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The Hunting with Dogs (Scotland) Bill

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The Hunting with Dogs (Scotland) Bill ('the Bill') repeals and replaces an existing piece of legislation on the same topic - the Protection of Wild Mammals (Scotland) Act 2002. The Bill makes provision about prohibiting hunting wild mammals using dogs, prohibiting trail hunting, and related issues.



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Summary

The [Hunting with Dogs \(Scotland\) Bill](#) ('the Bill') was introduced on 24 February 2022. Hyperlinks are provided below for the:

- [Bill as introduced](#),
- [Policy Memorandum](#), which explains the Scottish Government's policy intentions and why certain decisions about the Bill have been made, and
- [Explanatory Notes](#), which explain each section of the Bill in detail.

This briefing provides background information to the Bill, including:

- An overview of the existing legislation - the Protection of Wild Mammals (Scotland) Act 2002, as amended ('the 2002 Act') - which this Bill seeks to repeal and replace.
- An overview of the findings and recommendations of the Bonomy Review, which was commissioned by the Scottish Government "to ascertain whether [the 2002 Act] is providing a sufficient level of protection for wild mammals, while at the same time allowing effective and humane control of animals, such as foxes, where necessary, and report."
- An overview of the Scottish Government's response to the Bonomy Review.
- An overview of the consultations following the recommendations of the Bonomy Review, as well as ahead of this Bill.

The briefing then considers the Bill section by section. In contrast to the 2002 Act, and in addition to amending the language and structure of the provisions in that Act, the Bill:

- Makes it an offence to use more than two dogs when making use of an exception to the offence provided for in the Bill for the management of wild animals above ground. The Bill also provides that a licence to use more than two dogs can be obtained under specific circumstances.
- Does not exclude rabbits or rodents (except mice and rats) from the definition of 'wild mammal'.
- Makes it an offence to use more than one dog when making use of the exception for the management of foxes and mink below ground.
- Provides a new exception for activities carried out for the purpose of environmental benefit where up to two dogs may be used. A licence to use more than two dogs can be obtained under specific circumstances.
- Makes trail hunting unlawful except when training dogs to follow an animal-based scent for a lawful purpose.
- Provides that the court may issue an order removing the horse involved in committing an offence from a convicted person. The 2002 Act already provides that the court may order that dogs in custody of a convicted person during or since the offence may be removed, and/or that the court may disqualify a person convicted of an offence from

having custody of a dog for a specified time.

Background to the Bill

The Hunting with Dogs (Scotland) Bill ('the Bill') repeals and replaces an existing piece of legislation on the same topic - the Protection of Wild Mammals (Scotland) Act 2002 ('the 2002 Act').

Following concerns raised about the existing legislation, the Scottish Government commissioned senior Scottish judge, Lord Bonython, to carry out a review and make recommendations for change.

The existing legislation, the Bonython Review, and subsequent consultations and activities are explored in the following sections.

Existing legislation

The existing law on hunting wild mammals with dogs is set out in the [Protection of Wild Mammals \(Scotland\) Act 2002](#). In summary, the 2002 Act provides:

- That a person commits an offence if they "deliberately hunt[] a wild mammal with a dog", or, in the case of the owner or person responsible for the dog, allow another person to do so.
- That it is an offence for an owner or occupier of land to knowingly permit another person to enter or use the land to hunt a wild mammal with a dog.
- That it is an offence for an owner or person having responsibility for a dog to knowingly permit another person to use it to hunt a wild mammal.
- For a number of exceptions where using a dog for hunting a wild mammal is not an offence. The exceptions are:
 - To "use a dog under control" to stalk a wild mammal or flush it from cover above ground. In order to make use of this exception, the activity must be for [a purpose specified in the legislation](#), for example to protect livestock or ground-nesting birds, or to prevent the spread of disease. It is a requirement under this exemption that "once the target wild mammal is found or emerges from cover, it is shot, or killed by a bird of prey". However, a person does not commit an offence if a dog kills a wild mammal in the course of this activity.
 - To use a dog under control to flush a fox or mink from below ground for the same purposes as above.
 - To [use a dog in connection with falconry and shooting for sport](#), "to stalk a wild mammal, or flush it from cover above ground, for the purpose of providing quarry for the sport", if the wild mammal is shot or killed by a bird of prey as soon as possible after it emerges from cover.
 - For an ["authorised person", such as a local authority officer or police officer](#), to use a dog to search for, or catch, a wild mammal "if that person does so with no intention of harming the wild mammal".
 - For [retrieving or locating a wild mammal](#) under specified circumstances.

- [That Scottish Ministers may add to excepted activities by order.](#)
- For arrest, search and seizure in connection with a suspicion "with reasonable cause that a person has committed or is committing an offence" under the 2002 Act, as well as time limits for summary proceedings, and penalties in line with other animal welfare offences as provided for by the [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020](#).
- That the court may, on convicting a person of an offence under the Act, make an order for either the care or disposal of a dog in the offender's custody during or since the offence, or disqualifying the offender from having custody of any dog for a period that the court sees fit.

In the 2002 Act a "wild mammal" includes "a wild mammal which has escaped, or been released, from captivity, and any mammal which is living wild", but does not include rabbits or rodents.

Concerns with the operation of the 2002 Act led to [a Scottish Government commissioned review](#), and [two further consultations](#), prior to [the introduction of the Hunting with Dogs \(Scotland\) Bill](#) in February 2022.

Existing legislation in England and Wales

Hunting with dogs is also an offence in England and Wales as a result of the [Hunting Act 2004](#). In contrast to the approach of the 2002 Act in Scotland, the 2004 Act prohibits the use of more than two dogs when making use of the exemption for "stalking and flushing out", and the use of more than one dog below ground.

The Bonomy Review

The Hunting with Dogs (Scotland) Bill has been introduced following a review of [the 2002 Act](#).

In December 2015, the Scottish Government commissioned senior Scottish judge, Lord Bonomy, to lead a review of the Act "to ascertain whether it is providing a sufficient level of protection for wild mammals, while at the same time allowing effective and humane control of animals, such as foxes, where necessary".

Excluded from the Review were questions of whether predator control is necessary to protect livestock or wildlife, the operation of other wildlife legislation unless it has a direct bearing on the operation of the 2002 Act, and other types of predator or pest control.

A call for evidence was held in early 2016, interviews were carried out with relevant stakeholders, and other investigations made.

While the remit covered hunting of all wild mammals covered by the 2002 Act, the focus of the Review was largely on the use of dogs to hunt foxes.

Lord Bonomy noted in the [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#) that:

“ "In the course of the Review the question has turned out to be more specifically whether the Act has resulted in the elimination so far as possible of the chase and kill by hounds or other dogs of traditional fox-hunting, while allowing effective and humane control of foxes by flushing to guns by a pack of hounds or an unspecified number of dogs. "To neither part of the question is it possible to give a clear yes/no answer. There are reasons to be concerned in relation to both aspects. On the other hand, revising and amending the terms of the Act, and introducing measures aimed at making the actions of hunts more transparent and accountable, could over time lead to a situation where a positive answer can be given to both."”

