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Dear Finlay

SCOTTISH GOVERNMENT RESPONSE TO THE RURAL AFFAIRS, ISLANDS, AND NATURAL ENVIRONMENT COMMITTEE'S REPORT ON THE HUNTING WITH DOGS (SCOTLAND) BILL AT STAGE 1

I write in response to the Rural Affairs, Islands and Natural Environment Committee's Stage 1 Report on the Hunting with Dogs (Scotland) Bill. I would like to thank the Committee for its careful and detailed consideration of the Bill. As I said in my oral evidence before the Committee on 29 June 2022, the Bill is principally about pursuing the highest possible animal welfare standards in Scotland, but on the understanding that we are a rural nation and access to legitimate wildlife control must be possible.

I am pleased that the Committee has endorsed the general principles of the Bill. The Government's response in the **Annex** responds to each of the main recommendations in the Report, using the paragraph numbers in the report.

I hope that my response addresses the issues raised in the Committee's Stage 1 Report and is helpful in your further consideration of the Bill. I look forward to exploring the issues raised in your report during the Stage 1 debate on 25 October 2022 and to continue working with the Committee on this important Bill at Stage 2, should Parliament endorse the general principles at Stage 1.

MÀIRI MCALLAN

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36: The Committee notes some stakeholders' call for the Bill to include definitions of certain terms, such as 'hunting', 'searching for' or 'coursing' and the Minister's position that these are "terms that people readily understand" and a concern that, in setting an absolute definition, "things will naturally be missed". It is vital, however, this Bill does not repeat the ambiguities in definitions which have been identified in the 2002 Act. Accordingly, the Committee would welcome further information from the Scottish Government around the definition of hunting to reassure it that these terms do not need to be further defined. It would be helpful if this information could be provided in advance of Stage 2.

The definition of hunting in the Bill is intentionally non-exhaustive so that it will include any conduct which constitutes hunting. Such an approach means that the definition then relies on the natural meaning of the word, which encompasses the activities mentioned in the exceptions, such as searching for and flushing, but also any other activity that would naturally be understood to be hunting. Expanding the definition could result in unintended consequences because the more additional verbs added, the more it may appear that others have been deliberately excluded, offering scope for people to argue that some specific conduct which would naturally be understood as hunting falls outwith the definition. For example, a person who hunts a wild mammal with a dog could argue that they were not searching for, stalking, flushing, chasing, pursuing or coursing but they were "tracking" the wild mammal. Conversely, there may be instances of conduct which could fall within such an expanded definition but would not naturally be understood as hunting, such as accidentally flushing a wild mammal when walking a dog. The more we expand the definition of hunting, the more exceptions we would need to create for innocent conduct.

"Searching for" was retained as otherwise there could be doubt as to whether searching constitutes hunting (as discussed by Lord Bonyon in paragraphs 5.10 to 5.13 of his report). "Coursing" was also retained to avoid any impression that the prohibition of hare coursing is being relaxed, even although it would always constitute hunting.

The Bill does not contain definitions of "stalk" or "flush" as we do not consider there is an issue with understanding those terms. As with "hunting", they will take their natural meaning. Including definitions could result in unintended consequences similar to those listed above where, conversely, the more descriptive terms used, the narrower the definition can become in the Bill.

46: The Committee notes the Scottish Government's reasons for including rabbits in the definition of a wild mammal is to address concerns it is used as a cover for hare coursing and to prevent rabbits being chased and killed by dogs.

47: The Committee notes the views of animal welfare stakeholders that the inclusion of rabbits could address the concerns around hare coursing and animal welfare. The Committee also notes some stakeholders' view that there are more direct and effective methods of addressing the challenges of preventing hare coursing than making it an offence to use dogs to hunt rabbits.

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48: The Committee asks that, before Stage 1, the Scottish Government sets out its understanding of how dogs are used to control rabbits in Scotland; to provide more detail about the animal welfare concerns around these methods in relation to rabbits; and to provide further information about what alternative methods of addressing hare coursing have been considered.

