



Law Society
of Scotland

Written evidence

Hunting with Dogs (Scotland) Bill

13 May 2022



Introduction

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 Criminal Law Committee and Rural Affairs sub-committee welcome the opportunity to consider and provide written evidence on the Hunting with Dogs (Scotland) Bill¹. We have the following comments to put forward for consideration.

Consultation questions

Question 1 - Do you agree the bill would make the offence to hunt a wild mammal using a dog in Scotland easier to understand and to enforce than under the 2002 Act?

We feel that clarification may be necessary to improve understanding and enforcement here. We note that Section 1 subsection 4 states “in this part, a person is “using a dog”, when the hunting of a wild animal by that person involves the use of the dog, even if the dog is not under that person’s control or direction (and related expressions are to be construed accordingly)”.

We feel that this section should contain a clause which conveys that the person should know or ought to have known that hunting a wild animal was the intended use of the dog.

Question 2 - Do you agree with the definition of a wild mammal set out in the bill?

We have no comment.

Question 3 - Do you agree the bill would make the offence for a land owner/occupier or dog owner/person who is responsible for a dog to knowingly cause or permit another person to hunt a wild mammal using a dog easier to understand and to enforce than under the 2002 Act?

We have no comment.

¹ <https://www.parliament.scot/bills-and-laws/bills/hunting-with-dogs-scotland-bill>

Question 4 - Do you agree with the exception for the management of wild mammals above ground for the specified purposes and if the conditions are met?

We have no comment.

Question 5 - Do you agree with the specified purposes set out in section 3(2) for which the exception for the management of wild mammals above ground would apply?

We have no comment.

Question 6 - Do you agree with the conditions set out in section 3(3), including the proposed limit for up to two dogs, which would apply for the exception for the management of wild mammals above ground?

We note that section 3(3)(e) provides a condition that the wild mammal is shot dead, or killed by a bird of prey, "as soon as reasonably possible". We do not consider that provides any substantive difference from the equivalent provision under the 2002 Act which requires the mammal to be shot dead or killed by a bird of prey "once it is to do so" (2002 Act, section 2(1)).

Question 7 - Do you agree with the proposed licensing regime?

We have no comment.

Question 8 - Do you agree with the exception for the management of foxes and mink below ground for the specified purposes and if the conditions are met?

We have no comment.

Question 9 - Do you agree with the specified purposes set out in section 5(2) for which the exception for the management of foxes and mink below ground would apply?

We have no comment.

Question 10 – Do you agree with the conditions set out in section 5(3), including the proposed limit for one dog, which would apply for the exception for the management of foxes and mink below ground?

We have no comment.

Question 11 – Do you agree with the exception for falconry, game shooting and deer stalking if the conditions are met?

We have no comment.

Question 12 – Do you agree with the conditions set out in section 6(2) which would apply for the exception for falconry, game shooting and deer stalking?

We have no comment.

Question 13 – Do you agree with the exception for environmental benefit?

We have no comment.

Question 14 – Do you agree with the specified purposes set out in section 7(2) which would apply to the exception for environmental benefit?

In relation to section 7(2)(a) and (b), we note that these specified purposes seem to be very wide in scope and could be open to differing interpretations. We consider that there will be a need for subsequent guidance and/or prosecution policy on this so as to ensure clarity in the law and certainty for those operating.

We note that section 7(2)(c) connects to section 7(4) which defines “invasive non-native species”. We do not consider that it is entirely clear what will be within scope of this provision. While it will be possible to identify those species which fall under section 7(4)(a) with relative ease given the reference to the “Scottish list of species of special concern”, we consider that those species which will be caught in the definition under subsection (4)(b) is less certain. This could give rise to the potential for misuse of the exception and potentially undermine the entire purpose and effectiveness otherwise of the legislation.

Question 15 - Do you agree with the conditions set out in section 7(3) which would apply to the exception for environmental benefit?

We have no comment.

Question 16 – Do you agree with the proposed licensing regime?

We have no comment.

Question 17 – Do you agree the two licensing regimes should be managed by NatureScot?

We have no comment.

Question 18 – Do you think the bill should introduce vicarious liability?

We have no comment.

Question 19 – Do you think the bill should reverse the burden of proof?

We have no comment.

Question 20 – Do you agree with the proposed ban on trail hunting?

We have no comment.

Question 21 – Do you agree with the exception to the ban on trail hunting?

We note that Section 11 sets out the offences. In particular subsection 6 provides “it is a defence for a person charged with an offence under subsection 3 or 4 to show that the person reasonably believed that the exception in section 12 applied to the Trail hunting”. We would observe at this stage, that this appears to be along the lines of a similar defence, to a charge 1 offence.

Question 22 – Do you agree with the conditions set out in section 12(2) which would apply for the exception to the ban on trail huntings?

See our answer to question 21 above.

Question 23 – Do you agree with the provisions contained in Part 3 of the bill?

We note that Section 14 of Part 3, provides time limits for summary proceedings.

That section states inter alia “proceedings for an offence under section 2(1) or 2 or section 11(1) 11(3) or 11(4) may be brought within the period of 6 months beginning with the date on which evidence is sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor’s knowledge. But no such proceedings may be brought more than 3 years after the commission of the offence...”.

It is not, in our view clear why 3 years should apply. Clarification would be helpful.

We also note that Section 15, relates to individual culpability where organisation commit an offence. The section applies where the offence under the act is committed by a relevant organisation and the commission of the offence: -

1. Involves consent or connivance on the part of a responsible individual.
2. Is attributable to neglect on the part of a responsible individual.

However, we note that there does not appear to be any definition of consent or connivance in the act.

Question 24 – Do you support this Bill?

We have no comment.

Question 25 – Do you have any other comments to make in relation to the bill?

We note that Section 21 of part 4, provides ancillary provisions. Subsections 1 and 2, of section 21 state “Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provisions they consider appropriate for the purposes of, in connection with or for giving full effect to this act.”

Regulations under this section may: -

- a) Make different provisions for different purposes.

b) Modify any enactment (including this act)

We consider that this wording gives Scottish Ministers exceptionally wide powers regarding the Act. In essence, Ministers could make different provisions or modify the Act, without Parliamentary scrutiny.

In respect of the Schedule and Enforcement Powers. We note that Section 2 provides details of “entry and associated powers”.

Section 3 applies where Sheriff or a Justice of the Peace may grant a Warrant. And states “this subsection applies (a) if admission to the premises has been refused or such a refusal may reasonably be expected and b. 1. notice of intention to seek a Warrant has been given to the occupier of the premises or the giving of such a notice would frustrate the purpose for which the Warrant is sought”.

We are of the view that this appears to be a very wide definition. For example, there is no indication of what would constitute “a refusal may reasonably be expected”. In addition, there is no indication of the meaning of “frustrate”.

Further, Section 10 deals with supplementary provisions and states “a Constable exercising a relevant power must do so at a reasonable time unless it appears to the Constable that the purpose of exercising the power would be frustrated by exercising it at such a time.” We would contend that this phrasing is vague. There is no definition of what “a reasonable time is”.

For further information, please contact:

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