



Law Society
of Scotland

Stage 1 Briefing

Wildlife Management and Muirburn (Scotland) Bill

November 2023



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.

The Wildlife Management and Muirburn (Scotland) Bill¹ (the **Bill**) was introduced by the then Cabinet Secretary for Net Zero, Energy and Transport, Michael Matheson MSP. Our Rural Affairs sub-committee previously submitted written evidence on the Bill to the Rural Affairs and Islands Committee of the Scottish Parliament² and provided oral evidence as part of the Committee's Stage 1 consideration of the Bill on 21 June 2023.³

The Rural Affairs and Islands Committee's Stage 1 Report on the Bill (the **Stage 1 Report**)⁴ was published on 20 November 2023.

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 1 debate scheduled for 30 November 2023. We have also commented on proposed areas of amendment arising from the Scottish Government's further consultation in October 2023.⁵

General Remarks

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. Legislative efforts in this area to consolidate the law, make it clearer, and provide certainty for individuals and businesses is welcomed.

We have highlighted, as a recurring comment throughout our engagement on the Bill, that additional legislative or regulatory measures in this area should be informed and supported by a robust evidence base, policy analysis, and be a proportionate response to the intended aims. We likewise consider such changes would merit an appropriate awareness-raising campaign so as to make individuals and businesses aware of the position.

¹ [Wildlife Management and Muirburn \(Scotland\) Bill](#)

² Accessible [here](#).

³ Accessible [here](#).

⁴ [Stage 1 Report](#)

⁵ The consultation is accessible [here](#). Our response is accessible [here](#).

We have noted below areas of the Bill that we consider would merit amendment to ensure that the provisions operate as intended and do not have unintended consequences.

Comments on sections of the Bill

Part 1 (Wildlife Management)

Sections 1-3 (Glue traps)

Whilst we welcome these provisions, we consider that there would be merit in clarifying the drafting of the Bill to ensure that a glue trap which is intended to be used (and is delivered) outwith Scotland would fall within the scope of section 2 if the trap is subsequently brought into Scotland.

Sections 4-5 (Regulation of certain wildlife traps)

We welcome the additional regulation on the use of certain wildlife traps, as provided for at sections 4 and 5 of the Bill, as applicable to the use of traps in the wild. The existing law in this regard can be seen as unclear and inconsistent, and so measures to simplify the regime is welcome.

We have, however, suggested consideration of whether it is appropriate for the provisions to extend to the use of such traps in a domestic setting by an individual landowner, particularly given the increased bureaucratic burden on such persons.

As a more general observation in relation to the various licence regimes introduced or extended by the Bill, we note that 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.

Sections 6-7 (Licensing of land for killing and taking of certain birds)

We consider licensing itself may not act as a deterrent for raptor persecution and wildlife crime – although it will turn greater attention on landowners, which may help to bring these issues 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. In addition, it is important to consider the whole way in which the grouse moor landscape is managed, not just wildlife crime.

We note that Section 7 of the Bill, which inserts a new section 16AA after section 16 of the Wildlife and Countryside Act 1981, provides that such a licence “may be granted or renewed for a period not exceeding 1 year”. We consider that a maximum one-year period for a licence has the potential to be unduly burdensome and bureaucratic for both the licensing authority, applicants seeking a licence, and potential

consultees such as Police Scotland and others (although this may be mitigated should the procedure for application or renewal be straightforward).

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.

We recognise that granting licences for a maximum of one-year supports adaptation and changes being made to the licence at renewal if appropriate. If licences were to be granted for a longer period, we consider it appropriate for powers to be in place to review and alter the licence if appropriate. 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 therefore welcome the recommendation at paragraph 206 of the Stage 1 Report that the Bill is amended to provide for a longer licence period.

Section 8 (Investigation of wildlife offences)

We note that the proposal would extend the existing investigation powers of inspectors appointed under section 49(2)(a) of The Animal Health and Welfare (Scotland) Act 2006 to include the investigation of offences under Part 1 of Bill and Part 1 of The Wildlife and Countryside Act 1981.

We consider that the most appropriate bodies for law enforcement and prosecution in Scotland of the offences under the Bill are Police Scotland and the Crown Office and Procurator Fiscal Service (**COPFS**) respectively. Whilst we note the current investigation powers of the Scottish Society for the Prevention of Cruelty to Animals (**Scottish SPCA**) in relation to specific animal welfare issues, we would not generally consider it appropriate that wider criminal investigation powers would be extended to it, particularly given its role and function as a registered charity.

Part 2 (Muirburn Licensing)

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.

Whilst we welcome updated, clearer, or consolidated legislation where necessary, we highlight the existing legislation governing the making of muirburn (which is supplemented by the Muirburn Code) – and stress that the need for any further legislative change on this matter should be underpinned by a clear policy and evidential basis.

Part 3 (Miscellaneous and General Provisions)

We do not have any specific comments to make on Part 3 of the Bill.

Proposed Scottish Government Amendments to the Bill at Stage 2

We also responded to the Scottish Government's further consultation in October 2023 on proposals to amend the Bill in relation to the use of snares and cable restraints in Scotland and the powers of Scottish SPCA inspectors.

Our response highlighted the existing regulation in relation to the use of snares as set out in the Wildlife and Countryside Act 1981 – and similarly noted that any additional legislative or regulatory measures in this area should be informed and supported by a robust evidence base, policy analysis, and be a proportionate response. We note that the Scottish Government has since confirmed its intention to issue amendments to the Bill at Stage 2 for a full ban on the use of snares, which will not include a licensing scheme for any purpose.⁶

In relation to the proposals to extend the powers of Scottish SPCA inspectors, as set out in the consultation, we reiterated our previous comments that the most appropriate bodies for law enforcement and prosecution in Scotland of the offences under the Bill are Police Scotland and COPFS respectively. We highlighted, notwithstanding this, that we consider it appropriate for limitations and safeguards to be placed on such proposals if introduced.

⁶ As detailed in the letter from the Minister for Energy and the Environment to the Rural Affairs and Islands Committee, dated 9 November 2023, accessible [here](#).

For further information, please contact:

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