



Law Society  
of Scotland

# Consultation Response

## Wildlife Management in Scotland

December 2022



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Environmental Law and Rural Affairs sub-committees welcome the opportunity to consider and respond to the Scottish Government's consultation on *Wildlife Management in Scotland*<sup>1</sup>. We have the following comments to put forward for consideration.

## General remarks

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We note that the law relating to wildlife in Scotland is fragmented over a number of statutes, often themselves amended on multiple occasions, and as a result, is particularly complex. It is a clear principle of the rule of law that laws must be accessible, intelligible, clear and consistent. We consider that there is a need for consolidation of the law in this area in order to make the law clearer and provide certainty for individuals and businesses.

We suggest that there is a potential to consider wildlife protection, particularly in the rural sector, as part of the approach to land reform and management more generally. For example, the proposals recently consulted on in relation to land reform with large-scale landholdings being required to prepare management plans, including consideration of environmental matters, provide a wider context of action in relation to the climate and biodiversity crises, including in connection with flood mitigation and carbon protection and management. The importance of wildlife protection may be better understood within this wider context and might usefully be used to help achieve the desired Scottish Government objectives. Dealing with the matters covered by this consultation as a single-issue, and having separate licensing regimes for different activities, risks the creation of unintended consequences given the potential for interactions with other land management and use matters, and the potential confusion for those operating in the sector.

<sup>1</sup> <https://consult.gov.scot/environment-forestry/wildlife-management-in-scotland/>

## Consultation response

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### Section 1 – Licensing of Grouse Shooting

#### **1. Do you agree that the licensing of grouse shooting should be introduced to deter raptor persecution and wildlife crime linked to grouse moor management?**

##### **Unsure**

We are generally supportive of introducing of a licensing regime but we consider that there are a number of outstanding issues that need to be resolved before introducing the scheme.

It appears that there has been a shift in recent years in the approach to grouse moor management. The introduction of vicarious liability for landowners by the Wildlife and Natural Environment (Scotland) Act 2011 and the Good Agricultural and Environmental Conditions payment requirements has likely driven greater compliance.

We consider that licensing itself may not act as a deterrent for raptor persecution and wildlife crime, but will focus attention on landowners which may help to bring these issue into focus. In itself, we do not consider that the introduction of a licensing regime will fully resolve these issues, and this will need to be supported by enforcement and information sharing generally. The success of the regime or otherwise will depend to a large extent on the conditions that are imposed and the procedures around the licensing regime. In addition, it is important to consider the whole way in which the grouse moor landscape is managed, not just wildlife crime.

#### **2. If you answered ‘No’ to question 1, please state what other option/s you think we should consider (max 150 words).**

Not applicable.

#### **3. 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?**

##### **Yes**

We are broadly supportive of this approach, however, note that these could be different people, and it will be important that there is certainty as to the identity of the responsible person to hold the licence. It is not clear who will make the decision as to who will hold the licence.

We note that there is precedent for a person managing a licensed activity to also have responsibility under a licence, for example under Paragraph 5(8) of Schedule 1 to the Civic Government (Scotland) Act 1982 and under the licensing provisions relating to short-term lets, where the person managing the short-term let must be licensed.

We note that in some circumstances, a landowner may have little knowledge as to the detail of what is happening on the land, particularly if the landowner is a corporate body. Is it the intention that the corporate veil be pierced to hold those managing the land responsible for holding the licence? If so, how would the liable persons be identified? For example, section 273 of the Town and Country Planning (Scotland) Act 1997 limits such liability to a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity.

**4. If you answered 'No' to question 3, please state what other option/s you think we should consider (max 150 words).**

Not applicable.

**5. Do you think that the person wishing to shoot grouse on land that they do not own, or occupy, should be required to check that the person who owns the land has a licence which allows for the taking of grouse on that area of land?**

**No**

**6. If you answered 'No' to question 5, please state what other option/s you think we should consider (max 150 words).**

We are not supportive of such a requirement being introduced. We consider that the practicalities of this would be challenging. For example, many people who are paying guests/visitors for a shoot may not have the knowledge to be able to check that an appropriate licence is held. This may be particularly challenging for individuals/businesses from overseas. This is not the standard requirement in relation to other forms of premises or services which need a licence and enforcement of such an approach is likely to be particularly difficult.

