

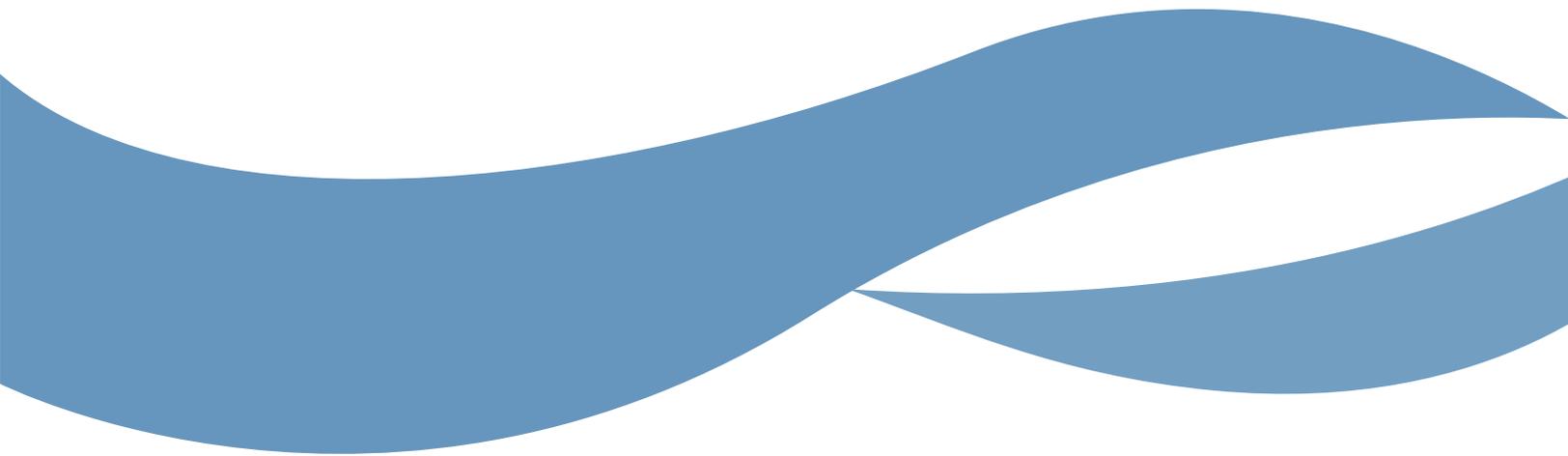
Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill

Stage 3 Briefing

15 June 2020

About Scottish Land & Estates

At Scottish Land & Estates (SLE) our work helps to ensure that rural Scotland thrives. We are a membership organisation for landowners, rural businesses, and rural professionals. We promote the wide range of benefits land-based businesses provide: tourist attractions, leisure facilities and landscapes enjoyed by the public, as well as housing, employment, tourism & enterprise and farming opportunities. We represent the interests of our members and wider rural Scotland to the UK and Scottish Governments to help ensure that policy and legislation reflects the unique requirements of rural Scotland and its communities.



Summary

Scottish Land & Estates (SLE) welcomes the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill. We fully endorse the overall objective of the Bill which increases the range of sentencing options in relation to animal welfare and wildlife offences. SLE fully supports the provision of more stringent sentencing powers which sends a strong and clear message that wildlife crime and animal cruelty is unacceptable.

The Bill amends the Animal Health and Welfare (Scotland) Act 2006, several pieces of wildlife legislation and the Animal Health Act 1980 to address concerns about current penalties, enforcement powers and the way this legislation operates in practice.

SLE broadly welcomes the changes as set out in the Bill, however we do have concerns with some amendments being introduced at stage 3.

We urge caution with proposing amendments at stage 3 without supporting evidence or data to show need and which have not been given due consideration or have been the subject of consultation with stakeholders. For example, we believe any widespread extension of vicarious liability should be subject to full consultation and receive proper scrutiny, rather than being introduced in a hurried fashion during stage 3 of a Bill. Given the impact of the Covid-19 pandemic on the operations of government, its agencies, and stakeholders, it would, in our view, be sensible to revisit contentious and legally complex matters at a later stage.

We recommend MSPs vote on the following amendments, listed in the order they will be debated, as follows:

Support Amendments 32 on *Animal Welfare offences: penalties*

Oppose Amendment 33 on *Protecting dogs from unnecessary suffering: docking*

Support Amendments 34, 35, 63 on *Disqualification order*

Oppose Amendments 36, 37, 38, 39, 40, 1, 53, 54 on *Vicarious Liability*

Support Amendment 28 on *Food and Environment Protection Act 1985: penalties for offences*

Oppose Amendments 29A, 55 on *Conservation and protection of marine life*

Support Amendment 58 on *Programme requirements*

Support Amendments 60, 62 on *Information sharing report*

Oppose Amendment 30, 56 on *Additional protection for certain wild animals*

Group 1: Animal Welfare Offences: Penalties (Amendments 32)

We **support** amendment 32 by Colin Smyth

We believe it is right that anyone who commits an offence under the Animal Health & Welfare (Scotland) Act 2006 should receive the highest penalty available and support the proposed increased penalties.