The report makes "two broad conclusions":

“ ...in the first place, that there are aspects and features of the legislation which complicate unduly the detection, investigation and prosecution of alleged offences; secondly, that there is a basis for suspecting that there may be occasions when hunting, which does not fall within one of the exceptions, does take place and that the grounds for that suspicion should be addressed.”

Discussions and recommendations were set out on a number of themes, explored below.

Changes since the 2002 Act

The Bonomy Review deals with the central question, highlighted above, of whether the 2002 Act is operating as intended. The Review highlighted that the Act gave rise to changes in fox hunting practices in order to comply with the law, particularly among mounted fox hunts.

For mounted hunts, as a traditional sporting activity, Lord Bonomy recognises that they have a social role which is important for those involved:

“ Those participating in and following the hunt gather at a suitable point of departure where they meet and greet their friends and are briefed by the huntsman. The mounted followers have the opportunity to ride out over beautiful countryside to which they would not otherwise have access and occasionally take up a position to divert a running fox from its escape route back to the guns. The foot followers can travel by vehicle to suitable vantage points from which they can observe the huntsman control the pack. A wide range of members of the rural community of all ages engage with the hunt in these ways. Other related activities foster further social interaction. The hunts continue to make a major contribution to the social cohesion and community spirit of the locality and to highly valued features of rural life.”

However, since the chase and kill by dogs that has traditionally been part of the country sport of mounted fox hunting was made unlawful, mounted hunts have since 2002 offered a fox control service. As a result, the hunts are now accompanied by guns which then kill the fox. The Review notes:

“ Since the Act came into force, it is the practice of mounted hunts in Scotland to offer farmers, landowners and estate managers a pest/fox control service using the pack of hounds to flush out a fox or foxes to be shot by strategically placed guns, a practice that was not followed by any of the mounted hunts prior to 2002. The fox-hunts on which they engaged two or three times a week from autumn to spring, and often beyond, which involved the use of the pack of hounds to locate, chase, catch and kill foxes, have now been replaced by pest/control activities under the above exceptions. The potential for this development was not addressed specifically in the debates on the Bill.”

In this regard, Lord Bonomy recognises a distinction between foot packs and mounted fox hunts, in that the activities of foot packs have not changed significantly since 2002. He notes:

“ That distinction between the activities of foot packs and those of mounted packs reflects their respective histories. The former were created as a means of addressing the need for pest or predator control and that continues to be their function; the latter were essentially sporting societies which have tried to adapt to the environment where using a pack of hounds to chase and kill a fox has been outlawed. That may also explain why the work of foot packs has the appearance of a diligent pest and predator control operation, whereas among mounted hunts pest control can appear to be incidental to the primary objective of exercising horse and hounds.”

Lord Bonomy specifies that no allegations of illegal hunting by foot packs were made to the Review.

One focus of discussion during the Review was the difference in the number of guns accompanying foot packs and mounted hunts. The Review suggested that where a foot pack may use twenty or more guns, a mounted hunt may only have two or three guns present, as per a voluntary fox control protocol which specifies that "a minimum of two dogs should be available". The result, according to the Review, is that "a fox cannot be shot, resulting in the fox being stalked, a situation which the Act was intended to avoid". Lord Bonomy notes:

“ "It is difficult to view the deployment of two or three guns in fairly open countryside, where a full pack of hounds are being used and there is a wide range of escape routes for a flushed fox, as complying with the obligation of the flusher to "act...to ensure" that it is shot."”

This has led, the Review outlines, to suspicions that some activities have occurred which are in contravention of the 2002 Act. The Review stated that it received "material on the basis of which an impartial observer would be entitled to suspect that there are occasions when the packs of mounted hunts engage in chasing foxes when on the face of it the huntsman is in control of the pack. The evidence is not conclusive, but equally the suspicion that it gives rise to cannot be dismissed as groundless."

It went on to recognise the suspicion between opponents and supporters of hunting, but noted that there was optimism on both sides "that it should be possible to agree on a way of trying to verify whether the suspicion of illegal hunting is well-founded". The Review's recommendations on this point are addressed in the next section.

Best practice and transparency

The Review discussed the, at times, deep suspicion between proponents of hunting and those who are opposed. To address the issue, during the course of the Review, major stakeholder groups representing both hunting and animal welfare interests were optimistic about the potential for hunts to be periodically monitored by independent observers.

The Review recommended that consideration should be given to the appointment of part-time, independent hunt monitors to observe on a random basis the activities of hunts using packs of hounds. It suggests that hunt monitors' observations would be reported on regularly, for instance as part of the Wildlife Crime in Scotland Annual Report, and observations could be admissible in court. The Review states that "while it is conceivable that such an arrangement could be provided for in legislation, there is reason to believe that it should be possible to develop a voluntary Protocol or Code of Practice to regulate this through discussions in which Police Scotland should be involved."

In addition, the Review discussed the potential for the development of a Code of Practice, building on the existing Scottish Mounted Foxhound Packs Fox Control Protocol, to increase data collection and reporting around, in particular, mounted fox hunts. The result of this would be a commitment to provide advance notice to Police Scotland of the identities of key people involved (e.g. the huntsman and other personnel, the fieldmaster, and any terriermen), the location and boundaries of the hunt, the number of guns and identities of those carrying the guns, the number of hounds, and modes of transport used. The Review goes on to suggest that

“ In addition, when intimating the conclusion of the day's activity, the number of foxes or other wild mammals roused, injured and killed and the means by which they were injured and killed should be intimated along with the number of shots discharged. The details intimated before and after the hunt should be intimated simultaneously to the hunt monitors.”

The Review suggests that Police Scotland could maintain a log of activities, report to Scottish Ministers annually, and for any relevant information to be included in the Wildlife Crime in Scotland Annual Report.

Clarity and enforcement

The second key focus of the review was whether the 2002 Act provides sufficient clarity to enable detection, investigation and prosecution of any alleged offences.

Police Scotland has dedicated wildlife crime liaison officers, with senior officers in charge of coordination and oversight. They are supported by local wildlife crime officers. A National Wildlife Crime Unit provides a specialist service to police forces across the UK, and its Chief Inspector spends two days per week in Scotland. The Bonomy Review noted that "The allocation of police resources has not been the subject of adverse comment to the Review."

Similarly, the Crown Office and Procurator Fiscal Service (COPFS) has a Wildlife and Environmental Crime Unit consisting of four procurators fiscal. A procurator fiscal is a civil servant and qualified solicitor, solicitor-advocate or advocate [responsible for initial investigations regarding whether suspected crimes should be prosecuted](#). Again, the

Bonomy Review highlighted that the level of resource is "on the face of it reasonable provision and has not been the subject of any criticism raised in the course of the Review."

Lack of clarity

The Review highlighted the view from Police Scotland, however, pointing to:

“ weaknesses in the Act, including the absence of definition of certain expressions such as "stalking", "searching", "flushing", the number and complexity of the exceptions to the offence of "deliberately hunting a wild animal with a dog" and a general consequent lack of clarity in the legislation. It is claimed that as a result it becomes extremely difficult to obtain sufficient evidence to prove the basic offence of deliberately hunting a wild mammal with a dog. The legislation is said to be complex and to need to be simplified to make it more effective. It is also said in the Police Scotland submission that the fluid nature of the activities of a mounted hunt can create issues in determining when an offence is being committed.”

