

T: 0131-244-7574
E: hugh.dignon@gov.scot

Finlay Carson
Convener
Rural Affairs and Island Committee

11 August 2023

Dear Convener,

Wildlife Management and Muirburn (Scotland) Bill (“the Bill”)

During the evidence session attended by the Minister for Energy and the Environment on the 31 May and the evidence session with government officials on the 28 June, we stated that we would provide further clarification on several points in writing. This is set out below.

- SG committed to ensuring amendments to ban snaring would be shared “in good time for evidence to be taken before stage 2. That is a certainty.” (col. 41). **What is the timetable for an announcement on snaring and sharing amendments? Is it expected that the amendments would be shared at the same time the announcement is made?**

The Scottish Government will announce it plans on snaring shortly.

Before bringing forward any amendments to further restrict or ban snaring, we will undertake a public consultation on our proposals.

We would, of course, not be in a position to prepare a final version of any amendments on snaring until after the responses to our consultation have been analysed and any follow up discussions with stakeholders have taken place.

However, if the decision is made to bring forward amendments at Stage 2 we would be happy to provide the Committee with sight of a draft amendment, once the consultation process has concluded.

- SG indicated a draft code of practice for the section 16AA licensing scheme would be shared with the committee “at some stage during passage of the Bill” (col. 58). **What is the timetable for this? Is a draft likely to be shared before Stage 2?**

NatureScot are in the planning stages of developing the Code of Practice with stakeholders through the Moorland Forum. Working groups are currently being formed to input into various sections of the Code of Practice, however a timetable has not yet been developed. We that we will be in position to share a copy of the draft Code of Practice with the Committee ahead of Stage 3.

- SG indicated discussions were ongoing with PSS and COPFS regarding whether current legislation is sufficient to investigate and prosecute traps tampering (col. 65). You updated in your 27 June letter. **When do you expect to conclude these discussions? It would be helpful if you could confirm the outcome of these discussions with the Committee?**

We expect to conclude these discussions ahead of Stage 2 and we will provide the Committee with a further update following those discussions.

SG committed to ensuring amendments relating to SSPCA powers would be shared during Stage 1 proceedings (col. 67). In the Minister's 27 June letter and 28 June evidence, she indicated there would be further consultation with stakeholders before an amendment is lodged at Stage 2. **What is your timetable for sharing amendments on SSPCA powers?**

Our consultation on proposals to extend the powers of Scottish SPCA inspectors will be published shortly. We will provide the Committee with a link to the consultation once it has been published and will also notify the Committee when the consultation analysis report is available.

We will, of course, not be in a position to prepare a final version of any amendments on Scottish SPCA power until after the responses to our consultation have been analysed and any follow up discussions with stakeholders have taken place.

However, after our consultation has concluded we would be happy to provide the Committee with sight of a draft amendment.

- The Minister responded to questions around possible amendments to ban the possession of glue traps. **For the purposes of clarity, should the Committee rely on the Minister's 21 June letter to the UKG which confirms the SG's intention to introduce amendments to ban the sale and possession of glue traps? What is the process for an exemption from the UKIMA? Are you aware of any other DAs asking for an exemption from the UKIMA and, of so, was it agreed and how long did the process take?**

We can confirm that, as set out in the Minister's letter of 21 June to the UK Government, it is the Scottish Government's intention to introduce a ban on both the sale and possession of glue traps.

During the UKIMA's parliamentary passage, after sustained criticism that it would render Common Frameworks inoperable, the UK Government laid amendments which allowed for some matters to be excluded from the UKIMA, where agreement had been reached on policy divergence through a Common Framework.

[Speaking to the amendment](#), UK ministers confirmed to the UK Parliament that conferred powers in the Act could be used to give effect to such exclusions. A [process was agreed](#) between the administrations setting out the steps to be taken through Common Frameworks to secure an UKIMA exemption and a [Written Ministerial Statement](#) was laid in Parliament in December 2021 effectively committing UK ministers to observing that process.

The process has been followed in pursuit of an exclusion for the Scottish ban on certain types of single use plastics (SUP). This took longer than expected and was not followed perfectly but, crucially, provided proof of concept that it could be used to secure exclusions from the UKIMA and thus provide a degree of protection from its effects.

At the time the Scottish Government proposed that the exclusion be wide enough in scope to cover deposit return schemes (DRS) as well, but a narrow exclusion covering only SUP was unilaterally determined by UK Ministers.

The Scottish Government returned to a DRS-specific exclusion in October 2022, to allow adequate time for an exclusion to be secured before commencement of the DRS regulations on 16 August 2023. Despite this, there were numerous delays to the process on the part of the UK Government, and unilateral conditions placed on the operation of the scheme which made it ultimately impossible to proceed with DRS on planned timescales.