Group 2: Protecting dogs from unnecessary suffering docking (Amendment 33)

We oppose Amendment 33 by Mark Ruskell

The tail docking of dogs in Scotland was banned in 2007, under the Animal Health and Welfare (Scotland) Act 2006, unless where required for medical treatment. An exemption was put in place in Scotland in 2017 for working Spaniels and Hunt, Point and Retrieve breeds – bringing Scotland in line with regulations in the UK. There is no evidence to suggest that there are problems with this exemption.

The regulations governing tail docking are tight. A vet must confirm the breed and see the mother of the litter before the puppy is docked and puppies must be docked before they are five days old - when bones are still soft and the nervous system is not yet fully developed; a vet is also entitled to refuse to undertake the procedure if there are concerns. Lastly the dog breeder must prove that the dog owner will be using the animal for work in connection with lawful pest control.

SLE believes the legislation is clearly defined and protects a small subset of dogs from harm (working dogs). The recent changes made in 2017 brought regulations in line with the rest of the UK and it would seem from the lack of evidence presented that it is unnecessary for Scotland to diverge from this UK approach.

Group 3: Disqualification order (Amendments 34, 35, 63)

We support Amendment 34 & 63 by Maurice Golden and Amendment 35 by Colin Smyth

Where there are repeated and/or very serious offences then it is right on animal welfare grounds that the person is subject to a disqualification order. We agree that disqualification orders should not be used as a substitution for penalties – they should only be considered in addition to.

Group 4: Vicarious Liability (Amendments 36, 37, 38, 39, 40, 1, 53, 54)

We oppose Amendment 1 by Mark Ruskell

SLE opposes amendment 1 by Mark Ruskell which seeks Vicarious Liability for badger offences. It is already an offence to knowingly cause or permit an offence under sections 6, 7, 9, 11 and 13 of the Wildlife and Countryside Act 1981 and sections 1 to 4 of the Protection of Badgers Act 1992. In addition, the Bill already ensures there is now a maximum penalty in place for badger offences and it would seem disproportionate to also apply Vicarious Liability.

Badgers are a protected species, they are widespread and are considered a species of least concern <https://www.mammal.org.uk/science-research/population-review-red-list/> with Scottish Natural Heritage (SNH) noting the species as being a “healthy population size, widespread distribution across mainland Scotland” <https://www.nature.scot/plants-animals-and-fungi/mammals/land-mammals/badger>

We do not see that this amendment serves any useful purpose as it targets an area of law that seems to be working well judging by the lack of conservation concern around the species. We are not aware of

Police Scotland concerns about a sizeable or growing level of badger persecution. Our firm understanding is that persecution is extremely limited and normally confined to poachers or baiters with dogs rather than Vicarious Liability type cases.

We oppose Amendments 36, 37, 38, 39, 40, 53, 54 by Claudia Beamish

We strongly disagree with a new provision of Vicarious Liability for offences involving traps and snares.

Vicarious Liability, generally, is a blunt tool that should be used with exceptional care. It effectively reverses a burden of proof, such that a landowner or manager can be found guilty unless they are able to prove that they have briefed, trained and instructed an employee in how to act.

Trapping and snaring are extremely well controlled and administered. The Wildlife & Countryside Act (1981) impose certain conditions on the use of snares, for conservation reasons, and prohibit their use to catch species of conservation concern that are listed in Schedules 5 and 6 of the Act. In Scotland, extra restrictions, and conditions on the use of snares were introduced by the Nature Conservation (Scotland) Act 2004, the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007, and the Snares (Scotland) Order 2010. These statutes dictate certain working practices as well as restricting use and reflect a mixture of conservation and humaneness concerns. The Wildlife & Natural Environment (Scotland) Act 2011 made accreditation and training of all snare users a legal requirement in Scotland, following the enactment of The Snares (Training) (Scotland) Order 2012.

The Snares Training (Scotland) Order introduced the requirement for all snare operators to be trained and for all snares operators to identify their snares through affixing a tag provided through Police Scotland. Additionally, SNH has recently made it a requirement of the General Licence (2020) for individual trap operators to also attach personal identification details to each predator control trap.

We are not aware of any concern about trapping and snaring within SNH. As far as we understand it, the number of offences regarding illegally set snares have been minimal. Given the operation of snares and traps are already strictly regulated and with no evidence to suggest a concern about misuse it therefore seems unnecessary to want to legislate further.