We consider that it is most appropriate for the responsibility for holding a licence to sit with the landowner, unless they defer this to another appropriate party, such as a shooting tenant/similar, and for the duty to rest on them for ensure that they do not knowingly permit another person to shoot grouse on their land if they do not hold a licence.

**7. If we introduce a licensing scheme, do you agree that NatureScot should be the licensing authority?**

**Yes**

We consider that it is most appropriate that this responsibility lies with NatureScot in the interests of consistency with other licensing regimes and recognising the underlying purpose of the licence to protect vulnerable species.

## **8. Do you think that a licence should be granted for a maximum period of one year (renewable on an annual basis thereafter)?**

### **Unsure**

We consider that a maximum one-year period for a licence has the potential to be unduly burdensome for both the licensing authority, applicants seeking a licence and potential consultees such as Police Scotland and others. This however depends on the procedure involved – if an application for renewal is straight-forward, this may limit the burden on all parties.

In addition, a maximum one-year period does not give a great deal of certainty to those operating in this sector, with many people booking shooting activities well in advance. In this regard, a longer period, such as three or five years may be more appropriate.

With a longer licence period, there would still be an opportunity for the regulator to intervene if necessary. If licences were to be granted for a longer period, we consider that it would be appropriate for powers to be in place to review and alter the licence if appropriate. We recognise that granting licences for a maximum of one-year supports adaption and changes being made to the licence at renewal if appropriate.

Alternatively, there are other licensing regimes, for example civic licensing, that use a three-year timescale which can be reduced to one-year depending on the circumstances. This may offer a more flexible approach than limiting to a maximum of one-year.

We note that there may be benefits to dovetailing licensing requirements with the proposed requirements for management plans as set out in the recent Land Reform consultation.

## **9. If you answered ‘No’ to question 8, please state what other option/s you think we should consider (max 150 words).**

Not applicable.

## **10. Do you think that the civil rather than the criminal burden of proof is an acceptable test for the application of sanctions in relation to grouse moor licences?**

### **Yes**

We consider this to be appropriate as it best aligns with other regimes, such as procedures under a General Licence<sup>2</sup>. We note that once a relevant determination has been made, the licensing authority would have the powers to decide on appropriate further action relating to the licence itself (ie. civil actions rather than the imposition of criminal penalties). We consider that it would be incumbent on the licensing

<sup>2</sup> For information, see <https://www.nature.scot/professional-advice/protected-areas-and-species/licensing/species-licensing-z-guide/birds/general-licences-birds>, <https://www.nature.scot/doc/hares-licence-forms-and-guidance-documents>, <https://www.nature.scot/doc/stoats-licence-forms-and-guidance-documents>

authority to act reasonably in any action being taken, and we suggest that the process should be subject to an appropriate mechanism of review. For example, section 131 of the Licensing (Scotland) Act 2005 makes provisions for an appeal to the sheriff or sheriff principal in connection with decisions of the Licensing Board under the scheme of liquor licensing.

We note that the question should be refer to the relevant standard of proof, rather than burden.

**11.If you answered ‘No’ to question 10, please state what other option/s you think we should consider (max 150 words).**

Not applicable.

**12.Do you agree that record keeping or reporting requirements should be part of the licence conditions?**

**Record keeping**

We are supportive of the proposal set out in the consultation paper that operators be required to keep records of their operations to be provide to the licensing authority when requested.

We consider that the requirements on those under the licence should be proportionate to achieving the aim – for many operators, the information required for record keeping will be readily available and therefore we consider that this is would be an appropriate approach. Unless there is a specific need for regular reporting to be undertaken, we do not consider that this should be a standard licence condition. We recognise that in some circumstances, a specific condition in the licence for reporting may be appropriate.

**13.If you answered ‘neither’ to question 12, please outline why you believe this (max 150 words).**

Not applicable.