In particular, Lord Bonomy highlights a number of issues with the language of the 2002 Act. These include:

- The limited definition of "hunt" and confusion caused by the use of "deliberately" in section 1 (1) where it states that "A person who *deliberately hunts* a wild mammal with a dog commits an offence". Lord Bonomy highlighted conclusions by the English courts which "described hunting as 'by definition intentional', something that can only be done intentionally or deliberately". The Review concluded that:

“ The point to be stressed is that the inclusion of 'deliberately' has set the test for proof of an offence under section 1(1) very high, or at the very least complicated the interpretation of the test unduly, by creating the impression that something more than evidence of the hounds apparently acting under the control and direction of the huntsman when they run in a line chasing a fox is required to provide sufficient evidence of the commission of an offence under section 1(1).”

- An "inconsistency and the lack of clarity in the way in which the exceptions are expressed"; for example, section 2(1) requires that a flushed mammal is shot or killed "once it is safe to do so", while other sections require that a flushed mammal is shot or killed "as soon as possible". Lord Bonomy states that "It is subjective and less peremptory than the others. It leaves scope for a chase to begin. It also defines the point of shooting by reference to safety, which common sense would suggest is implied in the requirement that the mammal should be shot 'as soon as possible'."

As a result, the Review recommended that:

- The language used in the 2002 Act should be reviewed "with a view to removing inconsistencies and inappropriate and unnecessary expressions and introducing greater consistency and clarity of expression".
- Consideration should be given to amending [section 1 of the 2002 Act](#) (which provides that it is an offence to "deliberately hunt a wild mammal using a dog") "in one of the following ways: either to provide that a person who "intentionally or recklessly hunts" a wild mammal with a dog commits an offence, or alternatively to provide that a person who "uses, or causes or permits, a dog to hunt" a wild mammal commits an offence.

Time limits

The Review also recommended that [the time limit for bringing prosecutions for summary \(less serious\) offences under the 2002 Act be extended](#). The Review noted that a general time limit of six months from the offence for bringing prosecutions for summary offences under the Criminal Procedure (Scotland) Act 1995 applies, but that this has caused problems. The Review noted that:

“ The reporting of one case two weeks before the expiry of that [six-month] period made proper investigation impossible. Increasingly wildlife offences are the subject of forensic science investigation and post-mortem examination which often take time. Where skilled opinion evidence is required, obtaining a fully researched expert report may also take time. In addition enquiries can be delayed by unwillingness of witnesses to give statements. A number of statutes which create wildlife offences provide for summary prosecution but with an extended time limit, which is six months from the date on which sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the offence...Both the police and the Crown would welcome amendment of section 5 to extend the time bar in that way.”

The time limit for bringing prosecutions under the 2002 Act has already been extended for the offence of an owner or occupier of land to knowingly permit another person to use the land to hunt a wild mammal with a dog, and the offence of the owner of, or person responsible for, a dog knowingly permitting the dog to be used for that purpose. The [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020](#) ('the 2020 Act') amended the 2002 Act so that proceedings for these offences "may be brought within the period of 6 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge." No proceedings may be brought after a period of three years.

For the core offence of hunting a dog with a wild mammal (section 1(1) in the 2002 Act), there is no time limit because it is triable either summarily or on indictment (i.e. [by summary or solemn procedure](#)), so section 136 of the Criminal Procedure (Scotland) Act 1995 does not apply.

Offences and exceptions

A number of options for amending provisions in relation to the offences and exceptions to the offences were also explored, including limiting the number of dogs, licensing, and introducing vicarious liability, or a reverse burden of proof.

Muzzling and limiting the number of dogs that may be used

The Review received a number of submissions proposing that hunts could be limited to using a maximum of two dogs above ground, and one dog below ground, as is the case in England and Wales. In addition, submissions proposed that dogs could be muzzled.

In relation to muzzling, the Bonomy Review did not recommend that muzzles should be required because it is believed to increase the risk of entanglement and injury, or prevent self-defence in the case of a terrier who is being attacked underground. In addition, the Review notes, it may prevent dogs from barking to alert the hunt to a scent or quarry.

The Bonomy Review also did not recommend that hunts should be limited to using a maximum of two dogs above ground. In relation to the use of two dogs, Lord Bonomy stated that:

“ I am persuaded by the submissions and such other evidence as there is, in particular that of the experience of those who work with packs, the scientific study paper by Naylor and Knott (taking full account of its limitations and the criticisms made of it), and the fact that in England and Wales hunts do not generally flush to guns using two dogs, not only that searching and flushing by two dogs would not be as effective as that done by a full pack of hounds, but also that imposing such a restriction could seriously compromise effective pest control in the country, particularly on rough and hilly ground and in extensive areas of dense cover such as conifer woodlands.”

In relation to limiting hunts to the use of one dog below ground, this refers to the use of terriers when a fox goes underground. The Review notes that the Code of Conduct of the National Working Terrier Federation recommends that, wherever possible and practical, only one dog should be used. As a result, the Bonomy Review concluded with a recommendation that hunts should be limited to the use of one dog below ground.

Licensing

Lord Bonomy notes that a licensing scheme to enable pest control was originally envisaged as part of the 2002 Act, but that these provisions were removed during the passage of the Bill which became the 2002 Act. The Review only considered the question of licensing very briefly, "in the absence of any detailed submission about the benefit of licensing". The Review noted that:

“ While greater transparency by way of advanced notification of certain information about the activity of hunts has been proposed in submissions and addressed above, it is not clear that establishing a formal system of licensing would do more for the protection of wild mammals than amending the legislation would. The same difficulties of proof and enforcement would remain. The bureaucracy and expense involved are unlikely to be adequately reflected in resultant benefit. That is a very broad assessment based on an overview of the material gathered by the Review... The one obvious gain would be the possibility of licence revocation in the event of non-compliance. However the difficulty of proof of non-compliance would remain.”

Vicarious liability and reverse burden of proof

The Review makes two recommendations:

- To consider whether a landowner should be "vicariously liable", whereby a landowner would be guilty of an offence, were someone involved in the hunt to be found guilty of an offence.
- That the 2002 Act should be amended to provide that it would be the accused's responsibility to establish that they have made legitimate use of one of the exceptions - a "reverse burden of proof".

On vicarious liability, the Review notes that "there may be merit in providing that the owner who gives the hunt permission to hunt over the land would be guilty of an offence in the event that someone involved in the hunt commits an offence." The Review highlighted that those in favour of this approach "consider that the landowner engaging a hunt to perform pest control services would take a close interest in the arrangements being made to satisfy the requirements of section 2."

On the reverse burden of proof, the Review discusses the question in detail in relation to previous cases and legal conventions. The Review considered that:

- The issue is likely to be controversial, and under certain circumstances may contravene Article 6 of the European Convention on Human Rights, which in part establishes the principle that a person shall be presumed innocent until proven guilty.
- In general, the convention of Scots law is also that a person shall be presumed innocent until proven guilty, though there are exceptions to this rule.

