

# **WILDLIFE MANAGEMENT AND MUIRBURN (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Wildlife Management and Muirburn (Scotland) Bill introduced in the Scottish Parliament on 21 March 2023.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 24-EN);
  - a Financial Memorandum (SP Bill 24-FM);
  - a Delegated Powers Memorandum (SP Bill 24-DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 24-LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.
4. The Wildlife Management and Muirburn (Scotland) Bill (“the Bill”) is being introduced to address raptor persecution and ensure that the management of grouse moors and related activities are undertaken in an environmentally sustainable and welfare conscious manner. The Bill will do this by implementing the recommendations of the independent review of grouse moor management.
5. The Bill will introduce measures to:
  - Ban the use and purchase of glue traps;
  - Introduce licensing and training requirements for certain types of wildlife traps;
  - Introduce a licensing regime for land used for the shooting of red grouse; and
  - Extend licensing regime for all muirburn, regardless of the time of year that it is undertaken. Muirburn on peatland will only be permitted in very limited circumstances.

6. The Bill will make it an offence to:

- Set a glue trap for the purpose of catching any animal (other than an invertebrate);
- Use a glue trap in a manner that is likely to cause bodily injury to any animal (other than an invertebrate); and
- Purchase a glue trap that is designed to capture any animal (other than an invertebrate) unless this is purchased for use outwith Scotland and is delivered outwith Scotland.

7. The Bill inserts provisions into the Wildlife and Countryside Act 1981 (“the 1981 Act”) making it an offence for anyone who wishes to use live capture bird traps or traps listed in an order made under section 50 of the Agriculture (Scotland) Act 1948 (“the 1948 Act”) (which is currently only the Spring Traps Approval (Scotland) Order 2011 (“the STAO”)) to do so without a licence or failing to comply with the following conditions:

- complete training by an approved body each time they apply for or renew their licence;
- register with the relevant authority (Scottish Ministers or if delegated Scottish Natural Heritage (known as “NatureScot”) for a unique licence number;
- display this unique licence number on each trap they use; and
- use the trap in accordance with the training.

8. The Bill also inserts provisions into the 1981 Act to require that the shooting of red grouse will only be permitted if the landowner or occupier has a licence which covers the land on which the shooting takes place. If a person does so without such a licence, they will have committed an offence under section 1 of the 1981 Act and the penalties for such an offence will apply.

9. Lastly, the Bill repeals the muirburn provisions in the Hill Farming Act 1946 (“the 1946 Act”) and replaces it with provisions to require that any muirburn should be unlawful unless carried out under a licence, for limited purposes, with further limitation on muirburn on peatland.

10. The Scottish Government’s Programme for Government 2022-23 committed to bringing forward a Bill to implement the recommendations of the Grouse Moor Management Review Group (“the Werritty review”) and introduce licensing for grouse moor management to ensure that the management of driven grouse moors and related activities is undertaken in an environmentally sustainable manner, as well as including provisions to ban glue traps.

11. The Bute House agreement also committed to take action to tackle wildlife crime and to address the environmental impacts of intensive grouse moor management. The agreement supports delivery of the recommendations of the Werritty review, including the licensing of grouse moors. It stipulated that licensing or further regulation would cover the key areas identified in the review, including muirburn, wildlife control, the use of medicated grit and wildlife crime, and that it will be supported by clear penalties to encourage compliance, as well as additional effort to detect wildlife crime.

## **GLUE TRAPS**

### **POLICY OBJECTIVES**

#### ***Background***

12. Glue traps (sometimes known as sticky boards or glue boards) are devices used for a variety of purposes, primarily to control ground rodents. The glue traps work by placing them along areas where rats and mice are likely to frequent. Once the animal steps onto the board it is then firmly stuck to it and is unable to free itself. Once an animal is captured the intention is that the glue trap can be retrieved and the animal dispatched.

13. The use of glue to trap birds is an offence under the 1981 Act. There is currently no legislation governing the use of glue trap boards to catch rodents in Scotland. However, should an animal be caught in one, then they immediately fall under the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”) since the animal is now under the control of man. This means, among other things, that it is an offence to cause the animal unnecessary suffering by an act or omission if 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. Operators of glue traps should humanely dispatch any target species caught, or extricate and release, or if necessary, humanely destroy any non-target species accidentally caught.

14. The table below outlines the position in the rest of the UK:

<b>Northern Ireland</b>	No plans to ban the use of glue traps at present.
<b>Wales</b>	Provisions to ban the use of glue traps for members of the public and professional pest controllers included in the Agriculture (Wales) Bill <sup>1</sup> which was introduced to the Senedd on 28 September 2022.
<b>England</b>	The Glue Traps Offences Act <sup>2</sup> 2022 makes it an offence for member of the public to use glue traps.  Professional pest controllers who wish to use glue traps will only be able to do so under licence.

15. Internationally, glue traps are banned in the Republic of Ireland. In New Zealand, glue traps can only be used subject to Ministerial approval. India and several states in Australia have also introduced restrictions and/or a ban on the use of glue traps.

#### ***Concerns***

16. There has been significant and ongoing concern regarding the welfare implications of the use of rodent glue traps. They can result in prolonged suffering and are indiscriminate in nature,

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<sup>1</sup> [Agriculture \(Wales\) Bill](#)

<sup>2</sup> [The Glue Traps Offences Act 2022](#)

meaning that non-target species can easily be caught. They are only one of several pest control methods available and glue traps are often cited as being used as a last resort.

17. The Scottish Parliament Petition PE1671- Sale and Use of Glue Traps<sup>3</sup> was lodged in 2017 by Let's Get MAD for Wildlife and collected 5,089 signatures. The petition called on the Scottish Government to ban the sale and use of glue traps in Scotland. Submissions were lodged by the Scottish SPCA, the British Veterinary Association, and the Humane International Society UK supporting the Petition. The animal welfare group, OneKind also publicly supported a ban on their use.

18. Professional pest controllers also responded to Petition PE1671 stating that their preferred option was to ban the use of glue traps by the general public but allow professional pest controllers to continue to use them. Their reason for allowing their use by professional pest controllers only is that they have a particular value where rodenticides cannot be used, e.g., where food is prepared such as restaurant kitchens etc.

19. In response to concerns raised by animal welfare groups and by individuals petitioning the Scottish Parliament about the welfare implications of glue traps, the Scottish Government sought advice from the Scottish Animal Welfare Commission (SAWC), established in 2020, to provide independent advice to the Scottish Ministers on the welfare of sentient animals, primarily on wildlife and companion animal welfare.

20. On 23 March 2021 the SAWC published its Report on the use of rodent glue traps in Scotland<sup>4</sup>. The report found that:

- “There is no way that glue traps can be used without causing animal suffering.”
- “[glue traps pose] an undeniable risk of capture of non-target species. However, without knowing how frequently glue traps are used it is not possible to quantify that risk.”
- “There are public health concerns in certain high-risk situations that clearly require effective and rapid pest control in order to reduce the spread of disease. However, the Commission is not convinced that evidence exists supporting the view that glue traps are genuinely the only method of last resort.”

21. Given these findings the SAWC recommended that: *“...the animal welfare issues connected with the use of glue traps would justify an immediate outright ban on their sale and use. This is our preferred recommendation.”* However, the commission also acknowledged the views expressed by some pest control agencies that *“in some cases there is no alternative to the use of glue traps as a last resort”*.

22. Therefore, the SAWC report further recommended that if a full ban is not introduced, the Scottish Government should consider an immediate ban on the sale of glue traps to the general public and the introduction of an interim licensing regime governing the use of glue traps by professional pest controllers. The purpose of the interim licensing regime, which the SAWC

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<sup>3</sup> [The Scottish Parliament Petition PE1671- Sale and Use of Glue Traps](#)

<sup>4</sup> [Report on the use of rodent glue traps in Scotland](#)

recommend should have been reviewed after 3 years, would be to allow further research into the development and use of alternative methods of rodent control, before a full ban was brought in.

23. The Scottish Government decided not to implement an interim licence scheme for professional pest controllers as the animals would still suffer regardless of who set the trap, they may still pose a risk of capture of non-target species and there are also issues around defining a professional pest controller (see paragraphs 31 to 34 for further information).

24. The Scottish Government accepted the SAWC's recommendation to introduce a full ban on the use of glue traps and on 20 January 2022, in response to a parliamentary question, Màiri McAllan, Minister for the Environment and Land Reform announced that the Scottish Government would "*introduce legislation to ban glue traps in this parliamentary term*".

25. Wild animals, including rats and mice are sentient creatures and as such are capable of experiencing pain and suffering. A ban on the use of glue traps will have a positive impact on animal welfare standards in Scotland. Not only will fewer target species suffer as a result of being caught by glue traps, but it is expected that non-target animals – which can fall victim to glue traps – will also benefit from the ban.

## **CHANGES BEING MADE BY THE BILL**

26. The Bill will address the policy objectives outlined above by introducing a comprehensive ban on the use of glue traps by both members of the public and professional pest controllers. The Bill will make it an offence to, without reasonable excuse:

- Use a glue trap for the purpose of catching any vertebrate animal;
- Use a glue trap in a manner that is likely to cause bodily injury to any vertebrate animal;
- Purchase a glue trap that is designed to capture any vertebrate animal unless it is purchased for use outwith Scotland and is to be delivered outwith Scotland.

27. These offences are liable on summary conviction to a maximum penalty of 12 months' imprisonment, or a £40,000 fine, or both. On conviction on indictment, they carry the maximum penalty of five years imprisonment, or an unlimited fine, or both.

28. These penalties are in line with the approach implemented by the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 ("the 2020 Act") that increased the maximum penalties for a range of wildlife crimes to 5 years and/or an unlimited fine under solemn procedure, as recommended by the Wildlife Crime Penalties Review group in 2015<sup>5</sup>.

29. The Bill also makes provision to allow the police to dispose of any glue traps that a person may have.

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<sup>5</sup> [Wildlife Crime Penalties Review Group: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2015/06/15062015/Wildlife-Crime-Penalties-Review-Group-report-2015.pdf)

## **ALTERNATIVE APPROACHES**

30. Due to the weight of evidence that glue traps are the least humane legal method of rodent control and cause unacceptable levels of suffering for the animals caught by them, continuing to allow the widespread use of glue traps was not considered to be a viable option. However, the following alternative approaches were considered.

