

# **Wildlife Management in Scotland**

## **Analysis of responses to the consultation exercise**

**Analysis report**

**April 2023**

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# Executive Summary

This summary presents an overview of the analysis of responses to a public consultation on Wildlife Management in Scotland. The consultation sought views on a range of topics related to wildlife management, with sections covering grouse moor licensing, muirburn and matters relating to the use of traps and snares.

The consultation opened on 26 October 2022 and closed on 14 December 2022. In total 4,863 standard responses were received, of which 129 were from groups or organisations and 4,734 from individual members of the public.

Please note that the nature of the open questions asked (generally phrased 'If you answered no...') means that the range of views set out at the open questions tends not to reflect the balance of opinion at the closed questions.

## Licensing of grouse shooting

### Overall views on licensing

A majority, 67% of those who answered the question, agreed that the licensing of grouse shooting should be introduced to deter raptor persecution and wildlife crime linked to grouse moor management.

In terms of those who disagreed, the analysis of comments across the section on licensing grouse shooting suggests that many took one of two overall positions. The first was that there should be no licensing scheme, or that proposals should be amended significantly. The second was that grouse shooting, and sometimes shooting of any animals for sport, should be banned.

The issues raised by those who did not think a licensing regime is required included that a licensing scheme would be disproportionate, that there is no evidence to suggest it is needed and that incidents of raptor persecution related to grouse moor management at an historic low. Connected to these issues was a common view that the current arrangements for grouse moor management are sufficient or work well, and should remain as they are. Respondents also wanted the Scottish Government to consider the rights of those who own land, including their human rights.

A number of respondents noted their general support for the introduction of a licensing regime, with further comments including that it is a proportionate approach to tackling some longstanding issues of public concern. There was particular reference to crimes against birds of prey and other wildlife and the misuse and abuse of traps. However, some respondents, including some who saw the proposed licensing regime as a useful first step, were looking for more extensive changes, and some called for a ban on grouse shooting.

### Responsibility for licences and other arrangements

A majority agreed that the person responsible for the management decisions should be responsible for acquiring and maintaining the licence (79% of those answering the question) and that a person wishing to shoot grouse on land that

they do not own, or occupy, should be required to check that the person who owns the land has a licence (81% of those answering).

The most-frequently made suggestion by some margin was that responsibility for acquiring and maintaining the licence should sit with the owner of the sporting or shooting lease or rights. In terms of whether the person wishing to shoot should be required to check whether a licence is in place, the most frequent comment was that they should not because responsibility should sit only with the licence holder.

A majority agreed that if licensing is introduced, NatureScot should be the licensing authority (75% of those answering) and that a licence should be granted for a maximum period of one year (renewable on an annual basis thereafter) (65% of those answering). Among those who suggested alternative timeframes, the most-frequent suggestion was that licences should remain valid indefinitely unless ownership of the sporting rights changes, or the licence is suspended.

### **Burden of proof, record keeping and reporting**

A majority thought that the civil rather than the criminal burden of proof is an acceptable test for the application of sanctions in relation to grouse moor licences (64% of those answering) and that where a person holds a valid licence, and there is sufficient evidence to show that, on the balance of probabilities a wildlife crime has been committed on their property, NatureScot should have the power to impose the proposed penalties (69% of those answering).

Among the minority who did not agree that the civil rather than the criminal burden of proof is an acceptable test, a frequent position was that it is not appropriate to suspend a licence on a 'balance of probabilities' that a wildlife crime has taken place, and that proof must be to a criminal standard or 'beyond reasonable doubt'. Another concern raised by many respondents was that individuals or groups opposed to grouse shooting could exploit a lower standard of proof to 'set up' estates in order to sabotage the business. It was suggested that, if a civil burden of proof is adopted, then there must be a statutory right of appeal to a court of law, with a process that is accessible, robust and independent.

A small majority of respondents, 51% of those answering the question, thought that both record keeping and reporting requirements should be part of licence conditions.

### **Muirburn**

#### **Licence for muirburn**

A majority agreed that that a licence should be required to undertake muirburn regardless of the time of year that it is undertaken (68% of those answering the question).

The issues raised most frequently by respondents who disagreed with licensing were the role of muirburn as a vital land management tool, its benefits for mitigation of wildfires and its positive impacts on biodiversity, including in mosaic habitat

creation. A much smaller proportion of respondents who disagreed wished to see a ban on muirburn rather than an extension of licensing arrangements.