To date, no other UK government has used the agreed process for seeking an exclusion from the UKIMA.

- The Committee discussed the number of recorded bird of prey crimes in Scotland shown in the Minister's 27 June letter and asked for further information about the number of these crimes which were connected with grouse moors.

This has been provided in the table below.

| Year | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 | 2020-21 |
|---|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Total recorded Bird of Prey Crimes in Scotland | 13 | 19 | 18 | 26 | 11 | 24 | 17 | 25 | 11 |
| Numbers of raptors recorded as killed on or around grouse moors | 11 | 9 | 12 | 9 | 4 | 12 | 4 | 14 | 8 |

Total recorded bird of prey crimes may include other offences other than killing of raptors e.g., disturbance, setting of illegal traps. Identifying these will require further analysis of Police Scotland data.

- The Minister stated “NatureScot says that it currently does not charge for licences, but I wonder how sustainable that will be. That is something that NatureScot will need to decide.” **For the purposes of clarity, should the Committee rely on the references in the PM that this will be considered as part of the wider review of the species licensing system? Has that review begun and what is NatureScot’s role in the review?**

Yes, the issue of whether licences issued by NatureScot (including those included in the Wildlife Management and Muirburn (Scotland) Bill) should be cost recoverable will be considered as part of the wider review of species licensing.

The broad remit of the review was set out in the Scottish Government and Scottish [Green Party Draft Shared Policy Programme](#):

“Species protection

“We will review the wider species licensing system with a view to ensuring that the law is being applied correctly and that lethal control is only licensed where the conditions required for such a licence are demonstrably being met. The review will also assess the potential to apply the principle of full cost recovery to species licensing and the introduction of a public register of licenses to improve transparency, bearing in mind data protection and safety of licence holders.”

The review is expected to commence later this year. While NatureScot will naturally feed into the review process, our expectation is that the review will be undertaken by an independent chair appointed by Scottish Ministers.

- The Minister offered to provide further information on the two independent reviews that gathered evidence and liaised with stakeholders in response to a question from Rachael Hamilton.

The two reviews referred to were the [Grouse Moor Management Group: report](#) (“the Werritty Review”) and the Scottish Government Commissioned report on the [Socio-Economic impacts of grouse moor management](#).

The Werritty Review group met with a number of organisations and businesses, including grouse moor estates and conducted a targeted questionnaire, receiving responses from 31 organisations and individuals including individual estates, landowners and land managers, gamekeepers, sport shooting, groups of estates, and trade organisations.

The Socio-Economic report included collated financial information from 24 estate-based enterprises.

- The Committee discussed with the Minister circumstances when NatureScot might suspend a licence despite not being satisfied that an offence has been committed and officials offered to provide further information on the specific examples mentioned.

As introduced, the Bill set out that the licensing authority (a role we expect to delegate to NatureScot) may suspend or revoke a licence if they satisfied that:

- a) the licence holder or a person involved in managing the land to which the licence applies, has committed an offence; or
- b) the licence holder or a person involved in managing the land to which the licence applies has knowingly caused or permitted another person to commit an offence.

The Bill further provides that where these conditions do not apply, the licensing authority may suspend a licence on the following grounds:

- where there is an official investigation taking place on the land to which the licence relates; and
- the licensing authority is satisfied that if the suspect of the official investigation were to be convicted of the relevant offence then the conditions set out in a) or b) above would apply.

However, the Bill places no obligation on the licensing authority to suspend a licence in these cases. It will be for the licensing authority to determine the appropriate course of action in these circumstances on a case by case basis after careful consideration of all the evidence presented to them.

In such cases, they could elect to take no further action at that time, or to modify or suspend a licence.

However, we expect a decision to suspend a licence under these provisions will only be done in very exceptional circumstances, for example in egregious cases where there is compelling reason to suggest that a wildlife offence has been committed and that suspension of a licence is necessary to prevent further risks to wildlife.

- The Committee discussed the definition of ‘official investigation’ as an investigation by PSS “or any other body that has as one of its functions reporting, for consideration of the question of prosecution, offences alleged to have been committed” and Hugh confirmed that ‘any other body’ “potentially” could mean the SSPCA. **Can you provide further information about when an investigation by the SSPCA could be defined as an official investigation for the purposes of the bill? Presuming this information cannot be provided until a draft amendment regarding the expansion of SSPCA powers has been agreed, can this information be provided at that point? What other body could be defined as holding an official investigation for the purposes of the bill and in what circumstances?**

An official investigation by the Scottish SPCA will be any investigation where they, acting under their powers as set out in schedule 1 of the Animal Health and Welfare (Scotland) Act 2006 (by virtue of being appointed as an inspector by the Scottish Ministers or otherwise being authorised by Ministers to act as an inspector under section 49(2) of that Act) and have sought to gather evidence in accordance with those powers for the purposes of considering whether a relevant offence, as set out in the Bill has been committed.