### ***Exemption to allow glue traps to be used by professional pest controllers***

31. Although the SAWC's main recommendation was an immediate ban on the use and sale of glue traps, the Commission also acknowledged the views expressed by some pest control agencies that "in some cases there is no alternative to the use of glue traps as a last resort". Therefore, the SAWC further recommended that if the Scottish Government decided against introducing a full ban on the use of glue traps they should consider instead, an immediate outright ban on the sale of glue traps to the general public and the introduction of an interim licensing regime governing the use of glue traps by professional pest controllers.

32. The purpose of the interim licensing regime, which the Commission recommended should have been reviewed after 3 years, would be to allow further research into the development and use of alternative methods of rodent control, before a full ban was brought in.

33. The Scottish Government considered whether to mirror the approach taken by the UK Government in England and restrict the use of glue traps to only professional pest controllers acting in accordance with a licence, however, this was not taken forward for the following reasons:

- Regardless of whether they are being utilised by a professional or member of the public, it is not possible to use a glue trap in a way that does not cause unnecessary suffering.
- There is no Standard Occupational Classification Code for pest controllers, no qualifications or licence are needed to work in the pest control industry and no regulatory authority oversees them. This would make it extremely difficult to determine who should be exempted from the ban on use.
- Without a regulatory framework in place, it would be very difficult for retailers to restrict sales only to professionals, thereby increasing the risk that members of the public would be able to continue to purchase and use glue traps.
- Alternative methods of rodent control are available and some professional pest controllers have already adopted a policy to not use glue traps due to welfare concerns.
- Where glue traps have been banned in other countries pest controllers have been able to adapt their approach and use alternative methods of rodent control.
- Animal welfare is a priority for the Scottish Government and even when used by professional pest controllers glue traps by their nature cannot be considered a humane method of trapping a rodent due to a high risk of suffering.

34. However, in recognition that individuals and professional pest controllers who currently use glue traps will need time to adapt to and develop alternative methods of rodent control, the Bill provides that the glue trap provisions will be brought into force by regulations. The Scottish Government intends to bring regulations into force to commence the ban on the use glue traps after a transition period.

***Ban the use of all glue traps***

35. Glue traps designed to catch invertebrates such as moths or flies are also widely used. The Scottish Government is not introducing a ban on these products as no evidence has been presented to show that they give rise to the same welfare implications as glue traps designed to catch rodents.

36. However, while insect glue traps are not designed for or intended to catch rodents and are not normally used for this purpose by the general public, there is evidence to suggest that small birds and bats can sometimes be caught by them. It was considered that there was insufficient evidence that this is a widespread problem which would require banning the use of all glue traps.

37. The Bill defines a glue trap as a trap that is designed, or is capable of being used, to catch an animal other than an invertebrate, and uses an adhesive substance as the means, or one of the means, of capture. An insect trap that is not capable of being used to catch an animal other than an invertebrate would not be subject to the restrictions legislated for by the Bill.

***Ban the sale of glue traps***

38. On 20 January 2022, in response to a parliamentary question asking whether the Scottish Government would introduce a ban on the sale of glue traps, Màiri McAllan, Minister for the Environment and Land Reform stated:

39. *“Our intention is to ban both the sale and the use of glue traps. However, implications arise from the United Kingdom Internal Market Act 2020, which can undermine decisions that this Parliament makes, including in wholly devolved climate and environmental policy areas. We intend to work through those issues to achieve a ban.”*

40. The UK Internal Market Act 2020 (“the IMA”) provides that any goods that are lawfully sold in one part of the UK can also be sold in the other parts of the UK, as long as the goods comply with any statutory rules or regulations in the part of the UK in which they were produced or into which they were imported (“mutual recognition principle”).

41. The IMA provides that provisions of an Act of the Scottish Parliament which contravene the market access principles (i.e., the mutual recognition principle or the non-discrimination principle) “do not apply” or “have no effect”. The mutual recognition principle means that Scottish legislation banning a particular product would not prevent that product being sold in Scotland if it was lawfully produced in, or imported into, another part of the UK.

42. As glue traps are permitted to be sold in the rest of the UK any provisions to limit their sale in Scotland must be compliant with the IMA. For a ban on the sale of glue traps to be compliant with the IMA, an exemption to the IMA for this purpose would need to be in place. The Scottish Government is exploring the possibility of gaining an exemption with the UK Government and devolved administrations and should an exemption be granted; the Scottish Government intends to bring forward an amendment at Stage 2 or Stage 3 of the Bill to ban the sale of rodent glue traps in Scotland.

## **WILDLIFE TRAP LICENCES**

### **POLICY OBJECTIVES**

#### ***Background***

43. The use of traps is governed by several pieces of legislation in Scotland that specify which traps can be used to kill or capture animals and sets out any additional conditions governing their use such as prohibiting the use of certain traps for individual species or placing requirements on trap operators. The control of mammal predators is also regulated by the laws on animal cruelty and controls on the sort of traps and snares that can be used. The protected status of some predatory species (e.g., badgers) must also be taken into account.

44. The use of spring traps is an important wildlife management and pest control technique. A variety of trap designs are used widely in game management, the pest control industry, conservation management, farming and sometimes by domestic users.

45. Section 50 of the Agriculture (Scotland) Act 1948 (“the 1948 Act”) makes it an offence to use any spring trap other than those approved by an Order. Currently the only Order under section 50 of the 1948 Act is the Spring Traps Approval (Scotland) Order 2011 (“The STAO”). The STAO lists each model of spring trap that has been approved, the manufacturer, and the conditions under which it must be used, including the permitted target species.

46. One of the primary conditions for most spring traps on the STAO is that they must be deployed in a manner that reduces the risk to non-target species, commonly achieved by using the trap in a tunnel or box. However, it is possible to use a trap on the approved list, in an illegal manner, by not conforming to the conditions placed on that trap by the STAO.

47. The penalties associated with the illegal use of spring traps can vary depending on the offence committed. Section 50 of the 1948 Act provides that a person convicted of using, or knowingly permitting the use of, any spring trap other than an approved trap or use an approved trap in circumstances for which it was not approved will be liable to a maximum fine of £20 on the first offence or £50 thereafter.

48. Further offences may also be committed using a spring trap if the caught animal is also protected. For example, section 5 of the 1981 Act provides that it is an offence to use a trap or snare or to set in position a trap or snare which is of a nature and so placed that it could cause bodily injury to any wild bird coming into contact with it. Section 11 of the 1981 Act provides that it is an offence to set in position a self-locking snare or to set in position any other type of snare which is so placed to cause unnecessary suffering to any animal coming into contact with



such a snare. Section 11 also provides that it is illegal to use any trap or snare for the purposes of killing, taking or restraining any wild animal included in Schedule 6 or Schedule 6ZA or to set any trap or snare of such a nature and so placed to be likely to cause bodily injury those animals. A person convicted of these offences will be liable on summary conviction to imprisonment not exceeding 12 months or a £40,000 fine (or both) and on indictment to imprisonment for a term not exceeding five years, or an unlimited fine, or both.

49. Lastly, the 2006 Act provides that it is an offence to cause a protected animal unnecessary suffering by an act if the person knew or ought to have known that the act would cause such suffering or would be likely to do so. The Act requires that protected animals, including captured ones, must not suffer and should be provided with appropriate shelter, water and food. A protected animal under the 2006 Act includes an animal “under control of man whether on a permanent or temporary basis”. Live capture trap operators must comply with all these provisions, and spring trap operators must comply with the requirement to ensure the trapped animal does not suffer. A person convicted of the offence of causing unnecessary suffering to a protected animal will be liable on summary conviction to imprisonment not exceeding 12 months or a £40,000 fine (or both) and on indictment to imprisonment for a term not exceeding five years or an unlimited fine, or both.

50. Section 1 of the 1981 Act makes it an offence to kill, injure or take any wild bird, however, there are a number of bird species that are generally accepted to cause certain types of common damage, or pose specific types of threat, and for which a licence to kill or capture can be granted under section 16 of the Act.

51. For these common species and situations NatureScot, as the licensing authority, can issue ‘General Licences’, which entitles people to kill or take birds under specific circumstances, while adhering to certain conditions, without the need to apply for an individual licence. These licences are reviewed and updated regularly.

52. One of the conditions of the general licences is that individuals intending to use a live capture trap, including Larsen Traps, Larsen Mate Traps, Larsen Pod Traps and multi-catch crow traps, to take wild birds under the general licence, are required to register those traps with NatureScot. The registration process confirms that the individual has not been convicted of a wildlife crime and provides them with a registered trap number that must be displayed on any trap used under the general licence. NatureScot have the ability to restrict the use of general licences in areas of land where there is evidence to suggest that General Licences are being misused.

53. Failure to comply with the conditions of the general licence can also result in a person committing the offence of illegally killing, taking or injuring a wild bird, which carries a maximum penalty of imprisonment for a term not exceeding five years or an unlimited fine, or both.

54. The Table below summarises the current requirements for the use of traps to capture live birds and the use of spring traps;

	Live capture bird traps	Spring traps
Training	No formal training required however an authorised person must understand the General Licence and comply with its terms and conditions.	No formal training required however individuals must understand and comply with the conditions specified in the Spring Traps Approval (Scotland) Order, including complying with the manufacturer's instructions of use.
Registration	Individuals are required to register with NatureScot in order to use traps for the live capture of wild birds under the NatureScot General Licence.	Traps which are part of the Agreement on International Humane Trapping Standards (AIHTS) offered for sale have to be marked as compliant with the standards.
Relevant Legislation	<p>It is an offence under section 1 of the 1981 Act to kill, injure or take any wild bird.</p> <p>Section 16 of the 1981 Act allows NatureScot to grant a licence to kill, injure or take any wild bird for limited purposes, which would otherwise be an offence under section 1 of that Act.</p> <p>Under the provisions of the 2006 Act, it is an offence to cause unnecessary suffering to a kept animal (this includes live caught animals).</p>	<p>The STAO specifies the types and makes of trap which are approved for use under section 50(1)(b) of the 1948 Act.</p> <p>It is an offence to use a spring trap which is not approved for the purposes of that section and section 50(1)(c) of the 1948 Act creates offences relevant to unlawful use.</p> <p>Section 5 of the 1981 Act provides that it is an offence to use a trap or snare or to set in position a trap or snare which is of a nature and so placed that it could cause bodily injury to any wild bird coming into contact with it.</p> <p>Section 11 of the 1981 Act provides that it is an offence to set in position a self-locking snare or to set in position any other type of snare which is so placed to cause unnecessary suffering to any animal coming into contact with such a snare.</p> <p>Section 11 also provides that it is illegal to use any trap or snare for the purposes of killing, taking or restraining any wild animal included in Schedule 6 or Schedule 6ZA or to set any trap or snare of such a nature and so placed to be likely to cause bodily injury those animals.</p> <p>Under the provisions of the 2006 Act, it is an offence to cause unnecessary suffering to a kept animal (this includes live caught animals).</p>

### **Concerns**

55. The Werritty review was tasked with examining grouse moor management practices in light of long standing concerns that in at least some estates, predator control included the illegal killing of raptors. This inference was supported by the frequent finding of poisoned baits and poisoned birds, traps and other signs of illegal activity.

