



Law Society  
of Scotland

# Hunting with Dogs (Scotland) Bill

## Stage 1 Briefing

25 October 2022



## Introduction

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The Law Society of Scotland is the professional body for over 13,000 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 Hunting with Dogs (Scotland) Bill<sup>1</sup> (the Bill) was introduced by the Cabinet Secretary for Net Zero, Energy and Transport, Michael Matheson MSP, on 24 February 2022. In May 2022 we responded<sup>2</sup> to the Rural Affairs, Islands and Natural Environment Committee's call for evidence on the Bill. We gave evidence before the committee on 22 June 2022<sup>3</sup> and provided supplementary information to the committee by way of a letter dated 13 July 2022<sup>4</sup>. We note the Stage 1 report of the Rural Affairs, Islands and Natural Environment Committee has now been published<sup>5</sup>.

We now welcome the opportunity to provide comment on the Bill ahead of the Stage 1 debate which is due to take place on 25 October.

If you would like to discuss this briefing or if you would like more information on the points that we have raised, please do not hesitate to contact us. Contact details can be found at the end of the paper.

## Our comments

We reiterate our comments as set out in our earlier written and oral evidence.

We note that the Bill aims to replace the Protection of Wild Mammals (Scotland) Act 2002. We recognise that this Bill has been prepared in response to the 2016 Report of the Review of the Protection of Wild Mammals (Scotland) Act 2002 by Lord Bonomy<sup>6</sup>. This report acknowledged that the language contained within the 2002 Act left room for interpretation which unduly complicated the detection, investigation and

<sup>1</sup> <https://www.parliament.scot/bills-and-laws/bills/cost-of-living-tenant-protection-scotland-bill>

<sup>2</sup> [22-05-13-crim-rur-written-evidence-hunting-with-dogs-scotland-bill.pdf \(lawscot.org.uk\)](https://www.parliament.scot/bills-and-laws/bills/cost-of-living-tenant-protection-scotland-bill/22-05-13-crim-rur-written-evidence-hunting-with-dogs-scotland-bill.pdf)

<sup>3</sup> [Official Report \(parliament.scot\)](https://www.parliament.scot/bills-and-laws/bills/cost-of-living-tenant-protection-scotland-bill/22-06-22-crim-rur-written-evidence-hunting-with-dogs-scotland-bill.pdf)

<sup>4</sup> [hunting-with-dogs-bill-law-society-of-scotland-13-july-2022.pdf \(parliament.scot\)](https://www.parliament.scot/bills-and-laws/bills/cost-of-living-tenant-protection-scotland-bill/22-07-13-crim-rur-written-evidence-hunting-with-dogs-scotland-bill.pdf)

<sup>5</sup> [Stage 1 report on the Hunting with Dogs \(Scotland\) Bill | Scottish Parliament](https://www.parliament.scot/bills-and-laws/bills/cost-of-living-tenant-protection-scotland-bill/22-07-13-crim-rur-written-evidence-hunting-with-dogs-scotland-bill.pdf)

<sup>6</sup> [1. Introduction - Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002 - gov.scot \(www.gov.scot\)](https://www.gov.scot/bills-and-laws/bills/cost-of-living-tenant-protection-scotland-bill/22-07-13-crim-rur-written-evidence-hunting-with-dogs-scotland-bill.pdf)

prosecution of alleged offences. Lord Bonomy recommended that legislative change was required to ensure clarity and consistency by removing inappropriate and unnecessary expressions.

The Bill comprises of 27 sections and is divided into 4 parts and one schedule.

**Part 1** of the Bill relates to the offences covered by the Bill (sections 1 and 2), exceptions to the offences (sections 3 to 8) and provisions on licences (sections 8 to 10).

**Part 2** of the Bill relates to trail hunting and exceptions (sections 11 and 12).

**Part 3** of the Bill sets out further provisions relating to the Bill including enforcement (section 13), and time limits and culpability where an organisation commits an offence (sections 14 and 15). Part 3 of the Bill further sets out the provisions relating to Court orders including deprivation orders, disqualification orders, seizure orders and appeals (sections 16 to 20).