However, Lord Bonomy explored the question of who bears the burden of proof where the accused is making use of an exception set out in legislation.ⁱ The Review stated:

“ If the onus on the accused is simply an evidential burden, i.e. to raise the exception under which he was acting as an issue, the task on the Crown of proving beyond reasonable doubt that he was not acting in accordance with the exception is an extremely difficult one. First of all, it involves proving a negative. It also involves obtaining evidence about events that occurred in remote areas far from the public gaze where the loyalties of those who are most likely to have had the best view of what happened may make investigation difficult.”

The Scottish Government's response and consultations

Following the publication of the Bonomy Review, the Scottish Government committed to:

- invite key stakeholders to work together to develop a code of practice for hunts and explore the potential for a new monitoring scheme, and
- consult on Lord Bonomy's proposed changes to the existing legislation.

A first consultation on the Bonomy Review recommendations was held in 2017-2018, and an analysis of responses was published in July 2018. The consultation received over 18,000 responses, 98% of which were campaign responses submitted through five different campaigns, and were generally supportive of or called for strengthening the Bonomy recommendations. Of the 25 organisational responses, all but two came either from organisations with an interest in countryside management or country sport, or animal welfare organisations. These were nearly evenly represented, with 13 countryside organisations, and 10 animal welfare charities and campaign groups.

The analysis noted that:

“ Between 94% and 98% of respondents indicated support for or agreement with each of Lord Bonomy's proposals for reform (i.e. they ticked 'yes' to the closed questions). These figures reflect the very large campaign response. Among the organisational respondents (n=25), animal welfare charities and campaign groups indicated support, whereas countryside management and sporting groups generally indicated opposition.”

Following the conclusion of the first consultation, on 9 January 2019, Mairi Gougeon, then Minister for Rural Affairs and the Natural Environment, announced that the Scottish Government would introduce legislation to implement the majority of Lord Bonomy's

ⁱ Lord Bonomy's deliberations can be found on pages 70-77 of the Bonomy Review report, see in particular pages 76-77.

recommendations. In addition, they announced an intention to:

- introduce a new general limit of no more than two dogs to be used to flush foxes or other wild mammals from cover through new legislation,
- consider a licensing scheme permitting more than two dogs to be used in certain circumstances,
- ban trail hunting.

A [second consultation on proposals](#) was held in October-December 2021. The consultation sought views on the issues above, in addition to further measures to strengthen the law to tackle hare coursing. Hare coursing is also prohibited as a consequence of the 2002 Act, through the consultation document states that the Scottish Government is aware that the practice continues in some parts of Scotland.

The second consultation received over 10,000 responses, and an analysis is yet to be published. However, the policy note for the Bill provides a preliminary review of the responses and states that it is intended to be published later this year. The overview of the responses is replicated in Annex A to this briefing.

The Bill

The Hunting with Dogs (Scotland) Bill makes provision about the prohibition of hunting wild mammals using dogs, about the prohibition of trail hunting, and related issues. The following sections of this briefing describes each section of the Bill in turn.

Section 23 of the Bill repeals the Protection of Wild Mammals (Scotland) Act 2002. The Policy Memorandum states that:

“ The Bill will broadly replicate the provisions of the 2002 Act but will make certain modifications to further limit the circumstances in which it is permitted to search for, stalk or flush a wild mammal using a dog. The Bill addresses the language issues identified by Lord Bonyon, closes loopholes in the existing legislation, facilitates the effective detection and prosecution of wildlife crimes and enhances the welfare of wild mammals by bringing in additional measures to reduce the risk of wild mammals being killed by dogs. The Bill will also, subject to certain modifications, broadly replicate the provisions of the 2002 Act which provide for powers of entry, search and seizure in relation to the investigation of offences, and allow courts to disqualify a person convicted of an offence from owning or keeping a dog.”

Criminal law rules and procedures

The Hunting with Dogs (Scotland) Bill contains criminal offences. The following section briefly explains some of the more general rules and procedures of criminal law in the context of the Bill.

Types of criminal procedure

There are two procedures for investigating and prosecuting crimes in Scotland. Which one is used depends on the seriousness of the crime, including the seriousness of the allegations in the particular case. Among other things, the choice of procedure affects the range of sentences available on conviction. The procedures are as follows:

- **Solemn procedure** is used where a serious crime has been committed. The case may be tried in the High Court or a sheriff court, depending on the seriousness, and any trial will have a jury. The offence in section 1(1) of the Bill may be prosecuted using solemn procedure for more serious cases.
- Less serious crimes are prosecuted using **summary procedure** and may lead to a trial in a sheriff or justice of the peace court without a jury. Offences committed under section 1(1) can be prosecuted using summary procedure for less serious cases. The remaining offences in the Bill can only be prosecuted using summary procedure.

Penalties

The Bill provides for different penalties for the different offences. For the most serious offences committed under section 1(1), the Bill provides that a person is liable on conviction 'on indictment' to imprisonment for a term not exceeding 5 years, or an unlimited fine, or both. If someone is convicted 'on indictment' they have been prosecuted under solemn procedure and it is therefore a more serious crime.

For the other offences in the Bill, lower maximum penalties apply. A lower maximum

penalty also applies for a person who has committed a less serious offence under section (1) and been convicted following summary proceedings.

For the more serious offences in the Bill, a person may be liable on conviction to a prison sentence. For the most serious offences under section 1(1), the prison sentence may be up to five years. For less serious offences under section 1(1) and for some of the other offences in the Bill, a person may be liable on conviction to a prison sentence between 6 and 12 months.

In Scotland, there is a presumption against prison sentences under 12 months. [This is because there is evidence to suggest that short custodial sentences are less effective at preventing re-offending](#) than other types of penalties. Therefore, apart from for the most serious offences under section 1(1) there is a presumption against prison sentences for these crimes.

Where the legislation allows for a penalty of imprisonment, [the Criminal Procedure \(Scotland\) Act 1995 provides that the courts may instead of imposing a prison sentence, impose a 'community payback order'](#). A community payback order is an order requiring the convicted person to, for example, comply with supervision requirements and/or carry out unpaid work. The Scottish Government states that the presumption against short sentences ["is intended to encourage greater use of community sentences and help break cycles of reoffending"](#).

Time limits

There can be time limits for bringing proceedings against someone suspected of a crime. This depends on whether the crime is more or less serious and therefore whether it is prosecuted under summary or solemn procedure, and whether there are specific provisions on time limits in the relevant legislation.

In the Bill, the time limits are different depending on the offence. For offences under section 1(1), there is no time limit because offences may be prosecuted using either summary or solemn procedure.

For most of the other offences, which may be prosecuted using summary procedure only, a time limit of 6 months from the commission of the offence (or the commission of the last offence where multiple offences were committed) applies.ⁱⁱ This is a general time limit set out in section 136 of the Criminal Procedure (Scotland) Act 1995.

However, the Bill specifically provides for a longer time limit for the offences under section 2 and 11 of the Bill. For offences under these sections, proceedings may be brought within 6 months of the date on which sufficient evidence to justify the proceedings became known to the prosecutor. [This longer time limit is provided for in section 14.](#)

Part 1: Offences

Sections 1 & 2 provides that it is an offence to hunt a wild mammal using a dog or to knowingly cause or permit another person to hunt a wild mammal using a dog. These activities were already unlawful as a result of provisions in the 2002 Act, but the Bill repeals the 2002 Act as a whole in a later section and these sections replace the

ⁱⁱ This is currently subject to a temporary extension to 12 months in response to the Covid-19 pandemic.

provisions on offences with updated language.