49: A minority of members believe that, to avoid unintended consequences, rabbits should not be included in the definition of a wild mammal.

I understand that there are a variety of methods used to control rabbits in Scotland, including shooting, trapping, snaring, and ferreting. Where these methods do not involve the use of dogs, they fall outwith this Bill.

The stakeholder and public consultation on the definition of wild mammal highlighted that those who are suspected of undertaking hare coursing, an illegal activity under the 2002 Act, frequently use the cover that they are legally using dogs to hunt rabbits.

Including rabbits in the definition of wild mammal will aid in the detection and enforcement of hare coursing offences by removing this activity as a potential cover and is supported by Police Scotland and the Crown Office and Procurator Fiscal Service:

Detective Sergeant Telford (Police Scotland) at the evidence session on the 22 June 2022 stated:

“Police Scotland welcomes the inclusion of rabbits, because it would, to an extent, negate the excuse that the dogs were hunting rabbits rather than hares.”

Sara Shaw (Crown Office and Procurator Fiscal Service), 22 June

“It is a useful inclusion in the bill. Section 1 would permit prosecution. Currently, if the COPFS receives a report of alleged hare coursing and it turns out to have been a rabbit that was involved, we can raise proceedings under section 11G of the Wildlife and Countryside Act 1981. That is not to say that that would be appropriate or possible in every scenario where rabbits are mentioned, but that is an option in appropriate cases. The benefit of raising a prosecution under section 1 of the bill in respect of a rabbit or rabbits would be the penalties that the bill would make available, which are additional to those in the 2002 act.”

Hare coursing remains a serious concern in Scotland and the inclusion of rabbits within the definition of wild mammal is only one of the steps that we are taking to address this issue.

The Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 introduced higher maximum sentences for persons convicted of hare coursing offences, which will give the courts more flexibility to deal with these types of offences going forward. Complementary to this the Scottish Sentencing Council is developing sentencing guidelines for environmental and wildlife crimes.

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We are also taking action through the Partnership for Action Against Wildlife Crime poaching and coursing priority group, that is seeking to build a greater level of public awareness of poaching and coursing as serious wildlife crime, and continue to build working relations, communications and share information between all agencies and organisations and rural communities in order to increase prevention activity and enforcement.

Police Scotland has also taken part in operation Galileo, a multi-agency approach at tackling hare coursing.

Rabbits have also been included within the definition of wild mammal to address welfare concerns. It is already an offence to use dogs to chase and kill hares and most other species of wild mammal on welfare grounds. The continued exclusion of rabbits is therefore anomalous.

The inclusion of rabbits within the definition of wild mammal on welfare grounds is supported by the Scottish Animal Welfare Commission (SAWC) and the Scottish Society for the Protection of Cruelty to Animals (Scottish SPCA):

“The SAWC supports the inclusion of all wild mammals within the protection of the Bill, on animal welfare grounds. Our view is that rabbits merit protection in their own right, on the basis of their sentience and their capacity to suffer. We therefore agree that rabbits should receive protection from being hunted using a dog, subject to the limited exceptions permitted under the Bill, if required.” (SAWC letter to the RAINE Committee 23rd June 2022).

Mike Flynn (Scottish SPCA) stated in the evidence session held on the 15 June:

“The Scottish SPCA welcomes the inclusion of rabbits. As I said in my opening remarks, when the police catch people hare coursing, their usual excuse is that they are after rabbits... If the intention is genuinely to go for rabbits, though, there are more humane ways of dealing with them than setting dogs on them. A lot of people think that, in all these sorts of activities, the dog kills the animal instantly. You might get away with that with mice or rats, but it is definitely not the case with foxes or even rabbits. Not all of them are instantly killed and, in any case, they also experience the fear of being chased.”