Some respondents saw the proposed licence for muirburn as unnecessary regulation, adding to paperwork and administrative costs for estates. Respondents also highlighted the levels of skill and experience among those who practice muirburn on grouse moors.

A majority agreed that if muirburn licensing is introduced, NatureScot should be the licensing authority (79% of those answering), and that there should be a ban on muirburn on peatland unless it is done under licence as part of a habitat restoration programme approved by NatureScot (69% of those answering the question). A majority did not think that there are additional purposes (other than for habitat restoration, public safety (e.g. fire prevention), and research) for which muirburn on peatland should be permitted (64% of those answering).

### **Definition of peat**

The most common view, taken by 44% of those answering the question, was that the definition of peat set out in the Muirburn Code should not be amended to 40cm, while 38% thought that the definition should be 40cm.

Among those who disagreed, some respondents argued that the Scottish Government should amend the definition to less than 40cm peat depth, with frequent suggestions being either 30cm peat depth, or a ban on muirburn. There were calls both for a ban on muirburn in general and, more specifically, for a ban on muirburn on peat. Other respondents noted they saw no reason to change the current definition of 50cm, including because there is no evidence that muirburn carried out correctly affects underlying peat. It was suggested that NatureScot has found a 'lack of evidence to determine the impacts of muirburn on different depths of peat', and that no evidence has been presented to support introduction of a lower, 40cm threshold.

One point of agreement was that it is important that peat is protected. However, respondents disagreed on how this should be achieved, with some seeing muirburn as a means of protecting peat, while others viewed muirburn as damaging or destroying it.

### **Overall views on further controls**

Respondents who disagreed with further restrictions on muirburn often referenced wildfire prevention or biodiversity improvements and the creation of mosaic habitats as reasons that muirburn should be seen as a positive land management practice. While many expressed a view that muirburn licensing is unnecessary, it was also argued that, if introduced, a licensing scheme should be based on operator licences.

In contrast, among respondents who thought that muirburn should be subject to greater control, arguments included that it can or does harm wildlife and/or reduce biodiversity. The importance of protecting carbon stored in peat was emphasised in the context of the climate emergency. There was also reference to muirburn

preventing natural regeneration of vegetation, creating run-off that can pollute watercourses, exacerbating flooding and having a negative visual impact on the landscape.

In addition to those respondents arguing in favour of greater control over muirburn, some sought a complete ban on the practice. A frequently-made point, including by many individual respondents, was that muirburn licences should never be given for the purpose of management for grouse shooting.

## **Traps and snares**

### **Wildlife Traps**

The majority of respondents agreed with the proposals relating to a person operating a wildlife management trap applying for a unique identification number (85% of those answering), successfully completing an approved course dealing with the relevant category of trap (85% of those answering) and undergoing refresher training every 10 years (89% of those answering). Those who referred to 'Other' traps were most likely to suggest that the proposals should apply to all wildlife traps.

Overall, 60% of those who answered the question agreed with a requirement for both record keeping and reporting, and 70% agreed with the proposed penalties set out.

The most frequently-given reason for objecting to the proposals was that they are excessive, with particular concerns about one of the proposed penalties being a custodial sentence. Some respondents were concerned about the proposed penalties being applied to what were seen as 'administrative' offences, such as failure to keep records, registration and training, where these do not have a direct impact on animal welfare. The potential for malicious tampering with, or damage to, traps was also a key concern or some of those who felt that the proposed penalties are too severe.

However, many others thought that the proposals do not go far enough to deter offending and prevent animal cruelty. This included some who wished to see a ban on all trapping but who felt that, in the absence of an outright ban, regulation should reflect a 'zero tolerance' approach to animal cruelty.

### **Glue traps**

The majority of respondents agreed that the use of glue traps designed to catch rodents should be banned in Scotland (78% of those answering) and that their sale should be banned (79% of those answering). However, a majority disagreed that there should be a two-year transition period before the ban on glue traps comes into force (69% of those answering).

Many respondents were strongly opposed to any continuing use of glue traps, with the majority of those commenting wishing to see the proposed ban introduced immediately. Support for an immediate ban was primarily linked to the animal welfare impacts of glue traps, including their indiscriminate nature and risks to non-

target wild and domestic species. Some described such traps as 'inhumane' and 'outdated'.

However, others suggested that there is still a place for responsible use of glue traps. These respondents described glue traps as an effective 'last resort' means of rodent control in cases where other methods would not resolve the issue. There was particular reference to 'high risk sites' where public health could be a factor.

