Protection of Wild Mammals (Scotland) Bill
[AS AMENDED AT STAGE 2]

CONTENTS

Section
1 Prohibition and offences
1A Exception: stalking and flushing from cover
1B Exception: pest control (places unsafe for shooting)
1C Excepted activities
1D Exception: use of a dog in connection with falconry and shooting
1E Exception: search by authorised person
1F Exception: use of dog where method of humane despatch not available
1G Exception: injured or diseased mammals
3 Exception: retrieval and location
4 Arrest, search and seizure
5 Proceedings and penalties
6 Disqualification orders
7 Meaning of expressions
8 Consequential amendments and repeals
9 Short title and commencement

Schedule—Consequential amendments and repeals
Protection of Wild Mammals (Scotland) Bill

[AS AMENDED AT STAGE 2]

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 who deliberately hunts a wild mammal with a dog commits an offence.

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

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

1A Exception: stalking and flushing from cover

(1) A person does not contravene section 1(1) by using a dog under control to stalk a wild mammal, or flush it from cover (including an enclosed space within rocks, or other secure cover) above ground for the purpose of—

(a) protecting livestock, ground-nesting birds, timber, fowl (including wild fowl), game birds or crops from attack by wild mammals;

(b) providing food for consumption by a living creature, including a person;

(c) protecting human health;

(d) preventing the spread of disease;

(e) controlling the number of a pest species; or

(f) controlling the number of a particular species to safeguard the welfare of that species,

but only if that person acts to ensure that, once the target wild mammal is found or emerges from cover, it is shot, or killed by a bird of prey or a dog, once it is safe to do so.

(1A) Where a person is using a dog in connection with pest control activities and intends to kill wild mammals in the course of those activities only by lawful means, that person does not contravene section 1(1) by using the dog to kill a wild mammal which has been flushed to a gun and has escaped without being shot, or been shot but not killed.
(1B) Where a person is using a dog in connection with the despatch of a wild mammal, being of a pest species, with the intention of flushing the wild mammal from cover or from below ground in order that it may be shot or killed by lawful means, that person is not in contravention of section 1(1) by virtue of the dog killing that wild mammal in the course of that activity.

(2) A person does not contravene section 1(1) by using a dog under control to flush a fox or mink from below ground or by using a dog under control to flush a fox from an enclosed space within rocks or other secure cover above ground, but only if that person—

(a) acts to ensure that the fox or mink is flushed as soon as reasonably possible after it is located and shot as soon as possible after it is flushed;

(b) takes all reasonable steps to prevent injury to the dog including steps to prevent the dog becoming trapped underground and, if it does become trapped underground, steps to ensure it is rescued as soon as is practicable;

(c) holds a valid firearms or shotgun certificate; and

(d) is either—

(i) the owner or lawful occupier of the land on which the activity takes place; or

(ii) has the permission of the owner or lawful occupier of that land to undertake that activity.

1B Exception: pest control (places unsafe for shooting)

Where a person is using a dog in connection with the control of a pest species, that person does not contravene section 1(1) by using a single dog to despatch a wild mammal if convinced that it would be unsafe to use a rifle or shotgun to do so.

1C Excepted activities

(1) A person does not contravene section 1(1) by participating in an excepted activity.

(2) For the purposes of subsection (1), an “excepted activity” is an activity excepted under any provision of this Act, or such other activity as the Scottish Ministers may, by order made by statutory instrument, specify.

(3) No order is to be made under subsection (2) unless it has been laid in draft before, and approved by resolution of, the Scottish Parliament.

(4) Before laying a draft order before the Parliament under subsection (3), the Scottish Ministers must—

(a) lay the proposed draft order before the Parliament and make it publicly available for consultation for a period (“the consultation period”) of at least 12 weeks;

(b) during the consultation period, consult such persons and bodies as they consider likely to be affected by, or otherwise to have an interest in, the proposed draft order; and

(c) take into account any comments on the proposed draft order expressed during the consultation period and make such changes to the draft order as they consider appropriate.
1D Exception: use of a dog in connection with falconry and shooting

Where an occupier of land (or a person acting with the occupier’s permission) is using a bird of prey, or a firearm or shotgun, for the purpose of sport, that person does not contravene section 1(1) by using a dog under control to stalk a wild mammal, or flush it from cover above ground, for the purpose of providing quarry for the sport, but only if—

(a) that person acts to ensure that, once a wild mammal is found or emerges from cover, it is shot, or killed by a bird of prey, as soon as possible;

(b) where a firearm or shotgun is used, that person holds a valid firearms or shotgun certificate; and

(c) where a wild mammal is shot and injured, that person takes all reasonable steps to retrieve it and, once retrieved, to kill it as humanely as possible.