56. Studies have shown that illegal killing is reducing the population and breeding success of raptor species in at least some grouse moor areas. The Werritty review report noted that while effective predator control is an integral part of grouse moor management *“the lawful use of traps to catch corvids can result in the capture of, and on occasion injury to, raptors and other traps can also cause unintended harm to wildlife”*.

57. The final report of the Werritty review recommended the following actions in relation to predator control (trapping):

- New legislation should be introduced to make it a legal requirement that it becomes an offence to set or operate a trap without an operator having successfully completed a course run by an approved and accredited body and dealing with the relevant category of trap (cage and/or spring);
- A trap operator who has successfully completed a relevant trap training course should apply to their local police station for a unique identification number which must be attached to all traps that are set; and
- That any operator dealing with the relevant category of trap (cage and/or spring) should undergo refresher training at least once every ten years.

58. The illegal use of traps on and around grouse moors continues to be an issue. In May 2019 a hen harrier was found caught in a spring trap that had been illegally set next to its nest on a grouse moor in South Lanarkshire. In January 2022, NatureScot restricted the use of general licences on a grouse moor in Perthshire based on Police Scotland evidence of wildlife crime that included a satellite-tagged hen harrier, found dead in an illegally set spring trap.

59. Where live capture traps have been used to persecute raptors, they are usually either ladder traps, or funnel traps. Designed to capture corvids, a decoy bird (often a carrion crow but certain other decoy species are also permitted) is placed inside the trap to attract corvids or other target species. Birds that are attracted to the trap can enter via the roof, either through the horizontal slots of the ‘ladder’ or via a ‘funnel’. Once inside the trap it is virtually impossible for the birds to escape unaided.

60. In the 2020 response to the recommendations made by the Werritty review, the Scottish Government accepted the need for greater regulation of the use of traps for land management purposes in Scotland, noting that these recommendations would bring the regulations for trapping broadly in line with those for snaring. The requirement for detailed record keeping and individual trapper IDs would also help inform a better understanding of the level of trapping being undertaken in Scotland.

## **CHANGES BEING MADE BY THE BILL**

61. The Bill makes limited modification to the existing legislation that regulates the use of all live capture bird traps or traps approved by the STAO, but places the additional requirement that individuals using those traps must hold a licence and meet the following conditions:

- complete training by an approved body each time they apply or renew their licence;
- register with the relevant authority (Scottish Ministers or if delegated NatureScot) for a unique licence number;
- display this unique licence number on each trap they use; and
- use the trap in accordance with the training.

62. The purpose of the wildlife trap licensing scheme is to ensure that wildlife trapping is being undertaken in an environmentally sustainable manner, with due consideration of all the possible consequences.

63. The provisions insert new sections into the 1981 Act that set out the types of traps to which the provisions apply, the details of the licence scheme and training requirements, and the penalties associated with the offence of not having a licence or complying with the conditions of a licence.

64. The licensing provisions for wildlife traps in the Bill closely mirror the established and well understood approach to the registration of certain live capture traps for the taking of wild bird under the general licences issued by NatureScot under Section 16 of the 1981 Act. However, the licence scheme within the Bill will apply to all live capture traps as well as traps under the STAO.

65. A person applying for a wildlife trap licence must complete an approved training course in respect of the type of trap they wish to use, and if the licensing authority (either the Scottish Ministers or if delegated, NatureScot) are satisfied, then they will be issued a wildlife trap licence number. The intention is to delegate the licence regime to NatureScot. This identification number must be displayed on any spring traps or live capture bird traps used by the individual.

66. As with other licensing regimes, the licensing authority will issue detailed guidance that outlines the evidence that an applicant must submit when applying for a licence. The licensing authority will consult with stakeholders as part of the development of that guidance.

67. Licences are valid for a period of up to ten years. When the licence is no longer valid, the individual must undertake refresher training before applying for another licence.

68. The licensing authority will approve the content and form of training courses, and the minimum criteria for the successful completion of these courses. While the required training will be developed in consultation with stakeholders following passage of the Bill, the Scottish Government expects that the minimum criteria for completion of a course for the use of spring traps will follow the existing criteria set out for their use in the Schedule of the STAO. As discussed above, the use of live capture bird traps is only allowed through the use of a general licence, NatureScot have produced guidance on the use of these traps.

69. The licensing authority can place further conditions on the licence that they consider appropriate, which could include for example, the keeping of appropriate records. The licensing authority are also able to modify a licence at any time. They can suspend or revoke a licence if the licence holder fails to comply with those conditions or if they are satisfied that the licence holder has committed a relevant offence. The relevant offences are listed in Section 12D and are considered to be offences closely linked to the misuse of traps or causing the suffering of a wild mammal.

70. Currently NatureScot do not charge the applicant for licences relating to wildlife management, as the majority of purposes for which licences can be issued reflect a need to act for a public interest, such as licences to survey for protected species, or control of one species to protect another. In keeping with this approach this Bill does not mandate charges for licences issued under the provisions of this Bill.

71. However, although NatureScot does not currently operate licences on a cost recoverable basis, the Scottish Government/Scottish Green Party Shared Policy Programme contains the commitment to review the wider species licensing system and assess the potential to apply the principle of full cost recovery to species licensing. The Bill will therefore allow for the possible introduction of charges for licences issued under these provisions at a later date, by providing that the licensing authority may charge a reasonable fee.

72. NatureScot has an established internal appeals process that will be extended to cover wildlife trap licences. Once that internal process has been exhausted, further appeal can be made by way of judicial review of the decision by NatureScot as regards the licence. As a public body, NatureScot also fall under the remit of the Scottish Public Services Ombudsman (SPSO). Therefore, if, having gone through NatureScot's complaints procedure, the licence applicant is still dissatisfied with the decision they may be able to appeal to the Scottish SPSO. This echoes the route of appeal for licences under section 16 of the 1981 Act.

73. Section 12G enables the Scottish Government to make provisions relating to (a) the use of a wildlife trap to which this licence scheme applies, (b) displaying of licence numbers on traps, and (c) approved training courses.

74. Section 12A states that a person who uses a trap to which the provisions apply without a licence or fails to comply with the conditions in section 12A(4) (i.e. appropriately displaying their licence number on a trap and using and monitoring the trap in accordance with the approved training course for that trap) commits an offence and is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). This level of penalty mirrors the penalties for comparable offences for snaring identification numbers. If a person is charged with an offence under Part 1 of the Act (e.g., killing or taking a wild bird) the Bill provides that a person will have a defence if they satisfy the following three conditions:

- the trap was used for the purpose of killing or taking a wild bird or animal which could lawfully be killed or taken by those means;
- the person had a wildlife trap licence and complied with the conditions in section 12A(4); and

- the person took all reasonable steps to prevent the killing, taking or injuring of an animal not intended to be caught in the trap.

75. The provisions also amend section 17 of the 1981 Act to provide that it is an offence to provide false information when applying for a wildlife trap licence. The penalty for this offence is 6 months or a fine not exceeding level 5 on the standard scale (or both).

76. Lastly, the provisions increase the maximum penalty for the offence in section 50 of the 1948 Act where a person convicted of using, or knowingly permitting the use of, any spring trap other than an approved trap can be liable on summary conviction to a term not exceeding 12 months or a fine not exceeding £40,000 (or both) and on indictment to imprisonment for a term not exceeding five years or an unlimited fine, or both.

77. This increase is in line with the approach implemented by the 2020 Act that increased the maximum penalties for a range of wildlife crimes to 5 years and/or an unlimited fine under solemn procedure, as recommended by the Wildlife crime Penalties Review group in 2015.

## **ALTERNATIVE APPROACHES**

78. The Scottish Government asked about including a variety of other traps in the wildlife trap licence provisions in the 2021 consultation. Notably the Scottish Government considered the prospect of including cage traps for the live capture of wild mammals. This proposal gained some support from the public, however following further discussion with stakeholders it became apparent that licensing of this kind of trapping could have unintended consequences. that were not assessed by the Werritty review.

79. The remit of the Werritty review only considered the use of traps as they pertain to grouse moor management and raptor persecution, and so these scenarios were not considered by the Werritty review, and did not form the evidence base that led to the training and registration recommendations.

80. At this point, Scottish Government has no evidence that cage traps (other than those designed to capture corvids and usually on or around grouse moors) have been used with the intent to illegally capture raptors.

81. Further to this, discussions with key stakeholders highlighted a wide variety of purposes for which live capture trapping is undertaken across Scotland. Those purposes range from routine (trapping feral cats or foxes for relocation) to project based (relocation of beavers under licence and research involving the live capture wild mammals), to ad-hoc and unplanned (Scottish SPCA trapping an injured wild mammal to treat it).

82. The Scottish Government has therefore assessed that it is neither practicable nor reasonable to require those undertaking any live capture of mammals to require registration and training, as the activity does not pose a risk to raptors, and in the majority, such activities have no link to grouse moor management.

83. Section 12A(8) however, provides Scottish Ministers the power to amend by secondary legislation, the types of traps to which these provisions apply. This allows the Scottish Government to flexibly respond to the way traps are used in the future, for example, should evidence come to light that traps that do not fall within these provisions are linked to raptor persecution. It would also allow flexibility to respond to the emergence of new types of traps in the future that may also pose the same risk.