### ***Snares***

The majority of respondents agreed that operators should be required to update their records at least once every 48 hours (73% of those answering) and that a power of disqualification should be introduced for snaring offences (70% of those answering).

Many of those commenting indicated that they opposed the proposals because they supported a ban on the sale and use of snares. These respondents suggested that any additional regulation of snares would not be appropriate, and that a ban is 'long overdue'. It was suggested that an outright ban would be more consistent with the Scottish Government's wider approach to protecting animal welfare and biodiversity and there were concerns about significant negative animal welfare impacts, even when best practice is followed.

However, some respondents referred to legislation already in place for specific offences, and to improvement in snare design to minimise animal welfare impacts. In this context, it was suggested that further regulation is not required. Respondents also raised concerns that proposals represent efforts to further reduce the range of wildlife management tools available to land managers.

# 1. Introduction

## Background

This report presents analysis of responses to a public consultation on Wildlife Management in Scotland.

The consultation sought views on a range of topics related to wildlife management, with sections covering grouse moor licensing, muirburn and matters relating to the use of traps and snares. The purpose of the proposals is to address raptor persecution and ensure that the management of grouse moors and related activities are undertaken in an environmentally sustainable and welfare-conscious manner.

The Wildlife Management (Grouse) Bill will implement the recommendations of the independent review of grouse moor management, set out in ‘the Werritty Report’ and introduce licensing for grouse moors. It will also:

- Introduce licensing and further restrictions on muirburn on non-peatland;
- Further restrict muirburn on peatland;
- Ban the use of glue traps;
- Introduce requirements for the use of wildlife traps;

It may also:

- Implement the recommendations of the recent statutory snaring review or introduce further restrictions on the use of snares.

## The consultation

The consultation opened on 26 October 2022 and closed on 14 December 2022. It asked 38 questions. The consultation paper is available [here](#) on the Scottish Government’s website.

## Profile of responses

In total 4,863 standard responses were received, of which 129 were from groups or organisations and 4,734 from individual members of the public.

Respondents were asked to identify whether they were responding as an individual or on behalf of a group or organisation and, if the latter, to either choose one of six predetermined groups that best characterised their organisation, or to specify another group. The groups set out in the consultation paper were:

- Animal welfare;
- Land management, including representative bodies;
- Sporting organisation, including representative bodies;
- Conservation, including representative bodies;
- Pest control, including representative bodies;

- Public body including law enforcement.

Respondents were able to select multiple groups and an ‘Other’ option also allowed them to suggest an alternative group. Based on the information provided, two additional group types were created: ‘Other – private sector’ and ‘Other – non private sector’.

For the purposes of the analysis set out in this report, each organisation was placed into a primary group. When an organisation had selected more than one group type, the primary group was selected by the analysis team, based on available information on the organisation (including through a web search) and on the content and focus of their response.

A breakdown of the number of responses received by respondent type is set out below, and a full list of group respondents is appended to this report as Annex 1.

<b>Table 1: Type of respondent</b>	<b>Number</b>
Organisations:	
Animal welfare	17
Conservation, including representative bodies	23
Land management, including representative bodies	41
Pest control, including representative bodies	8
Public body, including law enforcement	7
Sporting organisations, including representative bodies	6
Other - private sector	18
Other - non private sector	9
<b>Organisations</b>	<b>129</b>
<b>Individuals</b>	<b>4734</b>
<b>All respondents</b>	<b>4863</b>

The largest group of organisational respondents was from the land management sector, with a number of responses from estates, including some who identified themselves as running grouse shooting operations.

### **Analysis and reporting**

The report presents a question-by-question analysis of answers to the closed questions and further comments at open questions.

The analysis at closed questions uses variable bases, giving numbers and percentages for those who answered that question.

At open questions, the comment rate is provided at each question. The analysis across the open questions suggests that many respondents, particularly amongst

those who largely disagreed with the proposals set out, had drawn on consultation briefings developed by various representative bodies.

Further comments tended to be relatively brief, although a small number of organisations (primarily 'Land management' or 'Sporting organisation' representative bodies or 'Conservation' or 'Animal welfare' organisations) made longer, more detailed submissions. The analysis presented in this report concentrates on more frequently raised issues.

As with any public consultation exercise, it should be noted that those responding generally have a particular interest in the subject area. Therefore, the views they express cannot necessarily be seen as representative of wider public opinion.