**14.Do you agree that, where a person holds a valid licence, and there is sufficient evidence to show that, on the balance of probabilities a wildlife crime has been committed on their property, NatureScot should have the power to impose the following penalties:?**

- **Issue a written warning**
- **Temporarily suspend a licence**
- **Permanently revoke a licence**

**Yes**

We consider that the wording of this question is inappropriate in that the language of the civil burden of proof is referred to in relation to criminal offences. Reference should instead be made to sufficient

evidence, on the balance of probabilities that the licensing conditions have been breached on their property.

That said, we are supportive of NatureScot having these powers, however, note that these are tools to manage the licence rather than penalties as such – for example, this differs from enforcement where criminal penalties, or civil sanctions, are imposed.

We suggest that there should also be an option for NatureScot to review a licence while it is in force, in a similar manner to the ability of a Licensing Board to review a liquor premises licence. This is part of good adaptive management processes, and would allow greater flexibility, for example, by enabling a new condition to be added to the licence. We consider that such a power will be of particular importance if the maximum period for the licence is more than 12 months (question 8).

**15.If you answered ‘no’ to question 14, please outline why you believe this (max 150 words).**

Not applicable.

**16.Please provide any further comments on the questions in this section here.**

We have no further comments.

**Section 2 – Muirburn**

**17.Currently a licence is only required to undertake muirburn outwith the muirburn season. Do you agree that a licence should be required to undertake muirburn regardless of the time of year that it is undertaken?**

**Yes**

We note that there is a precautionary approach being taken to muirburn at present, particularly due to the uncertainty about its impacts in respect of the climate, biodiversity and water. We consider that extending the existing licensing regime will ensure greater control over muirburn and has the potential to develop greater information about its impacts.

**18.If you answered ‘No’ to question 17, please outline why you believe this (max 150 words):**

Not applicable.

**19.If we introduce a licensing scheme, do you agree that NatureScot should be the licensing authority?**

## Yes

We consider this appropriate in the interests of consistency with the current licensing regime.

## **20. 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?**

### Unsure

This is a complex matter and we are not sufficiently aware of the details of scientific evidence to form a considered view. We note the potential for differing impacts of muirburn on peatland – for example, shallow fire on the top layer of the ground vs. slow, hot fires that are deeper in the ground. In addition, defining peatland with sufficient clarity may be difficult. On areas of open ground where heather is growing, there is likely to be peat of varying depth.

Moreover, if all muirburn is to be prohibited unless a licence has been granted, we do not see the need for, nor value of, a specific prohibition on burning on peatland. The need to protect any particular category of land can be accommodated within the decision-making in the licensing regime, and with greater flexibility than a rigid ban that raises difficult definitional issues.

## **21. Other than for habitat restoration, public safety (e.g. fire prevention), and research, are there any other purposes for which you think muirburn on peatland should be permitted?**

### Unsure

## **22. Do you agree that the definition of peat set out in the muirburn code should be amended to 40 cm?**

### Unsure

We consider that this could be difficult to assess as the only way of accurately assessing the depth is likely to be by peat probing. The topology of the landscape means that depths could be variable even within a small area, and there could be changes to the ground over time. It is a feature of the rule of law that the law is clear and certain so that individuals and businesses may guide their conduct accordingly. We therefore consider that such measures could create uncertainty.

## **23. If you answered 'No' to question 22, please outline why you believe this (max 150 words):**

Not applicable.



**24. Please provide any further comments on the questions in this section here:**

We have no further comments.

**Section 3 – Trapping and Snaring**

**3.1 Wildlife Traps**

**25. The Scottish Government proposes that a person operating a wildlife management trap must apply for a unique identification number which they must then attach to any traps that they set outdoors, do you agree that this proposal should apply to (select all that apply):**

- Live capture traps for birds
- Live capture traps for mammals (except rodents)
- Traps listed in the Spring Trap Approval Order
- Rodent kill traps
- Live capture traps for rodents
- None of the above
- Unsure
- Other traps (please specify)

Yes, this should apply to all traps listed. The existing law in this regard is unclear and inconsistent, and so measures to simplify the regime is welcome.