## **GROUSE MOOR MANAGEMENT LICENCES**

### **POLICY OBJECTIVES**

#### ***Background***

84. Landowners have the right to take game on their land or to allow another person or persons to do so (subject to certain condition) for sporting purposes.

85. Sporting rights give the right to take wild birds and animals as part of the property rights pertaining to a specific parcel of land. The holder of the sporting rights can give permission to others to use this right over the specific land, but the primary right remains with the owner of the land. This right is modified through various legislation, most notably the 1981 Act prevents the killing of all wild birds and then allows those with the legal right, or those with permission from the person with that legal right, to take and kill certain species with various conditions.

86. Grouse shooting in Scotland refers to the field sport of shooting of red grouse. Walked up shooting, similar to rough shooting, involves a group of individuals with guns walking across a moor in a line with dogs working in front of them. The grouse are flushed by this movement and shot. Driven grouse shooting instead uses a row of people (beaters), to flush the grouse to fly towards and over a line of stationary shooters.

87. Driven grouse shooting typically requires higher grouse densities, and this needs more intensive management.

88. Red grouse are wild birds and are not ‘produced’ under the rear-and-release system used for lowland game birds. Grouse moors are therefore managed to raise grouse densities to a level that will yield a ‘sustainable surplus’ for shooting. This involves heather burning, predator control, disease management using medicated grit, and tracks for improved access.

#### ***Concerns***

89. For many years conservation groups have reported the number of raptors over grouse moors to be lower than expected. It was inferred that, in some estates, predator control included the illegal killing of raptors. This inference is supported by the frequent finding of poisoned baits and poisoned birds, traps and other signs of illegal activity.

90. Some of the land management practices necessary to sustain a viable grouse shoot – in particular muirburn and the use of medicated grit – have also been challenged as being potentially damaging to the environment and in the latter case, possibly affecting the food chain. Shooting of large numbers of hares on some estates has also received much attention in the media. The actual

definition of a ‘viable’ grouse shoot has also been debated, and there is widespread acknowledgment of substantial investment of private income in ‘driven’ grouse shooting.

91. A report from NatureScot in May 2017 found that around a third of satellite-tagged golden eagles in Scotland disappeared in suspicious circumstances, on or around grouse moors.

92. In response to this report, Roseanna Cunningham, the then Cabinet Secretary for the Environment, Climate Change and Land Reform, commissioned an independent group to look at the environmental impact of grouse moor management (the Werritty review).

93. The Werritty review’s remit was to examine the environmental impact of grouse moor management practices such as muirburn, the use of medicated grit and mountain hare culls, and advise on the option of licensing grouse shooting businesses. In doing so the group were asked to have due regard to the socio-economic impacts of grouse moor management so that they might continue to contribute to the rural economy, while being environmentally sustainable and compliant with the law.

94. The Werritty review report (also known as the Werritty report) made over 40 recommendations relating to grouse moor management including recommendations on grouse shooting muirburn and the use of traps. One of the recommendations is that a licensing scheme should be introduced for grouse shooting. The Werritty review report set out a number of arguments in favour of the introduction of such a licensing scheme including:

95. *“Although several forms of unacceptable conduct (e.g., killing raptors) have been criminal offences for years, the law is regarded as not being effective. Enforcement is difficult, requiring admissible evidence of specific wrong-doing against particular individuals. Although some improvements in detection and enforcement might be made, these may be matched by the adoption of new methods of offending and the inherent difficulty will remain. Enabling grouse shooting to take place at a fairly intensive level is perceived as a driver behind unacceptable practices, and by threatening the continuation of this activity, an effective deterrent would be provided. Land-owners/managers would be led to do their utmost to see that unacceptable conduct does not occur (even more so than the current vicarious liability which can only take effect when the evidential burden for a successful prosecution has been satisfied).”*

96. And: *“Media attention has been drawn to the activities of some grouse moor managers, mainly over the suspected killing of protected birds of prey, but also over the large-scale killing of hares and other animals, and over other aspects of moor management, such as muirburn, peat destruction and use of medicated grit. Some of these activities have repercussions well beyond the boundaries of grouse moors. The introduction of a centralised licensing scheme would help to reassure the public that government is taking these concerns seriously.”*

97. And *“In a complex area, a licensing scheme offers greater flexibility rather than the blunt instrument of using the criminal law to prohibit particular unacceptable practices, especially when these may be hard to define and prove in a way that allows the criminal justice process to operate. The flexibility is also beneficial in terms of adopting an adaptive management approach, responding to our changing understanding of the position and the factors that influence it, and of*



*This document relates to the Wildlife Management and Muirburn (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 21 March 2023*

*incorporating a number of important public objectives (e.g., climate concerns as well as biodiversity).”*

98. On 29 November 2020 the Scottish Government set out its response to the recommendations in [“The Scottish Government Response to the Report from the Grouse Moor Management Group”](#). This forms the basis of our proposals.

## **CHANGES BEING MADE BY THE BILL**

99. After considering the different options and recognising the issues highlighted by the Werritty Review, the Scottish Government believes that the best and most straight forward approach is to licence the activity of grouse shooting itself outwith the close season for sporting purposes. This is because there are difficulties in identifying and defining what is understood to be a grouse moor, grouse estate or a commercial grouse shooting business. As noted in the Werritty report:

100. “A major challenge in undertaking this review was the lack of definition of a ‘grouse moor’ and the absence of official information on the number of estates on which grouse shooting occurs. We estimate that the current number of grouse shooting estates in Scotland is around 120 but note that this includes great diversity in both the size and level of investment in individual grouse shooting businesses.”

101. And: “Some activities can be clearly identified, e.g., shooting Mountain Hares. On the other hand, there is no clear definition of ‘grouse shooting businesses’ (as specified in our terms of reference), nor of ‘grouse moors’ and although it is the more intensive management for driven grouse shoots that is thought to be most problematic, annual variations can mean that in different years the same land is used for driven, walked- up or no shooting of grouse.”

102. This approach means that any shooting of red grouse, regardless of where in Scotland it is undertaken and whether or not a landowner chooses to shoot the grouse on their land for their own benefit or permit others to shoot grouse on their land for free or on payment of a fee, will only be permitted if the landowner or occupier of the land has a licence which covers the land on which the shooting takes place. The Scottish Ministers can also add further birds to the licence regime if they thought it was appropriate to do so.

103. By taking this approach the Scottish Government hopes to avoid issues with interpretations or loopholes around what constitutes a grouse shooting business or grouse moor. It also provides for a less administratively burdensome scheme as it does not require everyone who wishes to shoot grouse to apply for a licence, as is required in some other jurisdictions, such as the Isle of Man.

104. The Bill introduces provisions into the 1981 Act so that going forward, landowner rights to take red grouse can only be exercised under licence from the Scottish Ministers or, if delegated, NatureScot. If a landowner (or other person permitted under legislation to take game on the land in which they occupy) does not hold a licence, then they will no longer be able to take red grouse on that land or to permit another person to do so.

105. Where a person wishes to take red grouse on land that they do not own or occupy they will only be able to do so if they have permission from the landowner or occupier (or other person permitted by the landowner or occupier) and a licence is held in respect of the land which allows for the taking of red grouse on that area of land.

106. The purpose of the licensing scheme is to address the on-going issue of wildlife crime, and in particular the persecution of raptors, on managed grouse moors. It will do this by enabling a licence to be modified, suspended or revoked, where there is robust evidence of raptor persecution or another relevant wildlife crime related to grouse moor management such as the unlicensed killing of a wild mammal, or the unlawful use of a trap, which has been committed under the following legislation:

- Part 1 of the Wildlife Management and Muirburn (Scotland) Bill
- The Hunting with Dogs (Scotland) Act 2023
- The Protection of Badgers Act 1992
- Section 1 of the Wild Mammals (Protection) Act 1996
- Part 3 of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716).

107. The Bill also allows Scottish Ministers to amend the list of relevant offences above by regulation.

108. The licence holder must be the owner or occupier of the land, and so someone who holds the sporting right to shoot grouse.

109. The licence application will cover the area of land over which the taking or killing of grouse is to be undertaken.

110. The Werritty review report discussed the appropriate period for which a licence could be valid but did not make any specific recommendations instead it noted that:

111. “Licences could be annual, or for another fixed period, or indefinite. Regular renewals of licences provide an opportunity to apply adaptive management and also to bring the permission to an end where there are sufficient grounds to believe, but no proof to the criminal standard, that undesirable conduct has been taking place.”

112. Grouse shooting is a seasonal activity and estates who sell rights to shoot grouse on their land generally decide on an annual basis whether to open for commercial shooting in the following season and if so for how many days they will operate and the maximum number of grouse they will permit to be taken (decisions which are made after an assessment of the number of viable grouse available and any other relevant factors).

113. The Bill therefore provides that licences can be granted for a period of up to one year. Licence holders will be able to apply for a renewal of their licence at the end of this period.

114. This is also in keeping with the approach taken with other licences granted by NatureScot which are usually granted for a short duration and subject to maximum periods set out in legislation (for example licences granted under the 1981 Act to take birds cannot be granted for a period exceeding two years).

115. Lastly, the Bill requires that the Scottish Ministers must prepare a statutory code of practice which must be reviewed and, where required, revised every five years. When considering an application for a licence, the licensing authority must consider compliance with the Code of Practice. Licences granted for the taking of grouse under the Bill may specify parts of the Code which must be adhered to.

116. In particular, the code of practice will provide guidance on how land used for grouse shooting should be managed to reduce disturbance of and harm to any wild animal, wild bird and wild plant, including how the taking or killing of any wild birds should be carried out and how predators should be controlled. It will also set out best practice for the use of medicated grit and other activities related to grouse moor management.

117. The licensing scheme will be administered by NatureScot. This mirrors the approach taken for the administration of other wildlife management licences including licences issued under the 1981 Act and reflects the recommendation made in the Werritty review report.

118. As with other licensing regimes, NatureScot will issue detailed guidance that outlines the evidence that an applicant must submit when applying for a licence. NatureScot will consult with stakeholders as part of the development of that guidance.

119. Currently NatureScot do not charge the applicant for licences relating to wildlife management, as the majority of purposes for which licences can be issued reflect a need to act for a public interest, such as licences to survey for protected species, or control of one species to protect another. In keeping with this approach this Bill does not mandate charges for licences issued under the provisions of this Bill.