Please note also that the nature of the open questions asked (generally phrased 'If you answered no...') means that the range of views set out at the open questions tends not to reflect the balance of opinion at the closed questions. Those who supported the proposals were most likely to make a further comment in the final question of each section (at Questions 16, 24, 35 and 38).

## 2: Licensing of grouse shooting

The consultation paper argues that continuing persecution of raptors, despite a range of measures introduced by the Scottish Government, suggests that self-regulation alone will not be enough to end the illegal killing of raptors, and further intervention is now required.

It is therefore proposed that a licence is required to shoot grouse, and that if there is compelling evidence of unlawful activity or serious breaches of codes of practice by the licence holder, then their licence could be withdrawn. The intention is that the Code of Practice recommended in the [Werritty Report](#) will ensure that a minimum standard of management and environmental protection is adhered to by those managing grouse for sporting purposes.

**Question 1 – Do you agree that the licensing of grouse shooting should be introduced to deter raptor persecution and wildlife crime linked to grouse moor management?**

Responses to Question 1 by respondent type are set out in Table 2 below.

<b>Table 2: Question 1</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	11	3	0	14
Conservation, including representative bodies	21	1	0	22
Land management, including representative bodies	10	30	0	40
Pest control, including representative bodies	1	0	5	6
Public body, including law enforcement	6	0	0	6
Sporting organisations, including representative bodies	0	6	0	6
Other - private sector	2	16	0	18
Other - non private sector	6	0	1	7
<b>Total organisations</b>	<b>57</b>	<b>56</b>	<b>6</b>	<b>119</b>
<b>% of organisations</b>	<b>48%</b>	<b>47%</b>	<b>5%</b>	
<b>Individuals</b>				
	<b>3207</b>	<b>1467</b>	<b>47</b>	<b>4721</b>
<b>% of individuals</b>	<b>68%</b>	<b>31%</b>	<b>1%</b>	
<b>All respondents</b>				
	<b>3264</b>	<b>1523</b>	<b>53</b>	<b>4840</b>
<b>% of all respondents</b>	<b>67%</b>	<b>31%</b>	<b>1%</b>	

Please note that some percentages do not sum to 100% due to rounding.

A majority – 67% of those who answered the question – agreed that the licensing of grouse shooting should be introduced to deter raptor persecution and wildlife crime

linked to grouse moor management. Of the remaining respondents, 31% disagreed and 1% were unsure.

However, organisational respondents were evenly divided with 48% agreeing, 47% disagreeing and 5% unsure. While a clear majority of 'Animal welfare', 'Conservation', 'Public body' and 'Other – non private sector' respondents were in favour of licensing, a majority of 'Land management', 'Sporting organisations', and 'Other – private sector' respondents opposed licensing. The majority of 'Pest control' respondents were unsure.

**Question 2** – If you answered 'No' to Question 1, please state what other option/s you think we should consider.

Around 1,570 respondents provided a comment at Question 2. Of these, around 1,430 respondents had answered 'No' at Question 1 and around 140 respondents had either answered 'Yes' or that they were 'Unsure'.

### **Overall positions on grouse moor licensing or shooting**

The analysis of comments across the section on licensing grouse shooting suggests that many of those who commented took one of two overall positions. These were that:

- Either there should be no licensing scheme, or the proposals should be amended significantly. These respondents generally answered 'No' at the closed questions and, reflecting the focus of the open questions, were most likely to go on to make a further comment.
- Grouse shooting, and sometimes shooting of any animals for sport, should be banned. Some of these respondents answered 'No' at one or more of the closed questions (including at Question 1) and then went on to explain why. Others may have answered 'Yes' or 'Unsure' at closed questions, but then went on to note that they supported a ban, either at that question or under 'Any other comments' (Question 16).

### **Reasons given for disagreeing with a licensing scheme**

#### **Evidence requirements**

Many of the commenting explained why they did not agree with the introduction of a licensing scheme. The most-frequently raised points included that:

- A licensing scheme would be an unnecessary, disproportionate and time-consuming bureaucratic exercise that is simply not needed. It was particularly noted that any interference with property rights must be necessary and proportionate.
- There is insufficient evidence to justify the introduction of a scheme. This includes a lack of evidence linking grouse moors to incidents or higher levels of wildlife crime. In particular, there is no established link between grouse moor management and raptor persecution. In fact, raptors are more likely to suffer as a result of development, including housebuilding, tree planting and

the construction of wind farms, than at the hands of those connected to shooting.

