

Hunting with Dogs (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Hunting with Dogs (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.
3. The following other accompanying documents are published separately:
 - Policy Memorandum (SP Bill 12–PM);
 - Explanatory Notes (SP Bill 12–EN);
 - Financial Memorandum (SP Bill 12–FM);
 - Statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 12–LC).

Outline of Bill Provisions

4. The Hunting with Dogs (Scotland) Bill (“the Bill”) will repeal and replace the Protection of Wild Mammals (Scotland) Act 2002 (“the 2002 Act”) which makes it an offence to hunt a wild mammal using a dog in Scotland except in limited specified circumstances.
5. The Bill is being introduced to address widespread concerns that foxes and other wild mammals are being hunted (and killed) by dogs in contravention of the intention of the 2002 Act. It therefore seeks to minimise the risk of wild mammals being caught and killed by dogs in the course of hunting by placing restrictions on their use.
6. The Bill will broadly replicate the core provisions of the 2002 Act but will address the inconsistencies and ambiguities in the language of the 2002 Act to make the law easier to understand and to enforce. The use of dogs to hunt wild mammals in Scotland will continue to be banned except in limited, specified circumstances and for certain permitted activities.

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7. In addition, the Bill will introduce new measures to:

- Limit the number of dogs that can be used to search for, stalk or flush wild mammals from cover above ground to two.
- Introduce a licensing regime for the use of more than two dogs to search for, stalk or flush wild mammals above ground in certain limited circumstances.
- Limit the number of dogs that can be used to search for or flush foxes or mink from cover below ground to one.
- Prohibit the activity known as trail hunting (the activity of directing a dog to find and follow an animal-based scent).

Rationale for Subordinate Legislation

8. The Scottish Government has, in deciding whether provisions should be in the Bill or in subordinate legislation, and in deciding on the appropriate level for scrutiny of subordinate legislation, given due regard to:

- The need to strike a balance between the importance of the issue and providing the flexibility to respond to changing circumstances,
- The need to make proper use of valuable Parliamentary time, and
- The need to deal with the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

9. The relevant provisions are described in detail below. For each provision, the memorandum sets out:

- The person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- Why it is considered appropriate to delegate the power to make subordinate legislation and the purpose of each such provision; and
- The parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

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Section 21 – Ancillary provision

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: affirmative procedure if amending primary legislation, otherwise negative procedure

Provision

10. This provision enables the Scottish Ministers to make any incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of or in connection with the Bill, or for giving full effect to it. The regulations may make different provision for different purposes and modify any enactment.

Reason for taking the power

11. As with any new body of law, the Bill may give rise to a need for a range of ancillary provisions. The power is needed to ensure that the policy intentions of the Bill are achieved if further changes are found to be necessary as a result of provisions in the Bill. The power is wide-ranging because the 2002 Act is being repealed and replaced. A smooth transition from the 2002 Act to the new provisions of the Bill is essential for all of those who wish to use dogs to hunt wild mammals (within the terms of the permitted exceptions) and for those who will have a role in enforcing the legislation.

12. The power will also allow Scottish Ministers to make further changes should there be any unforeseen issues with the operation of the new legislation. Without the power, it may be necessary to make further primary legislation to deal with a technical, operational or implementation matter which is clearly within the scope and policy intentions of the Bill. The Scottish Government considers that this would not be an effective use of resources by the Scottish Parliament or the Scottish Government.

13. The power, whilst potentially wide, is limited to the extent that it can only be exercised by the Scottish Ministers for the purposes of, in connection with, or for giving full effect to any provisions of the Bill.

Choice of procedure

14. Section 21 requires regulations made for the purposes of section 21 to be subject to affirmative procedure if they contain a provision which adds to, replaces or omits any part of an Act. Any other regulations made under this section are subject to negative procedure. These procedures are typical for ancillary powers.

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Section 26 – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Laid, no procedure (in accordance with section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010)

Provision

15. This provision allows the Scottish Ministers to commence provisions in this Bill (other than sections 21 (ancillary provision), 26 (commencement) and 27 (short title) which come into force on the day after Royal Assent) on such day as they may appoint by regulations. The regulations may include transitional, transitory or saving provision and may make different provision for different purposes.

Reason for taking power

16. It is standard practice for the Scottish Ministers to have control over the commencement of a Bill so that it can be brought into force at a suitable time. For example, it will be necessary to ensure that the appropriate forms and guidance for applicants in relation to the licences to be granted under the Bill are in place before those provisions are brought into force.

Choice of procedure

17. As is usual for commencement regulations, the default laying requirement applies (as provided for by section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010). This is considered appropriate because the policy behind the provisions will have already been considered by the Parliament during the passage of the Bill.

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