52: The Committee is content with the reason given for not including rats and mice in the definition of wild mammal. The Committee asks the Scottish Government, however, to respond to specific questions regarding the use of dogs to hunt other rodents – such as the grey squirrel – which are included in the definition.

As identified by the Committee, the only rodents excluded from the definition of wild mammal are rats and mice. Therefore, dogs can be used to chase and kill rats and mice. As grey squirrels fall within the definition of wild mammal, the Bill permits the use of dogs to search for and flush grey squirrels.

Any person wishing to use a dog or dogs to hunt for grey squirrels would need to do so in a way that was compliant with the conditions set out in the Bill. Many other mammal species, including other rodents, are protected by law and any person wishing to use dogs to hunt them would also need a relevant licence under applicable legislation such as the Wildlife and Countryside Act 1981 or the Conservation (Natural Habitats, &c.) Regulations 1994.

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63: The use of a bird of prey as a method of killing was not fully explored during the Committee's Stage 1 inquiry but it is not clear to the Committee why birds of prey are one of the two permitted methods of killing under the Bill. The Committee asks the Scottish Government to set out its reasons for the use of a bird of prey as a method of killing in all four exceptions.

153: The Committee would welcome further information about why an exception for falconry has been included in the scope of the Bill. The Committee has no other comments to make on section 6 in so far as it relates to falconry and deer stalking.

Falconry is a permitted activity in Scotland and the Scottish Government does not have any plans to ban it. When hunting, it is common practice for falconers to use dogs to flush wild mammals to the waiting bird of prey. Whilst the use of dogs for this activity is covered in the exception at section 6 (falconry, game shooting and deer stalking), this exception is only applicable where dogs are being used to search for, stalk or flush a wild mammal for the purposes of providing quarry for sport. Therefore, falconers cannot rely on section 6 if they need to manage wild mammals for purposes other than providing quarry for falconry.

Falconers also use dogs to control wild mammals for the purposes listed in section 3, 5 and 7. A landowner may, for example, hire the services of a falconer to take hares for the purpose of preventing serious damage to woodland or crops.

The inclusion of birds of prey as a method of lethal control under each of the four exceptions in the Hunting with Dogs (Scotland) Bill is therefore necessary otherwise a person undertaking the control of certain protected species or control for purposes listed in section 3, 5 and 7 by this method would not be able to use dogs to assist them in this activity.

80: The Committee also notes, however, some stakeholders' concerns about the proposed two-dog limit. These stakeholders told the Committee that two dogs could not effectively flush wild mammals from cover in all circumstances and terrain. They argued this could, in itself, create an animal welfare concern, prolonging flushing from cover and causing additional tiredness and stress for both the dogs and wild mammals.

81: Some of the Committee share these concerns about the impact of the two-dog limit. The Committee calls on the Scottish Government to address these concerns in a workable way through the proposed licensing scheme.

The majority of predator control in Scotland does not involve the use of dogs. As Lord Bonyon found in his report:

“Over the country as a whole a large majority of foxes killed are shot, e.g. by lamping, by individual landowners, estate managers, farmers and gamekeepers without the assistance of a pack of hounds...”

For many of the management activities involving the use of dogs, only one or two dogs are routinely used e.g. deer stalking or searching for invasive non-native species.

Two dogs are also the maximum number of dogs that can be used to control foxes and other wild mammals in England and Wales.

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I therefore believe that a two dog limit is workable, reasonable and appropriate in most circumstances where dogs are used.

However, I have always recognised the concerns put forward by those involved in land management and wildlife control – namely, that a two dog limit may limit their ability to undertake effective predator control in some circumstances. It is for those reasons that I have included a licensing scheme to allow the use of more than two dogs in circumstances where it can be demonstrated that using only two dogs would not be effective.

For example, in this report Lord Bonomy stated that a two dog limit could affect predator control:

“particularly on rough and hilly ground and in extensive areas of dense cover such as conifer woodlands.”

In his evidence to the RAINE Committee Lord Bonomy commented that a two dog limit, with the addition of a licensing scheme to enable the use of more than two dogs in certain circumstances was a viable approach.