- In any case, the persecution of raptors is declining, with incidents of raptor persecution related to grouse moor management at an historic low; it was noted that the Werritty Report states that licensing should be considered if, after a specified period of time, raptor persecution incidents do not decrease.

Connected to these issues was a common view that the current arrangements for grouse moor management are sufficient or work well, and that they should remain as they are. Associated points included that there are robust rules, regulations and penalties in place and that existing penalties that apply under the criminal law and general licensing regimes are effective deterrents; there was specific reference to Vicarious Liability meeting its purpose and that existing measures like Vicarious Liability and removal of general licenses this should be enough restrictions on grouse moors without adding licensing.

### **Rights, including Human Rights**

Respondents also wanted the Scottish Government to consider the rights of those who own land, including their Human Rights. In terms of those Human Rights, it was stated that the right to shoot grouse on your own land is a property right, and it was noted that everyone's property rights are protected by the European Convention on Human Rights (ECHR). In this context, and linking back to the earlier point about proportionality, it was suggested that state interference with property rights must be necessary and proportionate. Given some of the themes already covered above (relating to existing arrangements, raptor crime linked to grouse shooting having reduced and there being insufficient evidence of higher levels of wildlife crime on grouse moors), it was also suggested that a licensing scheme would not be necessary and proportionate. Other related points included that:

- Singling out grouse shooting and/or grouse moors appears contrary to the principle of equal treatment before the law; the connection was made to other activities, such as wind turbine construction, being associated with raptor movements and deaths.
- It is critical that any approach does not persecute or restrict those most in touch with the land.
- Licence suspension would be a deprivation of property rights, with very significant losses for rights-holders, employees and the local community, but would not rely on conviction of any connected person. In this regard it was thought that the Recommendations 4,7 and 25 of the Werritty Report offer less intrusive options.

A more general rights and fairness-related issue raised was that the proposals are focusing on the few who break the rules rather than the interests and rights of the many who do not.

### **Other issues**

Other concerns or suggestions included that:

- Any licensing scheme could be open to abuse, and that some could try and use it as a route to sabotaging and/or having grouse shooting operations shut down. There were calls to consider the motives of those non-government organisations (NGOs) and individuals that have lobbied to regulate grouse shooting, and also a view that licensing would hand too much power to the unelected body, NatureScot.
- A licensing scheme will have time and cost implications for both landowners and the public sector. These will include the costs of setting up the system, and then administering and policing it.

### **Positives associated with grouse shooting**

Some respondents also highlighted the positives associated with grouse shooting, including suggesting that grouse moor management is good for the environment and biodiversity. There was reference to general benefits for flora and fauna and to increasing numbers of raptors in particular; it was suggested that grouse moors provide good breeding grounds for raptors and that raptors generally thrive on grouse moors because land management activities promote biodiversity. There was also a suggestion that the effective management of wildlife on grouse moors is best left to highly experienced landowners and the staff that work on the land.

Also in terms of those working on the land, it was suggested that grouse shooting and grouse moor management provides rural employment, and that any decline in grouse shooting could lead to job losses. The connection was made to rural depopulation and the health of the rural economy more generally.

### **Alternative approaches proposed**

#### **Implement other recommendations of the Werritty Report**

A number of respondents suggested that there are approaches, other than the introduction of a licensing scheme, that could or should be considered. These included implementing certain recommendations from the Werritty Report, namely recommendations 3, 4, 7 and 25. More generally, there was a view that the proposals set out are inconsistent with the findings of the Werritty Report and its recommendations, and that the logical approach would be to implement all of the report's recommendations and work with the moorland management sector on a collaborative approach to ensuring that there is no reason for raptor crime to ever start up again.

It was also noted that tough new penalties for wildlife crime have recently been passed by the Scottish Parliament and it was suggested that these should be given an opportunity to have an impact before further changes or sanctions are considered. Specifically, it was suggested that time should be taken to ascertain whether penalties enacted under Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 serve as a deterrent to raptor persecution and wildlife crime.

## **Awareness raising and education**

There were also calls to work with those managing the land, including around awareness raising. It was reported that modern day gamekeeping is much more professional but that improving communications and awareness raising would help all parties understand the wider environment issues. Empowering professionals to (continue to) manage the environment, and be vigilant in terms of wildlife crime, was seen as the best way forward by some respondents.

An associated point was that education and support are always preferable to licensing, and there was reference to improved training in agricultural colleges and training establishments and as part of apprenticeships.