1E Exception: search by authorised person

(1) An authorised person does not contravene section 1(1) by using a dog to search for, or catch, a wild mammal if that person does so with no intention of harming the wild mammal.

(2) In subsection (1) “authorised person” means—

(a) an officer of a local authority acting in pursuance of any function of the local authority;

(b) any person authorised by such an officer to search for, or catch, a wild mammal; and

(c) a constable.

1F Exception: use of dog where method of humane despatch not available

Where a person is using a dog in connection with the control of a pest species, that person does not contravene section 1(1) by using a single dog to despatch a wild mammal if there is no practical and safe method of humane despatch available.

1G Exception: injured or diseased mammals

A person does not contravene section 1(1) by using a dog to despatch a wild mammal for the purpose of preventing suffering to the mammal, where the person reasonably believes that the mammal is injured or diseased.

3 Exception: retrieval and location

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

(a) retrieve a 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) retrieve or locate a wild mammal which that person reasonably believes is seriously injured or orphaned (but only if that person acts to ensure that the mammal, once located, is captured, treated or killed as humanely as possible 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.

(3) A person who is an occupier of land (or is acting with the occupier’s permission) does not contravene section 1(1) by using a dog under control below ground on that land in order to locate a fox cub which that person reasonably believes is orphaned and incapable of independent feeding, but only if that person acts to ensure that the cub, once located, is despatched by a single dog or otherwise killed as humanely as possible.

4 **Arrest, search and seizure**

(1) A constable who suspects with reasonable cause that a person has committed or is committing 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).

(1A) A vehicle, animal or article seized under subsection (1)(d) above shall be returned to the person from whom it was seized as soon as any proceedings under this Act are concluded without the conviction of the person accused.

(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 negligence on the part of, 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 negligence on the part of, a partner, the partner as well as the partnership is guilty of the offence.
Protection of Wild Mammals (Scotland) Bill

(7) In proceedings for an offence under section 1(3) or (4), 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 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).

(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.

(2A) A disqualification order shall not deprive a dog’s owner of custody of that dog where that dog was used by another person in the commission of an offence under section 1, unless the owner knowingly permitted the use of that dog contrary to that section.

(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, and revoking any requirement it imposed in relation to a dog under subsection (2) above, 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).

7 Meaning of expressions

(1) In this Act—

“to hunt” includes to search for or course;

“occupier” includes any person who has control of land;
an “orphaned” fox cub means a young fox, the mother of which is dead, and which is too young to survive on its own;

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

“pest species” means foxes, hares, rabbits, mink, stoats, weasels, rodents and such other species of wild mammal as the Scottish Ministers may, by order made by statutory instrument, specify as being liable to cause damage or nuisance;

“wild mammal”—

(a) includes a wild mammal which has escaped, or been released, from captivity, and any mammal which is living wild;

(b) does not include a rabbit;

(c) does not include a rodent;

and references to hunting with, or the use of, “a dog” are to be interpreted as applying to hunting with, or (as the case may be) the use of, two or more dogs.

(2) A statutory instrument containing an order under subsection (1) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) For the purposes of this Act, a dog is “under control” if—

(a) the person responsible for the dog is able to direct the dog’s activity by physical contact or verbal or audible command; or

(b) the dog is carrying out a series of actions appropriate to the activity undertaken, having been trained to do so.

8 Consequential amendments and repeals

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

9 Short title and commencement

(1) This Act may be cited as the Protection of Wild Mammals (Scotland) Act 2002.

(2) The preceding sections of this Act come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
SCHEDULE
(introduced by section 8)
CONSEQUENTIAL AMENDMENTS AND REPEALS

Game (Scotland) Act 1832 (c.68)
1 Section 4 of the Game (Scotland) Act 1832 (provisions about trespassers not to apply to persons hunting) is repealed.

Game Licences Act 1860 (c.90)
2 In section 5 of the Game Licences Act 1860 (exceptions and exemptions), exceptions 3 and 4 (so far as extending to Scotland) are repealed.

Protection of Animals (Scotland) Act 1912 (c.14)
3 Section 1(3)(b) of the Protection of Animals (Scotland) Act 1912 (exception for hunting of captive animal) is repealed.

Dogs (Protection of Livestock) Act 1953 (c.28)
4 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”.

Protection of Badgers Act 1992 (c.51)
5 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.

Wild Mammals (Protection) Act 1996 (c.3)
6 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”.
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Introduced by: Mike Watson
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Bill type: Member's Bill

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