Offences relating to traps and snares carry penalties which represent a significant deterrent to those with an intent to misuse them, therefore introducing Vicarious Liability seems unnecessary and disproportionate.

Pest and predator control are an integral part of land management in Scotland and this amendment is likely to have unintended consequences on the conservation of some of our most vulnerable species. The adverse impact that predators, including protected species, can have on ground-nesting birds including upland birds species which are reaching crisis point (Curlew which have declined by 62%, lapwing by 63%, golden plover by 43% and oystercatcher by 44%) has been recognised by many for a long time. We would ask what, if any, research has been done to ascertain the full extent of this work? Similarly what impact Vicarious Liability of traps and snares will have on those environmental organisations and wider conservation projects who use networks of volunteers to trap (with permission) on private land to control non-native native species including the Grey Squirrels, American Mink and

Stoats? There is potential for the introduction of Vicarious Liability to make these types of arrangements unappetising and problematic, and a greater understanding of this is required.

Landowners across Scotland have spent and continue to invest heavily in amending contracts of employment, putting in place management plans to remove any risk of being seen to condone an activity by an employee. The standard statutory defence of having taken all reasonable steps and exercised all due diligence could demand an excessive level of supervision and expense on employers, despite the already stringent measures in place and lack of evidence necessitating the Vicarious Liability provisions, which will serve to place further pressure on rural employers and communities and their sustainability.

We urge caution with proposing amendments at stage 3 without supporting evidence or data to show need and which have not been given due consideration or have been the subject of consultation with stakeholders.

We firmly believe that any widespread extension of Vicarious Liability should be subject to full consultation and receive proper scrutiny, rather than being introduced in a hurried fashion during stage 3 of a Bill.

Group 6: Food and Environment Protection Act 1985: Penalties for offences (Amendment 28)

We support Amendment 28 by Claudia Beamish

We do not condone possession of pesticides contrary to the law. There is no legitimate reason to have banned pesticides in Scotland and anyone in possession should bear the full brunt of the law. We fully support the proposed increased penalties for these additional offences.

Group 8: Conservation and Protection of Marine Life (Amendment 29A, 55)

We oppose Amendment 29A by Mairi Gougeon

Acoustic Deterrent Devices (ADDs) on rivers are an important management tool in protecting our vulnerable Atlantic salmon and sea trout populations from seal predation. The use of ADDs on rivers are only used to prevent the ingress of seals up-river. As drafted the amendment implicates fish farms and wild fisheries and removes an important management tool from wild fisheries managers at a time when Atlantic salmon populations are at crisis point.

We oppose Amendment 55 by Mark Ruskell

Fish farmers in Scotland recognise and welcome the value of further research to refine and enhance Acoustic Deterrent Devices (ADDs) that can protect farmed fish without disruption to other species. Work is being undertaken by academic institutions such as the University of St Andrews to develop the science in this area.

We fully support the need for comprehensive and accurate reporting of ADD use and deployment which would enable effective monitoring and regulation of these devices by the relevant bodies. It is important to note that the use of ADDs is not limited to fish farms. ADDs are a potentially important tool for wild fisheries managers to protect wild Atlantic salmon and sea trout from predation, by seals entering rivers. Deployment of ADDs within rivers would not be expected to impact cetaceans and would be used only to prevent the ingress of seals up-river.

We do however have significant concerns around point “(e) future regulation of the use of acoustic deterrent devices” and the impact such a regulation could have on the use of ADDs on Scotland’s rivers to protect species such as the Atlantic Salmon – a species approaching crisis point and classed as vulnerable in Europe on the IUCN Red List of Threatened Species.

Group 9: Programme Requirements (Amendment 58)

We support Amendment 58 by Claudia Beamish

We strongly support using a wide range of targeted and imaginative measures and support the use of payback orders and programme requirements (empathy courses). The Poustie review proposed retraining or empathy courses. We note this has so far not been taken forward. Non-custodial sentences, for example Community Payback Orders, could include such retraining or empathy courses as part of the Order. We recognise the need to have suitably qualified people and appropriate funding to deliver the courses.

Group 11: information Sharing Report (Amendments 60, 62)

We support Amendments 60, 62 by Colin Smyth

We fully support these amendments. It is important a system of information sharing is put in place. It will be useful in providing important information to the public, stakeholders and the Scottish Parliament on wildlife crime in Scotland and will be helpful in assessing the effectiveness of the Bill.

Group 12: Additional Protection for Certain Wild Animals (Amendments 30, 56)

We oppose Amendment 30 by Alison Johnstone

Mountain hares are an important part of Scotland’s moorlands and there is a requirement for the species to be maintained in a favourable conservation status. In addition, legislation and good practice with respect to sustainable culling require that Scottish Government and land managers need to monitor mountain hare population status and understand the effects of hunting of the species.

