strong>Protection of Badgers Act 1992 (c.51)</strong></td>
<td>5</td>
<td>In section 8 of the Protection of Badgers Act 1992 (interfering with badger setts: exceptions), subsections (4) to (9) (so far as extending to Scotland) are repealed.</td>
</tr>
<tr>
<td><strong>Wild Mammals (Protection) Act 1996 (c.3)</strong></td>
<td>6</td>
<td>In section 2(b) of the Wild Mammals (Protection) Act 1996 (exceptions for killing in certain circumstances), so far as extending to Scotland, between “or” and “pest” insert “lawful”.</td>
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</tbody>
</table>
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An Act of the Scottish Parliament to protect wild mammals from being hunted with dogs; and
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Introduced by: Mike Watson
On: 1 March 2000
Supported by: Tricia Marwick
Bill type: Member’s Bill