## **Enforcement and monitoring**

As noted above, some respondents thought that current laws relating to punishing wildlife crime are sufficient. There were also other references to those laws needing to be implemented, and the importance of more enforcement of current sanctions. It was suggested that prosecution under the current laws would be the effective deterrent, and that this does not require a licensing scheme to be in place. Rather, it was suggested, there is a need to make more resources available to enable better and more investigation and prosecution of wildlife crime.

One particular issue raised related to the crime detection methods currently available. There was reference to problems with raptor detection devices and for better tracking and research into missing birds. There was also a view that the tracking of tagged birds needs to be opened up to more than just the Royal Society for the Protection of Birds (RSPB).

## **Code of practice or self-regulation**

Another suggested way forward was the development of a code of practice or guidelines that could support self-regulation and encourage good practice. It was suggested that [Aim to Sustain](#) offers an example of the type of approach that could be taken forward, and there was also reference to appropriate representative bodies, such as the Scottish Gamekeepers Association (SGA), being involved in a self-regulation based approach. The work of the Tweed Foundation on salmon rivers was cited as an example of positive practice that could be drawn upon.

## **Ban grouse and other shooting**

A very different reason for not supporting a licensing scheme was that grouse shooting, or shooting more widely, should be banned. As noted earlier, those taking this view sometimes answered 'No' at the closed question, others answered 'Yes' or 'Unsure' but went on to note that they favoured a ban, either at this question or elsewhere (primarily at Question 16).

Reasons given for favouring a ban on grouse shooting included that it would be better for the natural environment. Comments or suggestions included that land management for grouse shooting prevents rewilding and that, in the face of climate and biodiversity crises, the land management of large areas of the country should not be prioritising the needs of grouse shoots. Respondents also raised animal

welfare and cruelty concerns, with comments including that grouse shooting, and often shooting more widely, is a barbaric and archaic blood sport. It was suggested that we need to protect all wildlife, including grouse.

Some of those who called for a ban commented that a licensing scheme does not or cannot go far enough. Others were of the view that a robust licensing scheme, backed up by rigorous enforcement, while potentially offering some improvement would also represent the bare minimum in terms protecting wildlife. However, a number of those favouring a ban were sceptical that licensing would act as an effective deterrent and did not think it would prevent raptor persecution. A different perspective was that, while licensing itself may not act as a deterrent for raptor persecution and wildlife crime, it would at least focus attention on landowners and may help to bring issue into focus.

### **Changes or modifications to the licensing scheme as proposed**

A number of respondents, some of whom had also made it clear that they did not agree with a licensing scheme being introduced, suggested possible modifications to the proposals should they be taken forward. Suggestions from those who generally did not support a licensing scheme included that any scheme should be workable for land managers and producers of livestock, including removing birds and mammals that are causing problems; it was suggested that this would help prevent illegal actions, which individuals only resort to when they consider they have no other option. Other comments included that licensing should:

- Not be linked to wildlife crime, and in particular should not be predicated on a link between wildlife crime and grouse moor management.
- Be linked to raptor persecution only. If measures are introduced, they should focus solely on raptor crime, where evidence of criminality has been proven in court. A specific suggestion was that the focus should be on deterring the illegal killing of golden eagles, hen harriers and peregrines.

Further suggestions included that power to suspend licences should be limited to cases where there is a successful criminal prosecution for the illegal killing of a golden eagle, hen harrier or peregrine. (The issue of criminal or civil prosecution is covered in greater detail at Question 11). There was also a call for a statutory right to appeal against licensing decisions.

Other comments about how any licensing scheme should be framed included that it will need to be supported by enforcement and information sharing generally. It was also suggested that success, or otherwise, will depend to a large extent on the conditions that are imposed and the procedures around the licensing regime.

**Question 3** – Do you agree that the landowner/occupier/person responsible for or accountable for the management decisions and actions should be responsible for acquiring and maintaining the licence for the taking of grouse on a particular piece of land?

Responses to Question 3 by respondent type are set out in Table 3 below.