**26. The Scottish Government proposes that a person operating a wildlife management trap outdoors must successfully complete an approved course dealing with the relevant category of trap, do you agree that this proposal should apply to (select all that apply):**

- Live capture traps for birds
- Live capture traps for mammals (except rodents)
- Traps listed in the Spring Trap Approval Order
- Rodent kill traps
- Live capture rodent traps
- None of the above
- Unsure
- Other traps (please specify)

Yes, this should apply to all traps listed. We consider that it is appropriate to align the requirements with snaring, in the interests of clarity in the law.

**27. This question should only be answered if you agree that training should be required for at least one of the traps listed in question 26. The Scottish Government proposes that a person operating a wildlife management trap outdoors must undergo refresher training every 10 years, do you agree that this proposal should apply to: (select all that apply)**

- **Live capture traps for birds**
- **Live capture traps for mammals (except rodents)**
- **Traps listed in the Spring Trap Approval Order**
- **Rodent kill traps**
- **Live capture rodent traps**
- **None of the above**
- **Unsure**
- **Other traps (please specify)**

Yes, this should apply to all traps listed. This is particularly relevant as the law may change over time.

**28. Do you agree that record keeping and reporting requirements should be part of the registration scheme?**

#### **Record keeping**

We are supportive of the proposal set out in the consultation paper that those operating traps be required to keep records of the traps they deploy and make records available to Police Scotland if requested. We consider that the requirements on those under the registration scheme should be proportionate to achieving the aim – for many operators, the information required for record keeping will be readily available and therefore we consider that this would be an appropriate approach

**29. Do you agree that an individual found guilty of the offence of:?**

- **using a trap without valid training from an approved body;**
- **using a trap without being registered to do so;**
- **using a trap without displaying an identification number correctly on the trap;**
- **falsifying records or identification number;**
- **using a trap on land without landowner permission;**
- **failing to comply with the duty to keep trapping records.**

**should be 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). A level 5 fine is currently £5,000.**

**Unsure**

We have no particular views on the proposed penalties however, we note that these should be proportionate and consistent with penalties for other similar offences.

**30.If you answered no to question 29 please explain the reason for your answer (max 150 words):**

Not applicable.

**31.Please provide any further comments on the questions in this section here:**

In circumstances where a body corporate is undertaking the activity, we question who is to be held liable for adherence to the requirements. We refer to our comments at question 3 in this regard.

### **3.2 Glue Traps**

**32.Do you agree that the use of glue traps designed to catch rodents should be banned in Scotland?**

Yes

**33.Do you agree that the sale of glue traps designed to catch rodents should be banned in Scotland?**

Yes

**34.Do you agree that there should be a two year transition period before the ban on glue traps comes into force?**

Yes

**35.Please provide any further comments on the questions in this section here.**

If such bans are introduced, we consider that a large-scale public awareness campaign will be required so as to ensure that members of the public and businesses are aware of their responsibilities.

### **3.3 Snares**

**36.Do you agree with the recommendations from the statutory review of snaring that operators should be required to update their records at least once every 48 hours, unless they have a reasonable excuse not to and that these records should**

**be made available to the Police on demand if the police arrive at the location where the records are kept, or within 7 days to the police station?**

**Yes**

We are supportive of such a requirement, subject to a reasonable excuse provision. For such a measure to be worthwhile, it will need to be enforced and this will require sufficient resourcing in order to do so. In addition, awareness raising of the requirements will need to be undertaken.

**37. Do you agree with the recommendations from the statutory review of snaring that a power of disqualification should be introduced for snaring offences?**

**Yes**

We consider that it is appropriate that a power of disqualification be made available to the court as a possible disposal in such cases. Given the potential implications of a penalty of disqualification, including loss of employment or the ability to manage one's land in person, this should be used proportionally.

**38. Please provide any further comments on the questions in this section here.**

We have no further comments.

## **Section 4 – Evaluation**

**Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published).**

**39. How satisfied were you with this consultation?**

**Slightly dissatisfied**

**Please enter comments here**

We note that this consultation has been undertaken over a period of 7 weeks. Given this relates to the introduction of a Bill, we consider it would have been appropriate for the consultation to run for the usual 12-week period.

**40. How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?**

**Not applicable**



**For further information, please contact:**

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