“The licensing scheme is, I think, what makes it viable to have the two-dog limit. There must be circumstances in which people can justify that it is appropriate to have more dogs, and licensing will allow for that.”

120: The Committee notes the section 4 licensing scheme to permit hunting with more than two dogs, where certain requirements are met, and the view this could provide a mechanism to address concerns about the two-dog limit. The Committee notes, however, there are different expectations around how this licensing scheme would work; the Minister has confirmed it should not be seen as a loophole to by-pass the two-dog limit but some stakeholders consider the licence essential to continue predation control with dogs.

121: The lack of clarity about the details of the licensing scheme has contributed to these different expectations and the Committee welcomes the Scottish Government and NatureScot’s commitment to developing the scheme, and providing further information, over the course of the Bill’s progress through Parliament. The Committee also supports the development of the licensing scheme under NatureScot’s shared approach to wildlife management.

122: The Committee notes the commitments made by the Scottish Government and NatureScot to consult widely with stakeholders as part of this process and highlights the comments from some stakeholders around the design of the licensing scheme. In particular, the Committee welcomes NatureScot’s reassurance that the scheme will be reviewed and revised, as necessary, as it is implemented. The Committee requests the Scottish Government update Parliament on its progress in developing the licensing scheme in advance of the Stage 1 debate.

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During Stage 1, NatureScot has focused its stakeholder engagement around a series of bilateral meetings with key stakeholders where they have discussed matters such as the two licensing exceptions for the use of more than 2 dogs. My officials and I have also met with several stakeholders to discuss the Bill and members of the Bill team and NatureScot have undertaken a site visit to the Lauderdale hunt.

The Scottish Government and Nature Scot are committed to a 'shared wildlife management principles' approach to stakeholder engagement. This incorporates stakeholder engagement in discussions during the development of policy/ licensing. This collaboration with stakeholders will allow for a range of opinions, perspectives and expertise to be shared at an early stage allowing for the development of more robust, open licencing scheme.

After the Stage 1 debate, my officials and NatureScot will set up a series of stakeholder engagement meetings which will follow the shared wildlife management principles. These will provide an open platform for stakeholders to discuss and provide expertise in developing the licensing schemes. I will also continue to engage with stakeholders directly.

Of course during Stages 2 and 3, the Bill is subject to amendment. It will therefore not be possible to finalise the details of the licensing scheme and the accompanying guidance until after Stage 3 has been completed and the final terms of the Bill are known. My officials and NatureScot will therefore continue to engage with stakeholders throughout the passage of the Bill and during the implementation phase to develop and refine the scheme.

123: The Committee notes the particular concerns around the requirement that a licence be valid for up to 14-days. Some stakeholders have argued that, if the Bill is to continue to enable predator control using dogs, a workable regime needs to be in place and that a 14-day licence would present significant practical challenges to predation control.

124: The Committee recommends the Scottish Government respond to the concerns expressed in relation to the 14-day licence scheme. The Committee requests this information should be provided in advance of the Stage 1 debate to inform the Parliament's decision on the Bill's general principles.

I recognise that foxes and other wild mammals, such as rabbits, need to be controlled to prevent damage to livestock such as lambs and poultry, and also wildlife such as ground-nesting birds. We know that in certain types of terrain, such as dense forestry, it is necessary to first flush foxes from cover so that they can be safely shot.

In developing this Bill I have tried to strike a balance between closing down loopholes that might be exploited by those who wish to continue using dogs to chase and kill wild mammals and the need for the effective protection of livestock and wildlife from predation where there is no other option than the use of more than two dogs. Putting in place a licensing system that is tightly controlled is, in my view, the best way of achieving that balance. The time restriction element of the licensing scheme is part of those controls. It prevents the licence becoming a free pass to be used whenever the holder wishes and instead focuses attention on those times when the use of more than two dogs is the only effective option. Having said that I do want the licensing system to be workable. If there are good arguments as to why a land manager cannot plan ahead, using their experience, to make use of a fourteen day window, then I am prepared to consider alternative proposals.