<b>Table 3: Question 3</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	12	1	0	13
Conservation, including representative bodies	21	1	0	22
Land management, including representative bodies	14	26	0	40
Pest control, including representative bodies	1	0	5	6
Public body, including law enforcement	6	0	0	6
Sporting organisations, including representative bodies	0	6	0	6
Other - private sector	2	14	2	18
Other - non private sector	7	0	0	7
<b>Total organisations</b>	<b>63</b>	<b>48</b>	<b>7</b>	<b>118</b>
<b>% of organisations</b>	<b>53%</b>	<b>41%</b>	<b>6%</b>	
<b>Individuals</b>				
	<b>3316</b>	<b>1291</b>	<b>95</b>	<b>4702</b>
<b>% of individuals</b>	<b>71%</b>	<b>27%</b>	<b>2%</b>	
<b>All respondents</b>				
	<b>3379</b>	<b>1339</b>	<b>102</b>	<b>4820</b>
<b>% of all respondents</b>	<b>70%</b>	<b>28%</b>	<b>2%</b>	

A majority – 70% of those who answered the question – agreed that the landowner/occupier/person responsible for or accountable for the management decisions and actions should be responsible for acquiring and maintaining the licence for the taking of grouse on a particular piece of land. Of the remaining respondents, 28% disagreed and 2% were unsure.

Among organisational respondents a small majority – 53% – agreed, while 41% disagreed and 6% were unsure. As at Question 1, a clear majority of ‘Animal welfare’, ‘Conservation’, ‘Public body’ and ‘Other – non private sector’ respondents agreed, while ‘Land management’, ‘Sporting organisations’, and ‘Other – private sector’ respondents disagreed, and the majority of ‘Pest control’ respondents were unsure.

**Question 4** – If you answered ‘No’ to Question 3, please state what other option/s you think we should consider.

Around 1,360 respondents provided a comment at Question 4. Of these, around 1,300 respondents had answered ‘No’ at Question 3 and around 60 respondents had either answered ‘Yes’ or that they were ‘Unsure’.

Reflecting themes at Question 2, a number of those commenting simply restated their support for a ban on grouse shooting or their objection to any licensing scheme. Connected to this latter point was the view that there is no need for change, including because the people in positions named in the consultation paper – the landowner/occupier/person responsible for or accountable for the

management decisions – already take full and legal responsibility for the management of, and actions on, grouse moors.

However, there was also a view that it would be wrong to put all the responsibility onto a single person, including because they cannot be held responsible for the actions of others. It was also suggested that reference to the ‘person responsible’ is far too broad and could include gamekeepers or anyone that works on the estate.

The most frequently-made suggestion by some margin was that responsibility for acquiring and maintaining the licence should sit with the owner of the sporting or shooting lease or rights. Further comments included that this could be the landowner or a tenant, since it is common for landowners of moorland either to retain the right to take and shoot grouse (the sporting rights) or to assign them to a third party under a contract (typically a sporting lease).

A reason given for the licence holder only ever being the person who holds the sporting rights was that otherwise someone who is responsible for management decisions and actions could place liability on someone who does not hold the sporting rights, such as the head gamekeeper or factor. However, it was suggested that the holder of the sporting rights or lease should be permitted to authorise a third party to deal with the administrative aspects of the licence on their behalf.

There was also a suggestion that, where the licence holder is somebody other than the landowner, the landowner should also be held responsible for the activities taking place on their land and be subject to licence conditions, akin to vicarious liability. It was suggested that this would incentivise landowners to seek out responsible managers and maintain oversight to ensure best practice.

Another suggestion made, albeit by only a small number of respondents, was that responsibility should sit only with the landowner.

**Question 5** – Do you think that the person wishing to shoot grouse on land that they do not own, or occupy, should be required to check that the person who owns the land has a licence which allows for the taking of grouse on that area of land?

Responses to Question 5 by respondent type are set out in Table 4 below.

<b>Table 4: Question 5</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	13	0	0	13
Conservation, including representative bodies	21	0	1	22
Land management, including representative bodies	14	19	7	40
Pest control, including representative bodies	1	0	5	6
Public body, including law enforcement	5	1	0	6
Sporting organisations, including representative bodies	3	3	0	6
Other - private sector	12	2	3	17
Other - non private sector	7	1	0	8
<b>Total organisations</b>	<b>76</b>	<b>26</b>	<b>16</b>	<b>118</b>
<b>% of organisations</b>	<b>64%</b>	<b>22%</b>	<b>14%</b>	
<b>Individuals</b>	<b>3823</b>	<b>744</b>	<b>129</b>	<b>4696</b>
<b>% of individuals</b>	<b>81%</b>	<b>16%</b>	<b>3%</b>	
<b>All respondents</b>	<b>3899</b>	<b>770</b>	<b>145</b>	<b>4814</b>
<b>% of all respondents</b>	<b>81%</b>	<b>16%</b>	<b>3%</b>	

A large majority – 81% of those who answered the question – agreed that a person wishing to shoot grouse on land that they do not own, or occupy, should be required to check that the person who owns the land has a licence which allows for the taking of grouse on that area of land. Of the remaining respondents, 16% disagreed and 3% were unsure.