Section 1 provides that a person commits an offence if the person hunts a wild mammal using a dog, if none of the exemptions set out in later sections apply. It also sets out maximum sentences, including imprisonment for up to 5 years for the most serious offences.ⁱⁱⁱ

Section 2 provides that a person commits an offence if they are the owner or occupier of land and knowingly cause or permit another person to hunt a wild mammal using a dog on that land. It is also an offence for the owner of a dog or a person responsible for a dog to knowingly cause or permit another person to hunt a wild mammal using that dog. Maximum sentences include imprisonment for up to 12 months.

Changes from the 2002 Act

The Bill makes changes to the wording of the offences, and to the wording of certain definitions. For example, the Bonomy Review had highlighted the confusion caused by the use of the word "deliberately" in section 1(1) of the 2002 Act. This word has been removed in the Bill, the logic being that anyone who hunts does so deliberately.

In addition, the Bill makes one substantive change compared with the 2002 Act:

1. The definition of "wild mammal" in section 1 has been amended. Where the 2002 Act excepts rabbits and rodents from the definition of "wild mammal", the Bill no longer excepts rabbits and all rodents, but excepts rats, mice, or animals "living under temporary or permanent human control".

According to the policy note:

"The stakeholder and public consultation on the definition of "wild mammal" highlighted that those who are suspected of undertaking hare coursing, an illegal activity under the 2002 Act, frequently use the cover that they are legally using dogs to hunt rabbits. Including rabbits in the definition of wild mammal will aid in the detection and enforcement of hare coursing offences by removing this activity as a potential cover."

The [Animals and Wildlife \(Penalties, Protections and Powers\) \(Scotland\) Act 2020](#) had previously increased the maximum penalties in the 2002 Act for the offences in section 2. Penalties were increased in the same way for other animal welfare offences. The Bill remains in line with those changes.

Part 1: Exceptions to the offences

Sections 3 to 8 set out exceptions, or situations where the use of a dog to hunt a wild mammal is not an offence under sections 1 and 2. These exceptions are:

ⁱⁱⁱ Note that where imprisonment is an option for sentencing, the [Criminal Procedure \(Scotland\) Act 1995](#) also provides the court with further sentencing options, such as community payback orders. Orders can require a convicted person to undertake community service, training, or pay compensation, for example.

- The management of wild animals above ground,
- The management of foxes and mink below ground,
- Falconry, game shooting and deer stalking, and
- Environmental benefit.

Section 3 sets out an exception from the general prohibition on hunting a wild mammal with a dog for the management of wild animals above ground. It is permitted to use a dog above ground to search for, stalk or flush a wild mammal with the intention of killing it, or search for and retrieve a wild mammal which has been killed, if the purpose of the activity is to:

- Prevent serious damage to livestock, woodland or crops,
- Prevent the spread of disease, or
- Protect human health.

There are also several conditions for making use of the exception. These are that:

- No more than two dogs are used (or the activity is carried out with a licence granted under section 4). Where there is no licence in place that reasonable steps are taken to ensure that any dog does not join with others to form a larger pack,
- The dog(s) are under control,
- Permission has been given by the landowner,
- The wild animal is shot or killed by a bird of prey (e.g. directed by a falconer) "as soon as reasonably possible", and if attempts to kill it result in it being injured, reasonable steps are taken to kill it in a way that causes minimum possible suffering.

The 2002 Act provided for a similar exception; however, the limit to two dogs in the absence of a licence is new for this Bill.

As discussed in [earlier sections of this briefing](#), the Bonomy Review considered, but declined to recommend, that the number of dogs should be limited to two above ground. The Review did not assess a more specific scenario where there is a general limit of two dogs in place, in conjunction with a licensing system for the use of more than two dogs if necessary, as provided for in section 4.

Section 4 provides that a person may apply for a licence to use more than two dogs for the activities excepted under section 3. To obtain a licence, a person must apply to the relevant authority, in this case, Scottish Ministers, or Scottish Natural Heritage (NatureScot)^{iv} where Scottish Ministers have delegated authority to them. The policy note suggests that NatureScot will be responsible for issuing licences.

Among other conditions, the relevant authority must be satisfied that there is no other solution which would be effective in achieving the purpose for which the licence is sought.

^{iv} Scottish Natural Heritage changed its name to NatureScot in August 2020. However, its legal name, established by the [Natural Heritage \(Scotland\) Act 1991](#), continues to be Scottish Natural Heritage. This is why the Bill refers to the organisation using its "former" name.

These are the purposes set out in section 3(2) (to prevent serious damage to livestock, woodland or crops, prevent the spread of disease, and protect human health). The relevant authority may also only permit the minimum number of dogs that would be effective in achieving that purpose.

Licences can only be granted for a maximum period of 14 days, and the authority can specify conditions it considers appropriate. For example, it may require the licensee to report back on their activities.

As also discussed [earlier in this briefing](#), the Bonomy Review considered the use of licensing very briefly (in the absence of detailed submissions to the Review on this topic) in relation to licensing all hunting with dogs, and concluded that it was not clear how this would address the issues beyond the ability to revoke a licence if wrongdoing was found, given that the challenges around proof and enforcement would remain. The Review did not, however, consider the more specific question of licensing for the use of a greater number of dogs in conjunction with a general limitation on using more than two dogs for hunting wild mammals.

Section 5 sets out an exception for the management of foxes and mink below ground. It is permitted to use a dog to search for, or flush, a fox or mink from below ground with the intention of killing it. However, to make use of this exception the activity must be carried out for one of the purposes set out in the Bill. These are the same purposes as the ones set out for section 3 above (preventing serious damage to livestock, woodland or crops, preventing the spread of disease, protecting human health) in addition to the purpose of relieving the suffering of an injured or dependent fox or mink.

As in section 3 there are a number of similar conditions for making use of this exception. In contrast to the exception in section 3, however, it is not permitted to use more than **one dog** to search for, or flush, a fox or mink from below ground, and there is no licensing provision which permits more than one dog to be used.

Section 6 sets out an exception for falconry, game shooting and deer stalking. This exception may be used if a person is using a dog above ground to search for, stalk or flush a wild mammal with the intention of providing quarry (intended prey) for falconry, game shooting or deer stalking, or to search for and retrieve a wild mammal which has been killed during that activity. Falconry is the practice of using a bird of prey to hunt. This section provides an exception for sporting purposes.

There are several conditions for making use of the exception, which are nearly identical to those under section 3 (e.g. no more than two dogs may be used, dogs must be under control, etc.). The difference is that there is no licensing option available under this exception.

Section 7 sets out an exception for activities carried out for the purpose of environmental benefit. This exception may be used if a person is using a dog above ground to search for, stalk or flush a wild mammal, with the intention of killing, capturing or observing it, or searching for and retrieving a wild mammal which has been killed. To make use of this exception, the activities must be for the purpose of:

- Preserving, protecting or restoring a particular species (which may include controlling the number of a species for its welfare),
- Preserving, protecting or restoring the diversity of animal or plant life,

- Eradicating an invasive non-native species of wild mammal from an area.