In addition to the Police Service of Scotland, there are over 50 organisations (including the Scottish SPCA) who are currently registered as specialist reporting agencies who can report cases to the Crown Office and Procurator Fiscal Service (COPFS) in Scotland. The COPFS website provides details of a number of the agencies - [Specialist Reporting Agencies | COPFS](#). This information is subject to change in the event that agencies cease to report to COPFS or new agencies undertake reporting responsibilities.

The majority of these bodies do not have a role in/or the power to investigate the relevant wildlife crime offences set out in the Bill. Therefore, we expect that the decision on whether to suspend licences will be primarily based on evidence presented to NatureScot by Police Scotland, who are the primary reporting body to the COPFS. However, the licensing authority will also be able to consider any evidence presented to them by one or more of the other reporting bodies (including the Scottish SPCA) who are a specialist reporting agency and have powers to investigate any of the relevant offences set out in the Bill, in that capacity.

- Following a question from Ariane Burgess, the Minister agreed to consider whether research has been, or will be, undertaken by the Scottish Government on the possible function of peatlands and landscapes containing mature trees as firebreaks against the spread of wildfires.

The Scottish Government has not undertaken this research. We are however aware of a number of pieces of research on the interaction between wildfires and peatlands or mature woodland. These are summarised below:

Peatland:

The [‘CentrePeat’ project](#) at the James Hutton Institute within the Scottish Government’s Strategic Research Programme is currently looking at two areas related to wildfires and peatland:

- 1) Further development of indicators for peatland condition and vulnerability to climate and land use/management change, specifically future drought and fire risks.
- 2) Enhance the Peatland code by developing data products that could be used to identify risks to investment due to future climate related disturbance, e.g., drought and fire, as well as providing valuations of further co-benefits beyond GHG mitigation.

University of Highlands and Islands research on the [Impact of land management on fire resilience and carbon fate in blanket bogs](#). The summary states: *“Whilst further data processing and analysis is still underway, our study currently suggests that restoration is likely to increase wildfire resilience and reduce wildfire severity. When taking management decisions at the landscape scale, strategic re-wetting around vulnerable areas (e.g. Highly degraded or undergoing forest-to-bog management leading to large volumes of brash on the ground) may help reduce the risks of occurrence of large catastrophic wildfires, and help minimise the carbon losses associated with these events.”*

Natural England on the [causes and prevention of wildfire on peatlands](#) which identifies current evidence gaps and makes research recommendations for wildfire prevention states: *“Habitat restoration, particularly of peatlands, as well as delivering wider benefits may offer the opportunity to reduce risk and increase resilience to wildfire and other impacts, and potentially address over-dominance of more flammable species, though relatively limited existing evidence was identified on this specifically in relation to wildfire, though it is subject to ongoing study.”*

The International Union for Conservation of Nature (IUCN) Peatland Programme [Position Statement: Burning and Peatlands V.4](#) outlines that *“The most effective long-term sustainable solution for addressing wildfire risk on peatlands is to return the sites to fully functioning bog habitat by removing those factors that can cause degradation, such as drainage,*

unsustainable livestock management and burning regimes. Rewetting and restoring will naturally remove the higher fuel load from degraded peatland vegetation.”

Mature Trees:

The UK Forestry Standard (UKFS) is the technical standard for sustainable forest practice and requires that forest managers consider the risks of fire when designing their woodlands. UKFS guidelines advise planning for forest resilience in relation to wind, fire, pests and diseases by using a variety of ages, species and stand structure. The [Building Wildfire Resilience into Forest Management Planning](#) guidance was published in 2014 to compliment the UKFS and help reduce the likelihood and severity of wildfires in forests and woodlands. To support the implementation of this guidance in a Scottish context, an [Information Note](#) was published by Scottish Forestry earlier this year (2023). This states: “*Vegetation and tree species influence flammability, with species such as heather, grass, bracken, gorse, and young conifers all highly flammable. Mature deciduous broadleaved stand with little surface vegetation will have low flammability, while sparse stands of birch in the uplands with a more surface vegetation can be a habitat with high flammability.*”

Scottish Forestry and their wildfire stakeholders are unaware of any existing UK/Scotland specific research related directly to the question. However, there is a new research initiative called [IDEAL UK Fire: Toward Informed Decisions on Ecologically Adaptive Land Management for Mitigating UK Fire](#), which aims to examine this subject area. Scottish Government will look to engage with the research.

I hope you find this information helpful. I would be happy to provide further information if requested.

Yours Sincerely,

Hugh Dignon

Head of Wildlife Management Unit – Scottish Government