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I will continue to engage with stakeholders on this matter and I will carefully consider the views put forward by all Members of Parliament during the Stage 1 debate.

141: The Committee notes the Scottish Government’s view that some provision should be made to permit the use of dogs below ground and that the one-dog limit “strikes the balance” between predation control and animal welfare.

142: The Committee also, however, notes the concerns raised by animal welfare organisations that even one dog below ground could raise animal welfare concerns. The Committee also notes the view of the NWTF that the requirement to keep a dog being used below ground under control by physical or verbal/audible command would alert the fox or mink to the presence of humans above ground and would compromise the effectiveness of the exercise.

143: It is not clear to the Committee, therefore, that the use of dogs at all below ground is compatible with the Bill’s pursuit of the highest possible animal welfare standards. It is also not clear to the Committee how the exception would work, given the dog handler’s preference for silence and the Bill’s requirement for a verbal or audible command.

The use of dogs underground was considered by Lord Bonomy in his review. He recommended that:

“In the event that it is accepted that the use of terriers is a necessary ancillary to fox control,,, then it would be appropriate to specify clearly that only one dog should be used below ground.”

In coming to his conclusion he stated that:

“The material presented to the Review is persuasive of the need for the use of terriers to ensure the despatch of a fox gone to ground. The principal issue is ensuring that the practice is used humanely and not abused.”

“Very strong representations about the importance of the use of terriers below ground have been made to the Review. “

But also acknowledged the welfare concerns associated with this practice noting that:

“Powerful submissions to the Review favoured ending the practice.”

This polarisation of views was clear from the responses to the Scottish Government 2018 consultation on the recommendations of the Bonomy review, with strong arguments being made both for the need to allow dogs underground and the view that such practice is incompatible with the highest standards of animal welfare.

By limiting the use of dogs underground to one, and by requiring the dog to be under control at all times, a balance has been sought between enabling effective predator control whilst at the same time reducing the risk of a fox or mink being killed by dogs.

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I recognise that there were strong representations made to the Committee about the welfare issues that can arise from sending a terrier underground, for the terrier itself and I noted the concerns expressed by Chief Superintendent Flynn of the Scottish SPCA in his evidence to the RAINE Committee:

“The animals suffer. I have grave concerns about dogs underground.” and “I can assure the committee that dogs also get hurt in dealing with foxes”

However, I also understand the arguments put forward by those who believe that it continues to be a necessary part of effective predator management without an obvious alternative. Further, those using dogs underground are governed by a code of practice which is designed to minimise the risks associated with this activity.

I will listen very carefully to what Parliament says on this matter during the stage 1 debate and will give full consideration to this in advance of stage 2.

In relation to the specific point about the need to be able to control dogs underground by verbal or audible command, it may be helpful if I clarify that this does not mean that the dog handler has to be in verbal or audible contact with their dog at all times. The person responsible for the dog should be able to direct the dog’s activity by physical contact or verbal or audible command. It simply means that, when sending a dog underground the handler should ensure that it remains within hearing distance so that they can exert control by verbal or audible means should it become necessary to do so, for example if it appears that the dog has engaged directly with a fox or there are concerns about the welfare of the dog or wild mammal. I accept that there could be occasions when silence is required but so long as the person responsible for the dog is satisfied that if they issued a command the dog would comply, then they would be operating within the definition of “under control” in the Bill.

144: The Committee recommends the Scottish Government respond to this point in advance of Stage 1 in order to inform Parliament’s consideration of the general principles. The Committee also recommends the Scottish Government respond to the specific provisions relating to the animal welfare conditions which have not been replicated from the 2002 Act.