As with other exceptions, there are a number of conditions which must be met to make use of this exception. These are that:

- No more than two dogs are used (or the activity is carried out with a licence granted under section 8). Where there is no licence in place, that reasonable steps are taken to ensure that any dog does not join with others to form a larger pack,
- The dog(s) are under control,
- The activity is carried out **either** with the permission of the landowner, **or** the person undertaking the activity is exercising a power of entry under the [Wildlife and Countryside Act 1981 \(sections 14M or 14N\)](#), or the [Deer \(Scotland\) Act 1996 \(section 15\)](#).
- The wild mammal is either captured, shot dead or killed by a bird of prey as soon as reasonably possible, or observed and allowed to escape without being pursued, injured or killed. If attempts to kill it result in it being injured, reasonable steps are taken to kill it in a way that causes minimum possible suffering.

The policy memorandum notes examples where this exception may be relevant; for example to use "up to two dogs to search for hedgehogs on Uist so that they can be recaptured and relocated to the mainland in order to protect species native to that island." Hedgehogs are not native to Uist and [pose a threat to nesting birds which are native to the island](#).

Section 8 provides that a person may apply for a licence to use more than two dogs when making use of the environmental benefit exception in section 7. The licensing provision is similar to the one set out in section 4, but the purposes for which licences can be granted are different. The relevant authority (as above, Scottish Ministers, or NatureScot where they have delegated authority) must satisfy itself that killing, capturing or observing the wild mammal will contribute towards significant or long-term environmental benefit, and that there is no other solution that would be effective in achieving the purpose of the activity. Unlike the licences provided for by section 4, the authority may grant a licence for a maximum period of two years, rather than 14 days.

Changes from the 2002 Act

The Bill makes substantial changes to the wording, structure, and effect of the exceptions compared with the 2002 Act. In particular:

1. There are fewer situations where the exceptions in sections 3 and 5 of the Bill may be used, compared to the exception in section 2 of the 2002 Act (though note that "controlling the number of a particular species to safeguard the welfare of that species" is now one of the purposes for which section 7 may be used as an exception).
2. The Bill separates out the exceptions for the use of dogs to search for, stalk or flush a wild mammal above and below ground.
3. For the exception for activities above ground, the Bill limits the number of dogs that may be used to two dogs, unless a licence has been granted for the use of more than two dogs.
4. For the exception for activities below ground, the Bill limits the number of dogs that may be used to one dog.
5. The Bill adds a new exception for activities carried out for the purpose of environmental benefit (section 7).
6. The Bill provides that more than two dogs may be used in connection with the exceptions in sections 3 (management of wild mammals above ground) and section 7 (environmental benefit) if a licence has been obtained. The 2002 Act did not provide for a licensing system.

Part 1: General provisions on licences

Sections 9 and 10 make further provision on licences. As licensing for this purpose is new for the Bill, these provisions do not replicate any provisions in the 2002 Act.

Section 9 provides that Scottish Ministers may delegate authority to Scottish Natural Heritage (NatureScot) to manage a licensing system.

Section 10 establishes that it is an offence to provide false information to obtain a licence, and sets out penalties for the offence. Sentences may include imprisonment for up to 6 months.

Part 2: Trail Hunting

Part 2 (sections 11 and 12) make new provisions on trail hunting; similar provisions are not included in the 2002 Act.

Section 11 establishes that it is an offence to engage or participate in trail hunting unless the exception in section 12 applies (see below). Trail hunting is where people

on foot or horseback follow a laid scent along a pre-determined route with a group of dogs. Generally, an animal-based scent such as fox urine is used.

The policy note states that:

“ In England and Wales, trail hunting became more widely established following the prohibition of hunting wild mammals with more than two dogs by the Hunting Act 2004. There have been occasions where packs hunting a trail have encountered a fox and the fox has been hunted in contravention of English law.”

The Bonomy Review highlighted that the rise of trail hunting in England and Wales has led to suspicions that there have been breaches of the Hunting Act 2004 ('the 2004 Act').

Since the Bonomy Review, there has been one high-profile case in the UK involving a senior huntsman convicted of encouraging the commission of the offence of hunting a wild mammal with a dog. [Westminster Magistrates' Court concluded that the person was "clearly encouraging the mirage of trail laying to act as cover for old fashioned illegal hunting"](#).

As a result of the case, Forestry England ¹ , the National Trust ² , and Natural Resources Wales ³ took decisions to suspend trail hunting on the land they own.

The Bill reduces the number of dogs that may be used under the section 3 exception for the management of wild mammals above ground to two dogs, bringing the legislation in Scotland into line with the legislation in England and Wales. As a consequence, the Bill also prohibits trail hunting, with the intention of avoiding a similar situation to England and Wales. The policy note states:

“ The provisions in the Bill will take pre-emptive action to prevent trail hunting becoming established in Scotland. This is in order to address the risk of a pack of dogs being used for trail hunting accidentally picking up a natural trail which could result in them chasing a wild mammal, and to avoid the activity being used as a cover for illegal hunting, following the introduction of a two dog limit.”

Maximum penalties for trail hunting, unless the exception in section 12 applies, includes imprisonment for up to 12 months.

However, **section 12 sets out an exception to the prohibition on trail hunting for training dogs to follow an animal based scent**. The section applies if a person directs a dog to find and follow an animal based scent which has been laid for that purpose, or lays an animal-based scent for a dog to find and follow to train that dog for a lawful purpose. To make use of this exception, a number of conditions must be met:

- The activity must not involve more than two dogs, and reasonable steps are taken to ensure that the dog(s) do not join other dogs to form a larger pack,
- The dog(s) must be under control,
- The landowner's permission has been obtained, and
- Reasonable steps are taken to ensure that no wild mammal is pursued, injured or killed.

The Policy note explains that:

“ in the course of the public and stakeholder consultation on this issue, it became clear that there are many reasons that a person may wish to lay a trail of an animal-based scent other than for the purpose of trail hunting e.g. to train dogs to locate injured deer or to find invasive stoats or hedgehogs as part of the conservation projects discussed above. These activities are undertaken by a wide range of people including enforcement agencies, professional dog training groups, and recreational deer stalkers.”

Part 3: Enforcement, proceedings and court orders

Section 13 provides that police powers under the Bill are set out in the Schedule.

Section 14 provides for a time-limit for summary proceedings (i.e. for less serious offences). To 'bring proceedings' generally means to start a court action against someone. In the absence of specific provisions, a general time limit of 6 months from the date of the offence (or the last offence, in the case of multiple offences) would have applied. In line with the amendment made to the 2002 Act by the Animals and Wildlife, Penalties, Protections and Powers (Scotland) Act 2020, the Bill extends the time limit for proceedings to be brought to within 6 months "beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge", as opposed to 6 months from the date that the offence was committed (or the last offence, in the case of multiple offences). No proceedings may be brought more than three years after the offence was committed.

This section only provides for an extended time limit for offences under section 2(1), 2(2), 11(1), 11(3), and 11(4). There is no time limit for the basic offence under section 1(1) as offences in contravention of this section can be tried as **either summary (for less serious offences) or solemn (for more serious offences) procedure**.