120. However, although NatureScot does not currently operate licences on a cost recoverable basis, the Scottish Government/Scottish Green Party Shared Policy Programme contains the commitment to review the wider species licensing system and assess the potential to apply the principle of full cost recovery to species licensing. The Bill will therefore allow for the possible introduction of charges for licences issued under these provisions at a later date, by providing that the licensing authority may charge a reasonable fee.

121. All licensing decisions by NatureScot are subject to their [internal complaint procedure](#) which sets out a framework for dealing with complaints, including those against licensing decisions, and may include investigation if necessary and involve senior members of management.

122. As a public body, NatureScot falls under the remit of the Scottish Public Services Ombudsman (SPSO). Therefore, if, having gone through NatureScot's complaints procedure, the licence applicant is still dissatisfied with the decision they may be able to appeal to the Scottish SPSO.

123. The Bill also provides a right for a person to appeal to the sheriff against a decision made by NatureScot to:

- refuse to grant to the person a licence;
- attach a condition to the person’s licence;
- modify, suspend or revoke the person’s licence.

124. Appeals to the Sheriff are to be determined on the merits rather than by way of review and must be made within 21 days of the decision on the licence being made.

## **ALTERNATIVE APPROACHES**

125. In the course of developing the provisions for regulation of grouse shooting the following alternative approaches were considered:

### ***Not introducing a licensing scheme***

126. The Werritty review report recommended that: “...a licensing scheme be introduced for the shooting of grouse if, within five years from the Scottish Government publishing this report, there is no marked improvement in the ecological sustainability of grouse moor management, as evidenced by the populations of breeding Golden Eagles, Hen Harriers and Peregrines on or within the vicinity of grouse moors being in favourable condition.”

127. However, it is important to note that this was a compromise. The Chair of the review, in the preface to the report stated: “The Group was evenly split on whether or not to licence grouse shooting. When, as Chair, I sought to exercise a casting vote in favour of the immediate introduction of licensing, this was contested by two members of the Group. In order to have a unanimous recommendation on this key issue with the authority that implies, the Group proposes a five-year probationary period for specified raptors on or near grouse shooting estates to recover to a ‘favourable’ conservation status. Should this target fail to be achieved, then licensing should immediately be introduced.”

128. In its written response to the Werritty Report the Scottish Government stated: “The Scottish Government agrees that a licensing scheme should be introduced. However, we believe that it should be implemented earlier than the five-year timeframe suggested by the review group.

129. “Grouse shooting makes an important contribution to the rural economy and many grouse moor managers already follow best practice guidance and take good care of the land that they manage. However, the Werritty report is clear that there are a number of problematical issues surrounding certain practices on grouse moors and that further regulation and increased/enhanced monitoring is needed across a number of areas. In terms of raptor persecution in particular, although the official recommendation of the Grouse Moor Management Group is as stated above, Professor Werritty noted in his introduction to the report that this recommendation was a compromise and half of the group, including the Chair, were in favour of immediate introduction.”

130. The Scottish Government response also acknowledged raptor persecution continues to be a significant and ongoing issue in Scotland, despite continued efforts to put a stop to such activity.

131. Since 2007, the Scottish Government has undertaken a range of measures to tackle wildlife crime, including: the introduction of vicarious liability; a poisons disposal scheme; restrictions on licences for those operating on land where it is suspected that wildlife crime has taken place; and additional resources for Police Scotland to tackle wildlife crime.

132. The Scottish Government response concluded that the “fact that raptor persecution continues in spite of all the measures we have already taken suggests that, while regulation from within the grouse shooting industry can be an important factor, self-regulation alone will not be enough to end the illegal killing of raptors and further government intervention is now required”.

### ***Licensing of other game bird species***

133. Scotland has four species of grouse – red grouse, black grouse, ptarmigan and capercaillie. Red grouse, black grouse and ptarmigan are all listed on Schedule 2, Part 1 (birds which may be taken or killed outside the close season) of the 1981 Act.

134. Due to their low population numbers, black grouse are generally not shot on grouse estates in Scotland at the present time and so it was not felt necessary to include them in the licensing scheme. Ptarmigan are hunted in Scotland but not to the same extent as red grouse and there is no evidence at present of a link between the hunting of ptarmigans and rapture persecution.

135. Although previously permitted to be hunted, due to their precarious conservation status Capercaillie were added to Schedule 1 of the 1981 Act (birds which are protected by special penalties) in 2001 and cannot be taken or killed at any time of year.

136. Alongside grouse, other species of game birds such as pheasants and partridges can also be taken outside the close season and some respondents to the consultation called for licensing to cover the taking of other game birds such as pheasants and partridges.

137. There are concerns that the breeding and releasing of pheasants and partridges, which are not native Scottish species, for sporting purposes can have a negative impact on the environment and biodiversity of these activities.

138. Consideration was given to including other species of game birds within the licensing scheme. However, there is not the same evidentiary basis to link the management of these birds to raptor persecution or associated wildlife crimes.

139. The licensing of non-grouse game birds was not considered by the Werritty review, and it was not considered appropriate to extend the licensing provisions of the Bill to include matters that were out with the remit of the Werritty review as the impact of proposals outwith the review and stakeholder and individual views on such matters is not known.

140. However, in recognition of the fact that this position could change in the future for example, if a grouse estate was to switch from red grouse shooting to other types of game birds as a way of avoiding the need to obtain a licence and this was shown to be linked to raptor persecution, the Bill contains an enabling power to add additional species to the licence regime.

## **MUIRBURN LICENCES**

### **POLICY OBJECTIVES**

#### ***Background***

141. For the purposes of the Bill, muirburn includes the setting of fire to, or burning of heather or other vegetation as a means of managing the natural environment. This is usually carried out to encourage new growth (either heather or grassland) for the management of moorland game and wildlife or for improving the grazing potential of the moorland for livestock or deer. Muirburn is also used to maintain moorland landscapes and habitats, and to reduce the risk of damage to habitats from wildfires.

142. On moorland areas managed for driven grouse shooting, rotational muirburn is carried out to create small patches of heather of different ages to produce patches of ground containing young, more nutritious heather shoots for grouse to eat and patches of taller heather for cover: the aim being to produce a mosaic in which heather of different heights and ages occur within the territory of each grouse pair.

143. Muirburn is currently regulated under sections 23-27A of the Hill Farming Act 1946 (“the 1946 Act”) as amended by the Climate Change (Scotland) Act 2009 and the Wildlife and Natural Environment (Scotland) Act 2011.

144. Section 23 of the 1946 Act provides that a person may make muirburn only during the muirburn season. The muirburn seasons consist of:

- the standard muirburn season - 1 October to 15 April
- the extended muirburn season- 16 April until 30 April

145. A person can only make muirburn in the extended season if the person is the proprietor of the land or authorised in writing by, or on behalf of, the proprietor of the land.

146. NatureScot may grant a licence to make muirburn during any period, other than the muirburn season, for the purposes of conserving, restoring, enhancing or managing the natural environment; research; or public safety. The licence sets out the land on which the muirburn may be made and the persons or type of person who can make the muirburn and can be subject to any specified conditions including conditions about giving notice. The Scottish Ministers are also given a power under section 23C(11) of the 1946 Act to make further provision for or in connection with muirburn licences by way of regulations.

147. Section 25 of the 1946 Act provides that it is an offence to:

- make muirburn or cause or procure the making of muirburn on any land unless this is during the muirburn season or in accordance with a muirburn licence.
- make muirburn between one hour after sunset and one hour before sunrise
- fail to provide at the place where muirburn is about to be made, or to maintain there while making muirburn, a sufficient staff and equipment to control and regulate the burning operations so as to prevent damage to any woodlands on or adjoining the land where the operations are taking place or to any adjoining lands, march fences or other subjects; or
- make muirburn on any land without due care so as to cause damage to any woodlands on or adjoining the land or any adjoining lands, woodlands, march fences or other subjects

148. Where a person intends to make muirburn during the muirburn season, they must give notice in writing to the proprietor of the proposed muirburn site (if different from the person making the muirburn); and any occupier of land situated within 1 kilometre of the proposed muirburn site. A person can, however, opt out of receiving such notification.

149. Where there are 10 or more people within 1 kilometre of the proposed muirburn site, the person making the muirburn may notify those persons collectively by placing a notice in at least one local newspaper circulating the area that includes the proposed muirburn site. The proprietor of the land or an occupier of land less than 1 kilometre from the muirburn site can request further information. Where a person does not comply with these notice requirements, they commit an offence.

150. The offences above relating to muirburn, and notice requirements are liable on summary conviction to a fine not exceeding level 3 on the standard scale (i.e., a fine not exceeding £1,000).

151. There is currently no legislation for prohibiting muirburn on peatland. However, this is covered by the Muirburn Code and Guidance, which provides a non-statutory set of guidance for best practice when undertaking muirburn.

### **Concerns**

152. Muirburn is a complex issue, with research suggesting that muirburn has both beneficial and adverse effects. If it is undertaken without due consideration of all the possible consequences, it undoubtedly has the potential to have a serious negative impact on wildlife and the wider environment. However, it can also have a positive impact, creating beneficial habitats for certain species or helping reduce fuel loads and lower the risk of wildfires.

153. Well-managed muirburn normally achieves its desired aims of providing good habitats for grouse and other species. But the wider impacts of muirburn are highly contested, with variable and sometimes contradictory findings from different experiments and monitoring work.

154. Supplementary guidance to the Muirburn Code sets out some of the risks associated with muirburn on peatland:

- “Peatland can be damaged easily by incorrect management.
- “Fires that ignite peat can be very damaging and difficult to extinguish.
- “Many peatland areas form part of drinking water catchments. Inappropriate management can lead to impurities in the drinking water, which are expensive to remove.
- “Bad burning practices can produce bare peat, which is easily eroded by wind and water, allowing it to enter watercourses.”

155. The Werritty review report recognised the benefits of muirburn, however it also highlighted that there was strong evidence that muirburn can have a detrimental effect on biodiversity, hydrology and soil. The report stated: *“Muirburn can have both positive and negative effects on carbon storage, both directly, by affecting carbon contents of soil and vegetation, and indirectly, by affecting carbon storage potential through the changes in plant community composition after fire. There is often an assumed net loss of carbon under regular muirburn, but the evidence is not conclusive...”*

156. The Werritty review report recommended that:

- Muirburn should be subject to greater regulation and oversight, and that this should apply to all muirburn, not just muirburn undertaken on grouse moors.
- Muirburn should be unlawful unless carried out under a licence.
- The Muirburn Code should be subject to regular updates to adapt to best available knowledge and changes to the climate.
- The Scottish Government should increase regulatory control relating to the Muirburn Code.