Section 2(3) of the 2002 Act provides that a person does not commit an offence under section 1(1) as long as certain conditions are met. The conditions are set out in paragraphs (a) to (e). It is understood that concerns were raised during the Committee evidence sessions that two of these conditions (paragraphs (b) and (c)), which appear to be about animal welfare standards, are not replicated in the Bill. To clarify, it is the Government’s position that whilst these provisions have not been replicated in the Bill, it is considered that there has been no reduction in animal welfare standards.

Section 2(3)(b) of the 2002 Act requires that a person “takes reasonable steps 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”.

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Section 5(3)(d) of the Bill requires that the fox or mink is shot as soon as reasonably possible. It does not replicate the requirement to ensure the fox or mink is flushed as soon as reasonably possible as it is not clear to me what practical steps could be taken to speed up the process of flushing in those circumstances. However, if any suggestions for any reasonable steps that could be taken are made I will consider these carefully ahead of Stage 2.

Section 2(3)(c) of the 2002 Act provides that all reasonable steps should be taken 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.

The Scottish Government is of the view that it is unnecessary to replicate this provision in the Bill. The Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”) would apply to dogs that are sent underground. Dogs are protected animals for the purposes of section 17 of the 2006 Act. Section 19(2) of the 2006 Act provides that a person who is responsible for an animal commits an offence if the person causes an animal unnecessary suffering by an act or omission, and the person knew or ought reasonably to have known, that the act or omission would have caused the suffering or be likely to do so.

154: In relation to game and rough shooting with dogs, the Committee notes the concerns raised by some stakeholders about how the exception would work in practice. First, concerns were raised about the impact of the two-dog limit on game and rough shooting. The Minister has been very clear that game and rough shooting could only use up to two dogs to hunt wild mammals. The Committee asks the Scottish Government to respond to the concerns raised in relation to rough shooting.

Following the Committee evidence sessions in June, we have further engaged with stakeholders to better understand this issue and clarify how the provisions set out in the Bill might apply to rough shooting. It is clear that the term “rough shooting” is broad and can refer to a range of different circumstances. However in what appears to be a common approach, a line of shooters advances over a piece of ground, each controlling a dog or dogs to search for quarry and then if a quarry is flushed it is promptly shot and then retrieved by a dog. Under section 6(1)(a) (exception: falconry, game shooting and deer stalking) of the Bill it is lawful for a person to use a dog to search for, stalk or flush from cover a wild mammal with the intention of providing quarry for game shooting or to search for and retrieve an animal which has been killed as a result of that activity. Subsection (2) of section 6 sets out the conditions which must be met when undertaking this activity.

Any person who uses a dog to, for example, search for and flush a rabbit from cover, may continue to do so provided that the conditions set out in section 6(2) of the Bill are met. One of the conditions is that the activity does not involve the use of more than two dogs. However, “the activity” refers specifically to the searching for, stalking or flushing of a wild mammal (or its retrieval once killed) rather than the rough shoot as a whole. Therefore, the two dog limit does not necessarily mean that not more than two dogs can be present at a rough shoot.

Section 1(4) of the Bill provides that a person is using a dog when the hunting of a wild mammal by that person involves the use of a dog, even if the dog is not under that person’s control. Therefore, if there is more than one person undertaking rough shooting where mammals such as rabbits or hares may be shot, each person must use no more than two dogs to search for and flush their respective quarry. They must also take reasonable steps to ensure that the one or two dogs that they are using do not join up with other dogs to form a pack.

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To be clear I am not proposing a specific exemption for rough shooting, and neither am I seeking to define rough shooting. The provisions of the Bill will still apply to the activity and so it is vital that the dogs do not form a pack and that no chasing of the quarry takes place. We understand that during rough shooting dogs forming a pack and chasing the quarry would prevent a clear shot at the quarry and so defeat the purpose of the activity. I believe therefore that the type of rough shooting that I have described above can continue as a lawful activity. Those taking part in rough shooting will need to take care to ensure that their practices do not fall foul of the provisions of this Bill, but I do not believe that will be difficult to achieve. I will be happy to hear further views on the issue as the Bill moves forward.