Section 15 provides that both a responsible individual as well as a relevant organisation can commit an offence under the Bill. An offence can also be committed by a company, partnership, body or association where it involves the organisation and consent, connivance or neglect by e.g. a director, manager, secretary, partner, etc.

Section 16 establishes processes for deprivation orders available to the courts. If a person is convicted of an offence under the provisions of the Bill, the court may choose to make an order depriving a person of possession or ownership of a dog or horse involved in the offence. The court may order the destruction, sale or other disposal of the dog or horse, though the legislation specifies that the court may not order the destruction of the animal unless it is satisfied on evidence provided by a veterinary surgeon that destruction would be in the interests of the dog or horse.

If the court chooses not to make a deprivation order, it must state why it has chosen not to (unless they have made a disqualification order under section 17, see below). Before making the deprivation order, the court must give the owner a chance to make representations, unless it is not practicable to do so.

Section 17 establishes processes for disqualification orders available to the courts. If a person is convicted of an offence under the provisions of the Bill, the court may disqualify the person from e.g. owning and/or keeping a dog, transporting a dog, or working with and/or using a dog for a specified period of time. As in section 16, the court

must justify where it has decided not to make use of a disqualification order. While section 16 provides that a person convicted of an offence may be deprived of the horse present during the offence, section 17 does not provide for disqualification from owning or working with horses.

It is an offence to breach a disqualification order; **section 18** provides that where a disqualification order is breached, the dog may be seized for destruction, sale or disposal. As in section 16, the dog may only be destroyed on the advice of a veterinary surgeon that it is in the best interests of the dog, and before making the deprivation order, the court must give the owner a chance to make representations, unless it is not practicable to do so.

Section 19 provides that a person who is subject to a disqualification order may request that the court terminate or vary the order. They may not do so within one year of the order being made, or make more than one request in a year. Under section 17(8)(b) the court may determine a period where a termination or variation of the order is not permitted. Under section 19(5) if the court refuses an application to terminate or vary the order, it may specify a period within which the applicant may not make further applications.

Section 20 provides for appeals against orders. It sets out that deprivation and disqualification orders are to be treated as a sentence under the Criminal Procedure (Scotland) Act 1995, and appeals will follow the process set out in that Act. It also specifies who can appeal, and that the operation of deprivation or seizure orders are suspended during the appeals process.

This section also provides for 'interim orders' where the operation of a deprivation order or seizure order is suspended during an appeals process. The court may make provision in relation to keeping a dog or horse during the period that the deprivation or seizure order is suspended or cannot be carried out.

This section also provides that a person commits an offence if they sell or part with a dog or horse to which an order applies, if the operation of the order is suspended during an appeals process.

Changes from the 2002 Act

The 2002 Act provided for orders where a person can be prevented from owning, keeping, or interacting with a dog in specified ways, and for the care or disposal of a dog in the offender's custody during or after the offence. The Bill also makes the same provisions, but also provides for deprivation orders where a horse involved in committing the offence can be removed from a convicted person.

Part 4: General provisions

Section 21 makes ancillary provisions, whereby Scottish Ministers may by regulations make incidental, supplementary, consequential, transitional, transitory, or saving provisions to give full effect to the provisions in the Bill.

Section 22 provides definitions. For example, this section defines "livestock", what it means for a dog to be "under control", and "woodland".

Section 23 repeals the Protection of Wild Mammals (Scotland) Act 2002 and makes consequential modifications. This Bill is not intended to amend the 2002 Act; it wholly repeals and replaces it.

Section 24 provides that the provisions in the Bill do not make the Crown criminally liable. The section provides that the Crown cannot be criminally liable, but the Lord Advocate may apply to the Court of Session to declare unlawful any act or omission for which the Crown would be criminally liable were it not for this section. 'The Crown', in basic terms, means the monarch, or those acting in service of the monarch, e.g. the government. In this case, however, subsection 3 provides that the immunity "does not affect the criminal liability of persons in the service of the Crown" (e.g. Ministers, civil servants or government departments) and therefore applies predominately to the Queen.

Section 25 provides for the application of powers of entry on Crown land. Powers of entry conferred under the provisions of the Bill are only exercisable in relation to specified Crown lands with the consent of the specified appropriate authority. What is meant by 'Crown lands' is set out in the Bill, and includes, for example, the Queen's private estates, or land belonging to a government department.

Section 26 provides for the provisions in the Bill coming into force. Only sections 21 and 27 (short title) come into force on the day after Royal Assent. All other provisions come into force on the day appointed by Scottish Ministers by regulations.

Section 27 provides for the short title of the Bill.

Schedule

The schedule to the Bill provides for enforcement powers. This includes:

- A power for the police to enter any premises (other than domestic premises) if they have reason to believe that an offence has been or is being committed at the premises, or for ascertaining whether or not an offence has or is being committed. The police may search for, examine and seize any animal (including carcasses), vehicle, equipment, document, or other thing which may provide evidence. Animals or vehicles may only be seized where they are in possession or control of a person suspected of an offence.
- A power for a sheriff or justice of the peace to grant a warrant under specified circumstances.
- A power for the police to enter premises and search for, examine and seize the evidence items listed above without a warrant if it appears to the police that any delay would frustrate the purpose for which the powers are to be exercised and so long as the premises are not domestic premises.
- A power for a police officer in uniform to stop and detain a vehicle or vessel for the purpose of exercising a relevant power.

The schedule also sets out a requirement to comply with reasonable directions of the police, and in particular to give the police information and assistance that they may reasonably require. This requirement applies to the occupier of any premises being searched, the owner or person responsible for an animal at the premises in some way, a

person responsible for a child who is responsible for the animal, and a person who appears to be under the direction or control of a person in the previous categories.

Finally, the Schedule establishes that it is an offence:

- Not to comply with reasonable directions or requests for information or assistance from the police, and
- To obstruct the police in exercising a power under the schedule.

The Bill and Lord Bonomy's Recommendations

The following section provides a summary comparison of the Bill with the recommendations of the Bonomy Review.

In repealing and replacing the 2002 Act, the Bill seeks to **address the clarity issues** highlighted in the Review by making similar, but updated, provisions for offences and exceptions. For example, the Bill no longer provides that [a person who "deliberately" hunts a wild mammal with a dog](#) commits an offence. The core offence in section 1(1) of the Bill now reads that a person commits an offence if "the person hunts a wild mammal using a dog".

The Bill **limits the number of dogs to two** for managing wild mammals above ground, and provides for **a licensing scheme** to allow for more than two dogs to be used under specified circumstances. Lord Bonomy considered the question of limiting the number of dogs (though not in conjunction with licensing), but declined to recommend this. He also considered the question of licensing all hunting with dogs, but did not make a recommendation to do so. As noted in a previous section, the Review did not consider the more specific question of limiting the number of dogs to two in conjunction with the use of licensing for the narrower purpose of enabling more than two dogs to be used.

The Bill **does not introduce vicarious liability for landowners, or a reverse burden of proof**.