157. Muirburn was also considered by The Deer Working Group, who in their 2020 report on the Management of Wild Deer in Scotland concluded that: *“...there is no public interest justification for continuing to allow a general right of land owners and occupiers to carry out muirburn for deer. The environmental costs of these fires in upland environments is at odds with the Scottish Government’s healthy ecosystem approach and its measures to mitigate climate change.”* They went on to recommend that the *“Hill Farming Act 1946 should be amended to make it an offence to carry out muirburn for wild deer without a licence from SNH [NatureScot].”*

158. In their 2020 report ‘Land use: Policies for a Net Zero UK’ the Committee for Climate Change recommended that there should be a ban on burning on peatlands: *“Ban rotational burning in the UK in 2020. This includes burning for grouse shooting. This practice was traditionally undertaken on mineral soils but over-time it has encroached onto peat soils. Burning heather promotes young shoots, which grouse feed on, but it is highly damaging to the peat, and to the range of environmental benefits that well-functioning peat can deliver (e.g., water quality, biodiversity and carbon sequestration). A voluntary cessation of this activity by landowners has not produced the desired outcome so the practice should be banned across the UK with immediate effect. The adoption of more sustainable practices to manage the vegetation (e.g., heather cutting)*



*would still allow grouse shooting to continue on peat soils, while the burning of heather could continue on mineral soils.”*

159. In 2022, in response to the lack of consensus in the scientific research, the Scottish Government commissioned a report to review the current evidence from the research conducted on muirburn and the impacts on carbon stores, implications for the wider environment and wildfires. The review reached the following conclusions:

- There is evidence that muirburn causes a proportion of wildfires that occur on moorland, however, there remains uncertainty regarding this proportion and the purpose for which muirburn is being undertaken. Studies suggest that fire intensity in Calluna (heather) is controlled by fuel structure, windspeed and fuel moisture content..
- There is evidence of burning of above-ground biomass on peat during muirburn with potential impact on carbon sequestration. The impacts of burning on carbon balance may be transient over longer burning rotations. There is no consensus as to the net impacts of muirburn on carbon budgets, with evidence supporting gains, losses and no difference in carbon stores/fluxes following muirburn.
- Burning on peatlands can change surface vegetation species and structure and can have a negative impact on carbon storage.
- Fire has the potential to get into the peat. Depending on the nature and characteristics of the fire, this can pose a significant risk to carbon stores.

160. The report found that there was an absence of complete evidence. In the absence of complete evidence, the risks associated with muirburn were identified as:

- the risks of carrying out muirburn on peat is that it changes the vegetation structure, lowers the water table and damages peatland processes which in turn results in net carbon emissions and/or reduces the capacity for peat to store carbon.
- The risk of using fire as a tool to manage moorland is that it can lead to an uncontrolled fire (wildfire) and if this is on peat it can have serious implications for carbon emissions.
- The risks of not carrying out muirburn are that fuel load builds up which can influence the risk around the level of intensity of wildfires, which if close to peat/peatlands could damage these habitats.

161. In the absence of complete evidence, NatureScot have taken the view through assessing the risks that a precautionary approach should be taken. In this instance this means:

- Taking into account any activity which potentially carries a risk to carbon storage (such as those outlined above in paragraph 160).
- Whilst the evidence around the role of muirburn as a tool to reduce the risk of wildfires is weak, it is acknowledged that the impacts of a wildfire would be significant. In this context the precautionary principle would indicate that the role of muirburn as a potential tool to manage this risk needs to be considered.

## **CHANGES BEING MADE BY THE BILL**

162. The Bill repeals the muirburn provisions in the 1946 Act and replaces them with provisions to require a licence all year round to undertake muirburn on any land in Scotland, with different licence conditions applying depending on whether this carried out during the muirburn season, outwith the muirburn season or on peatland.

163. The muirburn season is defined as 1 October to 15 April however, the Bill allows the Scottish Ministers to amend, by regulation, the dates of the muirburn season, if they consider it necessary or expedient to do so in relation to climate change, for the purposes of conserving, restoring, enhancing or managing the natural environment or for the purpose of public safety.

164. The purpose of the licensing scheme is to ensure that muirburn is being undertaken in an environmentally sustainable manner, with due consideration of all the possible consequences. There is currently no scientific consensus on the effects of muirburn so the Bill will contain powers to modify the regulations of muirburn in the future, as further scientific evidence is developed.

165. Separate licences will be required to undertake muirburn during the muirburn season, out with the muirburn season, and on peatland. “Peatland” is defined by the Bill as land where the soil has a layer of peat with a thickness of more than 40 centimetres. “Peat” is defined in the Bill as soil which has an organic content (that is, content consisting of living and dead plant and animal material) of more than 60%.

166. The Scottish Ministers can amend the definition of peatland by regulations and before doing so must consult Scottish Natural Heritage and such other persons as they consider likely to be interested in or affected by the making of muirburn.

167. The owner or occupier of an area of land, or a person authorised by the owner or occupier of the land, may apply to NatureScot for a licence to undertake muirburn. A licence will only be granted for specific purposes as set out below and the application must set out the purposes for which the licence should be granted. The application must also specify the area of land to which the application relates and whether this land is peatland. The licensing authority can also request that such other information as they require is also included in or accompanies the application.

168. The licensing authority can only grant a licence if they consider it appropriate to do so having regard to the muirburn code. If the licence is for muirburn on peatland, the licensing authority can only grant it if they are satisfied that the making of muirburn is necessary for the specified purpose and no other method of vegetation control is available. The licence must require the licence holder to have regard to the muirburn code and specify the part or parts of the muirburn code which must be complied with.

169. The Bill does not specify the maximum length of a muirburn licence. However, as muirburn is undertaken seasonally it is likely that the majority of muirburn licences will be for a maximum of one year.

170. The licensing authority will only grant a licence if the application is to make muirburn for one of the specified purposes and they consider it appropriate to do so having regard to compliance with the muirburn code.

171. A licence to undertake muirburn during the muirburn season can be granted for the following purposes:

- managing habitats for moorland game or wildlife
- improving the grazing potential of moorland for livestock
- conserving, restoring, enhancing or managing the natural environment
- preventing, or reducing the risk of, wildfires causing harm to people or damage to property
- research

172. A licence to undertake muirburn out with the muirburn season will only be permitted for the following purposes:

- conserving, restoring, enhancing or managing the natural environment
- preventing, or reducing the risk of, wildfires causing harm to people or damage to property
- research

173. A licence to undertake muirburn on peatland will only be permitted for the purposes of:

- restoring the natural environment
- reducing the risk of wildfires causing damage to habitats
- preventing, or reducing the risk of, wildfires causing harm to people or damage to property
- research

174. As this Bill is implementing a precautionary approach, the Bill includes a regulation making power to amend the purposes for which a licence may be granted. Before making such regulations, the licensing authority must consult NatureScot (if the licensing is not delegated to them) and such other persons as they consider to be interested in or affected by the licensing of muirburn.

175. Every muirburn licence must provide that the licence holder must have regard to the muirburn code, and that persons intending to make muirburn must have regard to the Muirburn Code and comply with section 15 of the Bill (which includes that notice must be given in writing no less than seven days before the muirburn is made to occupiers of the land situated within 1 kilometre of proposed muirburn site).

176. The Bill allows the licensing authority to specify any further conditions they consider appropriate, including, but not limited to, the person who can undertake the muirburn, sections of

the muirburn code which must be complied with and further conditions for the giving of notice prior to making muirburn.

177. The Bill specifies that different conditions can be imposed for different purposes granted under the licence e.g., at different times of the year and for different conditions on different land. This allows NatureScot to reflect the different requirements of undertaking muirburn on slopes, on areas adjacent to woodland, or around water catchments that are acid-sensitive.

178. The ability to impose a wide range of conditions on muirburn licences reflects the recommendation from the Werritty review report: “SNH [NatureScot] should have the power to respond flexibly and proportionately to breaches by imposing tighter conditions, imposing financial penalties, suspending or revoking the licence or referring the matter for prosecution for unlicensed muirburn”.

179. In the discussion of muirburn, the Werritty review report gave the following examples of conditions that could be attached to such a muirburn licence; *"Substantial compliance with the Muirburn Code (and any subsequent updates); Mandatory training for the staff directly involved in setting and managing fires; Keeping a record (ideally a map showing the location and date) of each operation."*

180. The Bill provides that the licensing authority may attach reporting requirements for activities undertaken under the muirburn licence. This fulfils the recommendation from the Werritty Report that: “A licensing system should also include SNH [NatureScot] having powers to check compliance, including inspection of muirburn records.”

181. Lastly, the Bill requires that the Scottish Ministers must prepare a statutory muirburn code which must be reviewed and, where required, revised every five years. The licensing authority must have regard to compliance with the muirburn code when granting a licence and licence holders must have regard to the muirburn code. In recognition that not all of the Muirburn Code is likely to be relevant in every case (e.g., it currently includes lines on burning around the edge of waterbodies) licences granted for muirburn under the Bill may specify parts of the Muirburn Code which must be adhered to.

182. The muirburn provisions in the Bill provide that a person must not (unless they have a reasonable excuse) make muirburn otherwise than in accordance with a muirburn licence that relates to the land on which muirburn is to be made. It is therefore an offence to contravene this, or to cause or permit such contravention.

183. A person who commits either of these offences is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). This is an increase to the existing penalty under the 1946 Act and reflects the potential consequences that can arise if muirburn is not undertaken in accordance with the regulations.

184. The licensing scheme will be administered by NatureScot. This mirrors the approach taken for the administration of other wildlife management licences including licences issued under the 1981 Act.

185. As with other licensing regimes, NatureScot will issue detailed guidance that outlines the evidence that an applicant must submit when applying for a licence. NatureScot will consult with stakeholders as part of the development of that guidance.

186. Currently NatureScot do not charge the applicant for licences relating to wildlife management, as the majority of purposes for which licences can be issued reflect a need to act for a public interest, such as licences to survey for protected species, or control of one species to protect another. In keeping with this approach this Bill does not mandate charges for licences issued under the provisions of this Bill.