**Part 4** of the Bill sets out the general provisions including the ancillary provisions, interpretation and repeal of the Protection of Wild Mammals (Scotland) Act 2002.

The **Schedule** sets out the enforcement powers and comprises of a further 17 paragraphs covering matters such as entry and associated powers including powers of constables in exercising warrants and stopping and detaining vehicles or vessels.

We have the following comments to put forward for consideration.

## Specific comments on the Bill

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### Part 1

We are of the view that clarification may be necessary to improve understanding and enforcement in this part of the Bill. We note that Section 1(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 consider that section 1 of the Bill 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.

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 are of the view that this terminology does not provide 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 safe to do so” (2002 Act, section 2(1))<sup>7</sup>.

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 a hunt.

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<sup>8</sup>” and the reference therein to the common name of each species, we consider that those species which will be caught in the definition under subsection (4)(b) is less certain noting in particular that the species contained within the list of alien species of Union concern contains scientific names only<sup>9</sup>. This could give rise to the potential for misuse of the exception and potentially undermine the entire purpose and effectiveness otherwise of the legislation. The Bill’s Policy Memorandum states at paragraph 6<sup>10</sup> that the Bill is intended to address ambiguities in the language of the 2002 Act and to make the law easier to understand. As a result, we favour a list detailing the common names of invasive non-native species being included within the Bill to ensure clarity and prevent uncertainty in its interpretation.

## Part 2

Section 11 sets out the offences and penalties.

## Part 3

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

This 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...”.

<sup>7</sup> [Protection of Wild Mammals \(Scotland\) Act 2002 \(legislation.gov.uk\)](#)

<sup>8</sup> [Sensitive Species of Scotland list.xls \(live.com\)](#)

<sup>9</sup> [Commission Implementing Regulation \(EU\) 2016/1141 of 13 July 2016 adopting a list of invasive alien species of Union concern pursuant to Regulation \(EU\) No 1143/2014 of the European Parliament and of the Council \(legislation.gov.uk\)](#)

<sup>10</sup> [Policy memorandum \(parliament.scot\)](#)

We recognise that the 3 year window for prosecutions follows precedent set out in previous legislation.

Section 15 relates to individual culpability where an organisation commits an offence. The section applies where

- (a) the offence under is committed by a relevant organisation, and
- (b) the commission of the offence -
  - (i) involves consent or connivance on the part of a responsible individual.
  - (ii) 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 Bill and consider that a definition of the phrase would be beneficial in aiding understanding. We note that the Bill's Policy Memorandum states at paragraph 6,<sup>11</sup> that the Bill is intended to address ambiguities in the language of the 2002 Act and to make the law easier to understand. We favour a definition of the term "consent and connivance" being included within the Bill which to ensure clarity and prevent uncertainty in its interpretation.

## Part 4

Section 21 provides Scottish Ministers with powers to modify, replace or omit any part of the text of the legislation.

Section 22 sets out the interpretation of terms used within the Bill and their definitions.

## Schedule

In respect of the Schedule and Enforcement Powers, we note that paragraph 2 provides details of "entry and associated powers".

Paragraph 3 applies where Sheriff or a Justice of the Peace may grant a Warrant and states "this subparagraph applies if - (a) admission to the premises has been refused or such a refusal may reasonably be expected and (b) (i) notice of intention to seek a Warrant has been given to the occupier of the premises or (ii) the giving of such a notice would frustrate the purpose for which the Warrant is sought".

<sup>11</sup> [Policy memorandum \(parliament.scot\)](#)

We note that similar wording is used in other legislation relating to the protection of animals in Scotland including the Animal Health and Welfare (Scotland) Act 2006<sup>12</sup> and the Wild Animals in Travelling Circuses (Scotland) Act 2018<sup>13</sup>. We would note however that 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, paragraph 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 “a reasonable time” and we would welcome clarity in that regard.

We look forward to taking part in discussions on this important issue.

<sup>12</sup> [Animal Health and Welfare \(Scotland\) Act 2006 \(legislation.gov.uk\)](#)

<sup>13</sup> [Wild Animals in Travelling Circuses \(Scotland\) Act 2018 \(legislation.gov.uk\)](#)



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