In relation to vicarious liability, the Review had recommended that "consideration should be given" to introducing vicarious liability. The policy note states:

"Vicarious liability requires an employee/agent relationship to be in place or a situation where services are contracted out. In our stakeholder and wider consultations, we have not seen any evidence to suggest that such a relationship or situation is being abused to encourage illegal hunting with dogs. While the Bill does not introduce vicarious liability, it contains ancillary offences to the principal offence and the offence of trail hunting, which are similar to those in the 2002 Act. The ancillary offences make it an offence for a person to knowingly cause or permit their land or dogs to be used for illegal hunting or trail hunting."

In relation to the reverse burden of proof, Lord Bonomy went further than a recommendation to give consideration, and recommended that the 2002 Act "should be amended to provide that the onus of establishing that conduct fell within one of the exceptions lies upon the accused".

The policy note, however, reasons:

“ In this context, the proposal to reverse the burden of proof would place the imposition on the accused of a legal/persuasive burden of proof to show that their actions fell within one of the legal exceptions. This would be a departure from the principle in Scots law that the burden of proof lies with the prosecution. Lord Bonython acknowledged in paragraph 7.27 of his report “[t]he issue is a controversial one likely to give rise to legal dispute”. Article 6(2) of the European Convention on Human Rights (ECHR) provides that ‘everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law’. We do not believe that there is adequate justification for a departure from this key principle of criminal law.”

The Review also recommended the **extension of time limits for bringing proceedings, consideration of the appointment of part-time, independent hunt monitors, and the development of a separate Code of Practice for the conduct of hunt activities.**

[Extended time limits were previously provided for by amending the 2002 Act](#); these changes are brought through into the Bill. The remaining two are non-legislative recommendations.

Annex A: Overview of responses

The second Scottish Government consultation on the use of dogs to control foxes and other wild mammals received over 10,000 responses. An analysis is yet to be published. However, the [policy note for the Bill](#) provides a preliminary review of the responses and states that it is intended to be published later this year. The text of the overview is replicated below.

Overview of responses

131. **Question 1:** In situations where the use of dogs is permitted, including searching for or flushing a wild mammal to waiting guns, do you think the Scottish Government should limit the number of dogs that can be used to two?

Yes - 67% No - 31% Don't know - 1% Not Answered - 1%

132. While some respondents who answered no to this question disagreed with the two dog limit on the basis that there should be no limit to the number of dogs that can be used to hunt wild mammals, others put forward the view that any use of dogs to hunt wild mammals should not be permitted.

133. **Question 2:** If a two dog limit were to be introduced, should the Scottish Government introduce licensing arrangements to allow the use of more than two dogs in certain circumstances?

Yes - 24% No - 73.5% Don't Know - 1.5% Not Answered - 1%

134. **Question 3:** If licensing arrangements to permit more than two dogs in certain circumstances were to be introduced, should there be a limit to the number of dogs that could be used? E.g. no more than four dogs, six dogs etc.

No limit - 28% Don't know - 6% Not Answered - 66%

135. Amongst the respondents who thought there should be a maximum number of dogs permitted, there was no general consensus on what that maximum number should be, with a wide range of suggestions from 3 to 100 dogs being provided.

136. **Question 4:** Do you agree that the Scottish Government should ban trail hunting?

Yes - 70% No - 29% Don't know - 1%

137. **Question 5:** Other than for the purpose of laying a trail for sport as outlined in question 4, are you aware of any other activities or circumstances which may necessitate the setting of an animal-based or artificial scent for dogs to follow?

Yes - 15% No - 73% Don't know - 9% Not Answered - 3%

138. A number of activities and circumstances which may necessitate the setting of an animal-based or artificial scent for dogs to follow were put forward by respondents (for example to train dogs to track wounded deer or to locate invasive non-native species). Detailed analysis of the response provided here will be published in later in 2022.

139. **Question 6:** For the purposes of this Bill do you agree with the current definition of

wild mammal?

Yes - 31% No - 68% Don't know - 1%

140. The 2002 Act defines a wild mammal as including 'a wild mammal which has escaped, or been released, from captivity, and any mammal which is living wild'. However, rabbits and rodents are excluded from this definition. This means that this Act does not prohibit the use of a dog or dogs to hunt and kill a rabbit/s or rodent/s. However, some species of rodents such as beavers and red squirrels are afforded certain protections within other wildlife legislation.

141. **Question 7:** If you answered no to question 6, do you think that: Rabbits should be included in this definition, all species of rodent should be included in this definition, some but not all species of rodent should be included in this definition, none of the mammals listed should be included in this definition?

Rabbits should be included in this definition - 48%

All species of rodent should be included in this definition - 45%

Some but not all species of rodents should be included in this definition - 10%

None of the mammals listed should be included in the definition - 9%

Not Answered - 32% 142.

142. **Question 8:** For the purposes of this Bill, do you agree that a person should be allowed to use dogs to stalk, search and flush wild mammals for the purpose of controlling the number of a 'pest' species?

Yes - 31% No - 68% Don't know - 1%

143. **Question 9:** For the purposes of this Bill do you agree with this definition of pest species? The 2002 Act defines "pest species" as foxes, hares, mink, stoats and weasels.

Yes - 28% No - 69% Don't know - 2% Not Answered - 1% 144.

144. **Question 10:** If you answered no to question 9, do you think that: Hares should be included in the definition of pest species, stoats should be included in definition of pest species, mink should be included in the definition of pest species, weasels should be included in the definition of pest species, none of the mammals listed should be included in the definition of pest species

Hares should be included in the definition of pest species - 5%

Stoats should be included in definition of pest species - 7%

Mink should be included in the definition of pest species - 12%

Weasels should be included in the definition of pest species - 6%

None of the mammals listed should be included in the definition of pest species - 60%

Not Answered - 28%

145. **Question 11:** Do you think the current legislation provides sufficient protection in order to tackle hare coursing in Scotland?

Yes - 19% No - 66% Don't know - 14% Not Answered - 1%

146. **Question 12:** If you have any other comments on the proposals we have set out in sections one to four of this consultation or if there are any further measures relating to the hunting of wild mammals with dogs that you think we should consider please provide them here (max 350 words).

147. A number of respondents provided additional comments on the proposals under question 12. Detailed analysis of the response provided here will be published in later in 2022.

Bibliography

- 1 Forestry England. (2020). Trail hunting in the nations forests. Retrieved from forestryengland.uk/trail-hunting [accessed 5 May 2022]
- 2 National Trust . (2021). Hunting wild mammals with dogs was banned in England and Wales by the Hunting Act of 2004: National Trust land is no exception.. Retrieved from <https://www.nationaltrust.org.uk/features/our-position-on-trail-hunting#:~:text=The%20law%20does%20allow%20what,being%20chased%2C%20injured%20or%20killed>. [accessed 5 May 2022]
- 3 Natural Resources Wales. (2021, November 18). NRW stops trail hunting on its land. Retrieved from [https://naturalresources.wales/about-us/news-and-events/news/nrw-stops-trail-hunting-on-its-land/?lang=en#:~:text=Natural%20Resources%20Wales%20will%20no,of%20Foxhounds%20Association%20\(MFHA\)](https://naturalresources.wales/about-us/news-and-events/news/nrw-stops-trail-hunting-on-its-land/?lang=en#:~:text=Natural%20Resources%20Wales%20will%20no,of%20Foxhounds%20Association%20(MFHA)). [accessed 5 May 2022]

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