187. However, although NatureScot does not currently operate licences on a cost recoverable basis, the Scottish Government/Scottish Green Party Shared Policy Programme contains the commitment to review the wider species licensing system and assess the potential to apply the principle of full cost recovery to species licensing. The Bill will therefore allow for the possible introduction of charges for licences issued under these provisions at a later date, by providing that the licensing authority may charge a reasonable fee.

188. All licensing decisions by NatureScot are subject to their internal procedures for reviewing licensing decisions.

189. As a public body, NatureScot fall under the remit of the Scottish Public Services Ombudsman (SPSO). Therefore, if, having gone through NatureScot's complaints procedure, the licence applicant is still dissatisfied with the decision they may be able to appeal to the Scottish SPSO.

## **ALTERNATIVE APPROACHES**

190. In the course of developing the provisions for regulation of muirburn the following alternative approaches were considered.

### ***Maintaining the status quo***

191. The impacts of burning on carbon release and sequestration on moorland are disputed and there is conflicting scientific evidence. When properly functioning, peatlands store a significant amount of carbon. They release this carbon when they are damaged or degraded. As with muirburn on non-peatland, scientific research to date suggests that muirburn can have both beneficial and adverse effects. The Werritty review, the Deer Working Group's report on the Management of Wild Deer in Scotland, and the Committee for Climate Change's report 'Land use: Policies for a Net Zero UK' all recommended changes made to the regulation and oversight of muirburn.

192. The Werritty review report recognised the benefits of muirburn: that it provides nutritious shoots for grouse, livestock, deer and mountain hares, can increase biodiversity in dry heaths, and

restrict colonisation by woodland. However, it also highlighted that there was strong evidence that muirburn can have a detrimental effect on biodiversity, hydrology, and soil stability.

193. The report goes on to say that the impact of muirburn can differ according to the type of moorland it is practiced on: “The strongest, but still inconclusive evidence for a greater likelihood of long-term detrimental impacts comes from blanket bog/wet heath areas, and it has been widely assumed that regular muirburn is detrimental to peat-forming plant species.”

194. It also considered the effects of muirburn on carbon storage: “Muirburn can have both positive and negative effects on carbon storage, both directly, by affecting carbon contents of soil and vegetation, and indirectly, by affecting carbon storage potential through the changes in plant community composition after fire. There is often an assumed net loss of carbon under regular muirburn, but the evidence is not conclusive...”

195. The report concluded that muirburn should be subject to greater regulation and oversight.

### ***Alternative definitions of peatland***

196. There is no single definition of peat or peatland. The Muirburn Code defines peat as “an organic soil, which contains more than 60 per cent of organic matter and exceeds 50 centimetres in thickness.” As a response to the Werritty review report, the Scottish Government committed to review the current definition of peatland to determine whether this should be revised, and subsequently imposed a stricter definition.

197. The definition of peatland was required to adequately account for the risks associated with muirburn on peatland. It was decided that, in line with the Bill’s wider muirburn provisions, the precautionary principle should be followed. In recognition of the lack of strong scientific consensus relating to muirburn on peatlands, the Bill contains a regulation making power which allows the Scottish Ministers to amend the definition of ‘peatland’. The Bill provides that the Scottish Ministers must consult with NatureScot and such persons they consider likely to be interested in or affected by the making of muirburn.

198. The benefit of using the Muirburn Code’s current definition of peat would be that it is in line with the Scottish soil definition (Scotland’s Soils). The digital survey maps, based on this definition (National soil map and the Carbon and Peatland map 2016) can be used to help provide a desk-based assessment and help to interpret field survey data. This would mean that NatureScot and the licence applicant would be able to refer to desk-based information via soil survey map data. They could then validate and check specific areas where required. It may, however, allow muirburn on peatlands that may be associated with shallower peat.

199. The use of surface vegetation was also considered as an appropriate way to determine whether muirburn would be appropriate or not. A number of broad habitat types are associated with undisturbed peatlands, each with their own characterised surface vegetation. There are, however, areas of peatland that show atypical vegetation due to past management and land drainage. A narrow definition of a vegetation indicator could lead to muirburn being considered appropriate on degraded peatlands or areas that could be suitable for restoration, whereas a wider definition may include areas that are not peatland or degraded peatland.

200. A definition based on the hydrological or morphological typology alone was also considered. Expert understanding of the relationship between peatland and water tables can be used to recognise structured patterns of peatland and other habitat types. However, this requires a high level of expertise, and the findings can be significantly impacted by the weather conditions surrounding the time of the survey as well as historic land management practices. It was felt that, while the understanding of the hydrological systems associated with peatlands could be used to identify areas which may be at higher risk or have a higher potential for restoration, including such a definition in the Bill would be impractical.

201. The Bill defines ‘peatland’ as “land where the soil has a layer of peat of more than 40 centimetres. It then defines ‘peat’ as “soil which has an organic content (that is, content consisting of living and dead plant and animal material) of more than 60%”, This is in line with The Heather and Grass etc. Burning (England) Regulations 2001 which provides that: “a person must not burn specified vegetation on a designated site on peat that is of a depth of more than 40 centimetres, except under (and in accordance with) a licence issued by the Secretary of State under regulation 4.”

202. This definition was selected as 40 cm so that it may protect areas of peatland associated with shallower peat. It was therefore felt that this definition was in line with the precautionary principle. It is important to note that national survey data for peat measured at 40cm does not exist as currently all areas with a peat depth less than 50 cm are labelled peaty soils. This means that assessment of peat at this threshold will be reliant on surveys undertaken by land managers and licence applicators. These would require only simple equipment such as a peat probe, and no specialist skill or knowledge.

#### ***Adding further requirements to the existing legislation***

203. These requirements could include requiring the individual undertaking the muirburn to have completed a certified training course or that a record is kept of the operation and area affected. This would require additional concerns to be clearly specified and enforcement would rely on the use of the police and the standard criminal justice systems.

204. This option was discounted as it does not allow for the flexibility required in enforcement. The inconclusive nature of the scientific research relating to muirburn, as well as the high number of variables means that a more flexible approach to regulating muirburn is required.

#### ***Requiring that muirburn is undertaken in accordance with the Muirburn Code***

205. The Werritty review report considered that instead of setting out increased regulation in legislation, a general condition could be added to the 1946 Act simply requiring that muirburn must be carried out in accordance with the Muirburn Code. The Werritty review concluded that this “*would appear to offer a more holistic approach to controlling muirburn operations, but has the severe drawback that the Code is not, and probably cannot be, written in a way that sets the clear and rigid boundaries of what is acceptable or not as required for the criminal law, and it would be difficult to obtain admissible evidence in many circumstances to establish in court whether the terms of the Code have been overstepped.*”

## **SNARING**

### ***Background***

206. The use of snares to catch certain animals (e.g., foxes and rabbits) is currently permitted in Scotland, however, it must be carried out in accordance with the requirements set out in section 11 of the 1981 Act.

207. As snares are intended to restrain the target species, they must be checked at least once in every 24-hour period. Section 11F of the 1981 Act also sets out that the Scottish Government is required to undertake a review of the operation and effect of section 11 of the 1981 Act, and any orders made under those sections every 5 years.

### ***Concerns***

208. Animal welfare groups, such as the Scottish SPCA, Onekind and the League Against Cruel Sports have called for the sale and use of snares to be banned on the basis that they cause undue suffering to animals, and animals caught in a snare often struggle, resulting in injury or death.

209. Additionally, there are concerns that snares are indiscriminate and that non-target and protected species such as badgers or domestic animals such as cats can be caught by them.

210. However, land management organisations have called for the use of snares to be retained on the basis that they are an important and effective method of predator control.

211. Snares are already banned in many European countries. They are permitted in England, Northern Ireland, and Wales, subject to certain conditions laid out in their applicable legislation.

212. Scotland currently has the tightest restrictions on snaring in the UK. However, the Welsh Government Agriculture Bill which is currently progressing through the Senedd contains provisions to ban the use of snares in Wales.

213. The latest statutory review<sup>6</sup> of snaring was undertaken in 2021/2022 and its recommendations were published on the Scottish Government website on 1 April 2022. The review recommended that the legislation be amended in order to:

- Require operators to update snaring records at least once every 48 hours;
- Introduce disqualification orders for snaring offences; and
- Introduce a statutory code of practice for snaring.

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<sup>6</sup> <https://www.gov.scot/publications/review-snaring-scottish-government-february-2022/>



### ***Changes being considered***

214. The Scottish Government has committed to reforming snaring legislation. In addition to this review, there is also a further review of the impacts of snaring on land management and on animal welfare under way.

215. The remit of that review includes consideration of whether a ban on the use of snares should be introduced. In order to allow sufficient time for analysis of the findings of the wider review to be completed the Scottish Government intends to introduce provisions on snaring at Stage 2.

## **SCOTTISH SPCA POWERS**

### ***Background***

216. The Scottish Society for the Prevention of Cruelty to Animals (“Scottish SPCA”) is a charity with the objectives of preventing cruelty to animals and encouraging kindness in their treatment. The Scottish SPCA is unique among animal charities as it is the only charity which is a reporting agency to the Crown Office and Procurator Fiscal Service (“COPFS”). Under the Animal Health and Welfare (Scotland) Act 2006 (“the 2006 Act”), Scottish SPCA inspectors may enter and search premises under warrant, seize animals and issue animal welfare notices.

217. The Minister for the Environment and Land Reform appointed Susan Davies on 17 June 2022 to undertake a review as to whether the SSPCA should be given additional powers, through legislation, to allow them to investigate wildlife crime. The review was a commitment in the shared policy programme between the Scottish Government and the Scottish Green Party. The Bute House Agreement committed to the establishment of an “*independent taskforce to consider whether the Scottish Society for the Prevention of Cruelty to Animals should be given extra powers to investigate wildlife crime*” and the taskforce “*will be asked to report back in a timeframe that will allow any changes to the Scottish SPCA powers to be delivered by legislation implementing changes to grouse and other wildlife management in the course of this parliamentary session*”.