155: Second, concerns were raised about the section 6(2)(e) requirement that wild mammals being searched for, stalked or flushed could only be shot dead or killed by a bird of prey. The Committee heard concerns that, in those situations where rabbits are killed by hand to sell to market or accidentally by a dog whilst being retrieved, an offence may be committed. The Committee asks the Scottish Government to address this issue in its response to this Stage 1 report.

The 2002 Act sets out that if someone is using a dog to flush a wild mammal, the animal must be shot or killed by a bird of prey: in those circumstances, to kill a wild mammal by hand would be an offence. The Bill contains similar provisions as the 2002 Act, and these apply to all wild mammals as defined in section 1(3) of the Bill.

The intention behind the condition that a wild mammal must be shot or killed by a bird of prey as soon as reasonably possible is to ensure that it is never permissible for a dog to chase and kill a wild mammal, or for a person to use a dog to flush wild mammals from cover without the presence of guns (or a bird of prey).

The conditions envisage, however, that a person may attempt to kill the wild mammal but fail to do so. Therefore, section 6(2)(f) provides that if an attempt to shoot the wild mammal (or kill it with a bird of prey), results in it being injured but not killed, reasonable steps must be taken to kill it in a way that causes it the minimum possible suffering. The Bill does not specify the manner in which that is undertaken. If a person complies with the conditions in the exception but the dog nevertheless accidentally kills the wild mammal, no offence will have been committed. Whether an offence has been committed will depend on the facts and circumstances of each situation. It is ultimately for the police and the courts to determine whether an offence has been committed.

As the Bill was developed, our discussions with stakeholders found that the large majority of rabbits currently dispatched by hand are flushed into nets using ferrets, an activity that can continue unaffected by this Bill.

167: The Committee notes the point raised by OneKind that the Bill does not seem to provide for the use of two dogs to search for and retrieve a wild mammal which has been injured. The Committee requests the Scottish Government address this point in advance of Stage 2.

I recognise and agree with the concerns raised by OneKind and other stakeholders that the Bill does not currently permit the use of dogs to search for and retrieve a wild mammal which has been injured and I intend to bring forward an amendment at Stage 2 to address this issue.

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168: Concerns were raised about the section 7(3)(e)(ii) requirement that wild mammals being searched for, stalked or flushed be shot dead or killed by a bird of prey. It was argued that this may mean that alternative, more “welfare-friendly” methods could not be used. The Committee asks the Scottish Government to address this issue in its response to this Stage 1 report

When dogs are used to search for or flush a wild mammal, the Bill requires that the wild mammal is shot or killed by a bird of prey. This mirrors the approach in the 2002 Act. It is also in line with the position in the Hunting Act 2004 which governs the use of dogs to hunt wild mammals in England and Wales.

I am aware that other methods of controlling wild mammals are available e.g. the use of capture or kill traps, was raised by stakeholders. To clarify, there are “welfare-friendly” provisions in the Bill. Section 7(3)(e)(i) of the Bill allows for a wild mammal, which has been flushed by dogs, to be captured (whether or not with the intention of subsequently releasing or relocating it) and section 7(3)(e)(iii) allows the wild mammal which has been flushed to be observed and allowed to escape without being pursued, injured or killed.

In addition, we understand that the RSPB in their letter of 13 May 2022 raised concerns about the ability to use approved spring traps. My understanding is that where dogs are usually used in conjunction with traps, it is to identify the optimal area for traps to be laid. In these situations, the subsequent dispatch of the animal does not fall under this Bill as it is part of a separate activity which does not involve the use of dogs.

I have not come across a situation where dogs are used to flush animals towards waiting traps to be killed and therefore, I do not believe it is necessary to include provision for trapping at section 7(3)(e)(ii).