A significant body of law already exists to protect the mountain hare. The control of mountain hare populations is subject to legislation passed by the Scottish Parliament in 2011 and an EU Habitats Directive which requires their number to be maintained at a ‘favourable conservation status’.

The Wildlife and Countryside Act 1981 as amended by the Wildlife and Natural Environment (Scotland) Act 2011 includes a prohibition on killing except under licence over a specified period of time. There are also measures to regulate the use of snares and a prohibition on poaching of hares. Under section 16(3) of the 1981 Act (as amended) certain activities which would normally constitute an offence can be carried out legally under a licence. However, it is important to note that licences can only be issued for specific purposes defined in the Act.

The latest science for counting hares, which has been rolled out following a three-year project commissioned by SNH, estimated the current mountain hare population to be 135,000 – a figure which constantly renews as mammals breed each year. Importantly, it also found that the management of driven grouse moors appeared to provide a net benefit to mountain hare populations, even after population control was factored in. The densities of mountain hares remain highest on managed moorland and their range is stable in this core area.

In the Highland region, for example, the density of mountain hares on driven grouse moors was 35 times higher than on moors not managed for shooting. In large parts of Scotland, where there are no grouse moors – they are completely absent from the landscape. GWCT research published in 2019 reported that, in Tayside, on moors where no management for grouse shooting was taking place there was evidence of annual declines of 40 percent per year.

Over the last 20 years mountain hare distribution has remained stable in this habitat, except where the habitat has been replaced or fragmented by afforestation (Hesford, N et al. (2020). The Werritty report (2019) highlighted that mountain hares' benefit from grouse moor management, that there is little evidence of impact of culling on the species and that their numbers can increase quickly on grouse moors.

There are now 60 upland estates trained to count mountain hares and 80 survey sites established. Hare abundance has been found to be high on grouse moors with an average close to 9 hares seen per 1000m of walked transect. There is significant work ongoing in relation to counting methodology for mountain hare populations and there is widespread recognition among land managers that control of hares should ensure populations remain sustainable.

The Principles of Moorland Management best practice guidance, which is supported by 29 organisations, provides comprehensive guidance on appropriate methods of managing mountain hare populations. It sets out a professional approach to management that draws on practitioner experience and evidence, enabling landowners and managers to make an informed decision about how they wish to approach sustainable management.

Following on from the Werritty Report we looked forward to the publication of the Scottish Government's response and an opportunity for scrutiny and wider consultation on current practices. We do not believe further protection is required or that the evidence exists to support additional legislation or protections, rather simply the invoking of the law which already exists.

We oppose Amendment 56 by Mark Ruskell

In 2019 the Scottish Government gave beavers European Protected Species status in Scotland. Although there has been no formal requirement to report to the EU on conservation status of beavers in the UK, SNH consider that as long as populations continue to increase in number and range, the conservation status of beavers in Scotland can be considered as being favourable. As well as the information on population dynamics, we know that there is a large amount of suitable habitat for beavers and SNH consider that their future prospects are good. The species will continue to be monitored.

As European Protected Species, the Conservation (Natural Habitats &c.) Regulations 1994 make certain actions in relation to wild beavers an offence unless carried out under licence. This legislation acknowledges the need to manage protected wildlife but SNH, as licensing authority, have to make sure that management of beavers under licence is carried out for the right reasons, only when necessary and without compromising their conservation status. [The management framework](#) sets out how SNH will achieve this.

A full survey of the Tayside population was carried out in 2012 and was repeated in 2017/18 by SNH. The 2012 survey found 39 territories and the 2017/18 survey recorded 114 territories, demonstrating that beavers had successfully established themselves in the Forth catchment. This potentially represents a population increase of over 20% per annum between 2012 and 2017/18. If this growth rate has continued, SNH suggest that there might be over 160 territories currently present.

At the end of May 2020 SNH published its annual Beaver Licensing Summary Report, which highlighted that beaver population expansion has continued to occur with new records cited within existing catchments and new catchments and also sub-catchments; this was backed up by anecdotal reports and casework over the past year.

In its first year of operation, the management and licencing framework for beavers, as established by all key stakeholders including Scottish Government and SNH, is proving effective and fit for purpose. Beaver populations are clearly maintaining themselves and SLE does not believe there is evidence to support this amendment or that it is necessary.

References

Hesford, N et al. (2020) Distribution of mountain hares (*Lepus timidus*) in Scotland in 2016/2017 and changes relative to earlier surveys in 1995/1996 and 2006/2007. *Wildlife Biology* 2020: - DOI (10.2981/wlb.00650)

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