### ***Concerns***

218. The review was instructed due to a perceived gap in the ability for Scottish SPCA inspectors to adequately respond to wildlife crime. This was as a result of the Scottish SPCA inspectors only being able to exercise powers in accordance with the 2006 Act. As summarised by the review report: “*the SSPCA are unable to investigate offences where an animal is not under the direct control of a person and is not being caused to suffer. It also means they are unable to investigate and, where appropriate seize, illegal traps, snares, poisonous baits and wild animals that may have died as a result of these activities. This creates a situation where the SSPCA may find themselves at a site where an animal has already died, and they are unable to directly seize any evidence and/or cannot extend their search to wider areas of land in the immediate vicinity*”.

### ***Changes being Considered***

219. The Scottish SPCA taskforce has now presented its report to Scottish Ministers. The Scottish Government is considering the findings and will publish a full response shortly.

220. As set out in The Scottish Government Wildlife Management in Scotland: A Consultation on the Bill “*Depending upon the recommendations of the review we may include provisions relating to the powers of Scottish SPCA in the Wildlife Management (Grouse) Bill, in which case a separate consultation with interested parties will be undertaken.*”

221. The Bill therefore contains an order making power to enable Scottish Ministers to extend the powers of inspectors authorised under the 2006 Act to investigate relevant offences relating to wild animals as set out in Part 1 of the Bill and Part 1 of the 1981 Act, should they deem it appropriate to do so.

222. If a decision is made to extend the powers of the Scottish SPCA to investigate wildlife crime then the Scottish Government will bring forward further provisions by amendment at Stage 2, following the outcome of this further consultation.

## **CONSULTATION**

223. The Scottish Government Wildlife Management in Scotland: A Consultation on the Bill ran from 26 October 2022 until 14 December 2022. A high-level analysis of the key findings is provided below. The full analysis report of the public consultation will be published separately in April 2023.

224. The Consultation received 4,863 responses, the majority of these were received via Citizenspace. A breakdown of the type of responses received is shown in the tables below:

225. Table 1: breakdown of responses

<b>Type of response</b>	<b>Total Number of responses</b>
Organisation	129
Individual	4734
All responses	4863

226. Table 2: Organisational respondents by type

<b>Organisation</b>	<b>Number</b>
Animal Welfare	17
Conservation, including representative bodies	22
Land management, including representative bodies	42
Pest control, including representative bodies	8
Public body, including law enforcement	7
Sporting organisations, including representative bodies	6
Other – private section	18
Other – non-private sector	9

227. Table 3 responses to selected key questions

<b>Questions</b>	<b>Agree</b>	<b>Disagree</b>	<b>Unsure</b>
Do you agree that the licensing of grouse shooting should be introduced to deter raptor persecution and wildlife crime linked to grouse moor management?	67%	31%	1%
Do you agree that the landowner/occupier/person responsible for or accountable for the management decisions and actions should be responsible for acquiring and maintaining the licence for the taking of grouse on a particular piece of land?	70%	28%	2%
Do you agree that the landowner/occupier/person responsible for or accountable for the management decisions and actions should be responsible for acquiring and maintaining the licence for the taking of grouse on a particular piece of land?	70%	28%	2%
Do you agree that a licence should be required to undertake muirburn regardless of the time of year that it is undertaken?	69%	29%	2%
Do you agree that there should be a ban on muirburn on peatland unless it is done under licence as part of a habitat restoration programme approved by NatureScot?	69%	29%	2%
Do you agree that the use of glue traps designed to catch rodents should be banned in Scotland?	79%	12%	10%
Do you agree that there should be a two year transition period before the ban on glue traps comes into force?	16%	69%	15%

228. In addition to the public consultation the Scottish Government also contacted all Scottish Local Authority pest control departments to ascertain the extent to which they used glue traps. Of the fourteen Local Authorities who responded, eleven confirmed that they would never use glue traps, two stated that they do not provide a pest control service, and one confirmed that, while they do not regularly use glue traps, they would consider using them where there is justifiable concern for public health and no alternative practical solution.

**EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

**Equal opportunities**

229. An Equality Impact Assessment (EQIA) has been carried out and a summary of its findings is provided below. The full EQIA will be available to view on the publication area of the Scottish Government website.

230. The EQIA did not demonstrate any particular positive or negative impact with regards to any of the protected characteristics and did not highlight any equality issues that needed to be mitigated against.

231. The creation of new offences relating to grouse shooting, muirburn and wildlife traps have relevance to all protected characteristics as the penalties for those offences will apply equally across all protected groups.

232. However, they will only affect those convicted of one or more of the offences set out in the Bill. Therefore, the impact of these provisions is limited and does not impose any additional impacts on any individuals falling within any of the current protected characteristics when compared to the existing legislation.

## **Human rights**

233. The Bill is compliant with the European Convention on Human Rights (ECHR).

234. The offence provisions for glue traps, wildlife trap licencing, licencing of land for taking certain birds and muirburn licensing may fall within the ambit of Article 1 Protocol 1 (A1P1) to the ECHR (right to peaceful enjoyment of possessions) as regards:

- property rights of landowners in relation to taking or killing certain birds (currently only red grouse) and carrying out muirburn;
- use of glue traps;
- the use of wildlife traps;
- the right of landowners or lessors to take and kill game on land and to exclude others from coming onto land for that purpose; and
- the marketable goodwill of business owners involved in the shooting of red grouse (or any other specified bird).

235. The protection of property rights under A1P1 is not absolute, and restrictions on these rights may be permitted provided they have a legitimate aim and are proportionate to that aim. The provisions of the Bill respect these principles in view of the aims of the prevention of cruelty to animals, the prevention of wildlife crime and protection of the natural environment. A fair balance is struck between those whose possessions are affected by the provisions of the bill and the wider general interest of prevention of cruelty to animals, prevention of wildlife crime and protection of the natural environment.

236. The Bill includes powers of entry, search and seizure for constables where there are reasonable grounds for believing that an offence has been or is being committed. The powers relate to the investigation and prosecution of an offence with the legitimate aim of the prevention of disorder or crime. The powers are subject to a number of safeguards, including provision for warrants to be granted, that premises cannot be entered without a warrant, and that the power of entry must be exercised at a reasonable time. A warrant granted under the Bill will also expire when it is no longer required for the purpose for which it was granted. It is considered that these safeguards are sufficient to ensure compatibility with Article 8. Article 8 is also engaged by the power to provide limited additions powers for inspectors under schedule 1 of the Animal Health and Welfare (Scotland) Act 2006. This power also relates to the investigation and prosecution of an offence with the legitimate aim of the prevention of disorder or crime and will be subject to safeguards to ensure compatibility with Article 8.

237. The provisions of the Bill include licensing regimes for making muirburn, land for taking or killing certain birds of red grouse (or any other specified bird) and the use of wildlife traps. Licences may be issued by the “relevant authority” being the Scottish Ministers or NatureScot. Decisions in relation to a licence for land on which the killing or taking of certain birds is to take place is subject to appeal to the sheriff. Decisions in relation to muirburn and wildlife trap licences are subject to the internal review process of NatureScot because of the administrative nature of the decision making. Due to the specialist subject matter knowledge held by NatureScot together with the availability of judicial review it is considered that the wildlife trap and muirburn licensing processes provides sufficiency of review and is therefore compatible with Article 6 of the ECHR.

### **Island communities**

238. No policy issues were identified during the course of the development of the Bill, or from the stakeholder discussion or the public consultations, which would have an effect on an island community which was significantly different from the effect on other communities (including other island communities). It was therefore not considered necessary to conduct an Island Communities Impact Assessment.

### **Local government**

239. The investigation of wildlife crime, and therefore offences relating to grouse shooting, muirburn and the use of glue traps and wildlife traps falls to Police Scotland. Local authorities do not enforce any wildlife legislation. The Bill provisions included at introduction will not introduce any new responsibilities for local authorities and as such will not result in any impact to local authorities. The Bill will ban the use of glue traps however this is not anticipated to impact the local authorities’ ability to undertake pest control as set out in the local authorities’ responses to the consultation above in paragraph 226.

### **Sustainable development**

240. The work of the Scottish Government directly links to the UN Sustainable Development Goal 15: Life on land. In particular, target 15.5: Take urgent and significant action to reduce the degradation of natural habitats, halt the loss of biodiversity and, by 2020, protect and prevent the extinction of threatened species.

241. As set out by the Werritty review report, certain wildlife offences, such as those relating to the killing or taking of certain species or the use of poisons, can have wider negative impacts, such as causing damage to established eco-systems. Wildlife crimes can also impact on the conservation status of species resulting for example in the reduction or loss of local bird of prey populations.

242. By addressing wildlife crime and the environmental impacts of grouse moor management, we would progress the Scottish Government National Performance Framework Environmental outcome of “*We value, enjoy, protect and enhance our environment.*”

243. Regulating the use of wildlife traps, grouse moor management and muirburn, will reflect the potential impact that these activities can have on biodiversity and the environment and demonstrate the importance and value the Scottish Government places on protecting our natural environment.

244. As discussed above, there are serious welfare concerns about the use of glue traps, prohibiting their purchase and use would improve animal welfare to both target and non-target species. It would send a clear message about the poor welfare implications of this method of rodent control and ensure that users are not inadvertently breaking welfare legislation by using glue traps without full detailed knowledge of their legal responsibilities to avoid causing unnecessary suffering.

245. Strategic Environmental Assessment (SEA) pre-screening reports were undertaken for the provisions relating to muirburn, grouse moor licensing and glue traps and submitted to the Strategic Environmental Assessment (SEA) Gateway Database. The relevant Consultation Authorities agreed with the Scottish Government's assessment that full SEAs were not considered necessary.

246. It is recognised that, after the Bill has been passed, implementation will require the development of subordinate legislation, which will be of interest to businesses and wider stakeholder groups, and which will need to be considered carefully for regulatory and environmental impacts. The Scottish Government is committed to continuing to engage with stakeholders on the detail of this work as it develops and to undertaking further BRIAs and/or SEAs if and when necessary.

## **CROWN CONSENT**

247. It is the Scottish Government's view that the Bill as introduced does require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that the powers of entry in the Bill impact on the personal property interests of the monarch because they would give those investigating offences under the Act power to enter onto Balmoral.

248. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.



*This document relates to the Wildlife Management and Muirburn (Scotland) Bill (SP Bill 24) as introduced in the Scottish Parliament on 21 March 2023*

# **WILDLIFE MANAGEMENT AND MUIRBURN (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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