182: The Committee also notes, however, the concerns raised with it regarding NatureScot’s capacity to undertake this additional role. The Committee notes NatureScot’s and the Scottish Government’s assurances that NatureScot has sufficient expertise and resources to administer the schemes. The Committee asks the Scottish Government, however, in its response to this report, to set out how it intends to support and monitor NatureScot’s performance as licence scheme administrator.

183: The Parliament also has a role in holding NatureScot to account. NatureScot falls within the net zero, energy and transport ministerial portfolio and the Committee recommends the Net Zero, Energy and Transport Committee, whose remit is to scrutinise the corresponding ministerial portfolio, to consider this as part of its oversight of NatureScot.

Like all Non Departmental Public Bodies (NDPB) in Scotland, NatureScot operates at ‘arms-length’ from Government but within an established framework of accountability and governance to Scottish Ministers and through them to the Scottish Parliament. The key elements of the NDPB accountability and governance framework include:

- The Public Finance and Accountability (Scotland) Act 2000, including appointment of statutory of Accountable Officer;

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- The Scottish Public Finance Manual (SPFM), which includes detailed governance, accounting and reporting requirements;
- Individual public body founding legislation, which sets out delivery of statutory functions;
- The duty to lay audited annual reports and accounts before the Scottish Parliament
- Framework Documents
- Delivery of agreed corporate and operational plans;
- Monitoring and reporting arrangements agreed with the Scottish Government Sponsorship Team

The Scottish Government will continue to use the key elements of the framework to support and monitor NatureScot's performance and the delivery of its functions.

197: The majority of the Committee supports the section 12 exception to train dogs to follow an animal-based scent. The Committee notes, however, concerns raised with it about the impact of the two-dog limit on current training practices and asks the Scottish Government to address this issue in its response to this Stage 1 report.

My officials spoke with Police Scotland on the 15 July and were able to confirm that the Bill as it currently stands will not impact on their current activities. Currently, the training of all dogs used for wildlife crime is undertaken using bird-based trails as which and therefore this falls outside the remit of this Bill. However, in order to train dogs to be used to aid in the investigation of activities such as hare-coursing, rabbit and hare-based trails may also be used in the future.

The training of victim recovery dogs is undertaken primarily using pig meat which could fall under section 11(2) of the Bill.

During this training, however, it is not standard practice to release more than two dogs to find the hide at any one time. This means this activity would fall under the exception at section 12 of the Bill (training dogs to follow an animal-based scent).

My reason for limiting the number of dogs that can be used in this activity to two is to reduce the risk of wild mammals being killed by dogs accidentally. And I also want to avoid creating a loophole that would allow illegal hunting to continue under the guise of training a dog to follow a scent.

206: The Committee notes that part 3 of the Bill largely replicates the provisions already in place under the 2002 Act. The Committee highlights, however, the introduction of deprivation orders at section 16 which would allow the court to remove dogs or horses used in the course of any offence. The Committee highlights Police Scotland's suggestion that section 16 should be amended; otherwise, the Committee makes no comment on part 3 of the Bill.

The provisions for deprivation and disqualification orders are similar to the existing provision for disqualification orders under section 9 of the 2002 Act.

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Deprivation and disqualification orders can only be granted when a person is convicted of the offences in relation to hunting with dogs or trail hunting

The rationale behind the inclusion of provisions for deprivation orders to be made in relation to any horses used in the commission of an offence under the Bill is to ensure that anyone convicted of a relevant offence is deprived of the “tools” used in the commission of that offence. The intention is to limit the ability to reoffend and also to act as a deterrent against committing relevant offences under the Bill. However, these powers only apply to a dog or horse that was used in or present at the commission of the offence.

Hunting a wild mammal using a dog is a dynamic and fluid activity which is carried out in many different ways. We therefore wish to ensure that the courts have the discretion to make these orders in a range of different circumstances depending on how the dogs and horses were deployed and the offence was committed.

I recognise and agree with the concerns raised by Police Scotland in relation to Part 3 of this Bill. I will be seeking to address this matter by bringing forward an amendment at Stage 2.

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