Among organisational respondents a majority – 64% – agreed with a requirement to check that an appropriate licence is in place, while 22% disagreed and 14% were unsure. A clear majority of ‘Animal welfare’, ‘Conservation’, ‘Public body’ and ‘Other’ respondents agreed, while ‘Land management’ respondents were most likely to disagree. ‘Sporting organisations’ were evenly divided, and the majority of ‘Pest control’ respondents were unsure.

**Question 6** – If you answered ‘No’ to Question 5, please state what other option/s you think we should consider.

Around 740 respondents provided a comment at Question 6. Of these, around 690 respondents had answered ‘No’ at Question 5 and around 50 respondents had either answered ‘Yes’ or that they were ‘Unsure’.

As at previous questions, some respondents restated their support for a ban on grouse shooting or their objection to any licensing scheme. Others noted that the question refers to ‘the person who owns the land’ and suggested that, reflecting their views at Question 4, it should refer to the person holding the shooting rights or lease, which could be the landowner or a tenant.

In terms of whether the person wishing to shoot should be required to check whether a licence is in place, the most frequent view was that they should not, because responsibility should sit only with the licence holder or the person who should hold a licence.

Reasons for not requiring the person wishing to shoot to check included that the equivalent requirements are not in place for other licensing regimes, and that there is no reason for special treatment under the law for those involved in shooting. It was noted, for example, that consumers are not required to check that a pub or restaurant holds an alcohol licence before consuming alcohol on the premises. It was suggested that placing the onus on consumers wishing to shoot to check licences goes a step further than this without delivering any obvious additional public benefit.

In practical terms, it was suggested that placing a requirement on the person wishing to shoot would be an unnecessary change that would create a pointless administrative burden, with monitoring and enforcement difficult if not impossible. It was also suggested that it would be unrealistic or unreasonably onerous to expect shooting guests to check whether a licence is in place, and that any licensing scheme should look to keep potential barriers to income generation to a minimum.

In terms of approaches that could or should be considered going forward, suggestions included that:

- An assurance that the estate has the necessary licensing in place could be provided by the estate as part of their commercial client operations. Specifically, details of the licence to shoot grouse could be required information in any advertising or could be set out in the shoot agreement that is signed prior to a shoot day taking place.
- A breach of the licence by a guest should potentially carry sanctions against the licence holder. It should be the responsibility of the licence holder to ensure all operations relating to grouse shooting on their land are carried out legally and responsibly.

**Question 7** – If we introduce a licensing scheme, do you agree that NatureScot should be the licensing authority?

Responses to Question 7 by respondent type are set out in Table 5 below.

<b>Table 5: Question 7</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	13	0	1	14
Conservation, including representative bodies	20	1	1	22
Land management, including representative bodies	30	1	8	39
Pest control, including representative bodies	2	0	4	6
Public body, including law enforcement	5	0	1	6
Sporting organisations, including representative bodies	6	0	0	6
Other - private sector	11	2	4	17
Other - non private sector	8	0	0	8
<b>Total organisations</b>	<b>95</b>	<b>4</b>	<b>19</b>	<b>118</b>
<b>% of organisations</b>	<b>81%</b>	<b>3%</b>	<b>16%</b>	
<b>Individuals</b>	<b>3510</b>	<b>534</b>	<b>635</b>	<b>4679</b>
<b>% of individuals</b>	<b>75%</b>	<b>11%</b>	<b>14%</b>	
<b>All respondents</b>	<b>3605</b>	<b>538</b>	<b>654</b>	<b>4797</b>
<b>% of all respondents</b>	<b>75%</b>	<b>11%</b>	<b>14%</b>	

A majority – 75% of those who answered the question – agreed that if licensing is introduced, NatureScot should be the licensing authority. Of the remaining respondents, 11% disagreed and 14% were unsure.

Among organisational respondents a larger majority – 81% – agreed that NatureScot should be the licensing authority, while only 3% disagreed and 16% were unsure. A clear majority of all organisational respondent groups were in agreement, with the exception of ‘Pest control’ respondents, where the majority were unsure.

Those who did not agree that NatureScot should be the licensing authority were invited to suggest an alternative organisation/body. Around 440 respondents made a comment, although some simply to note that they had answered ‘No’ at Question 7 because they did not agree with the introduction of a licensing scheme. Others raised concerns or reservations about NatureScot taking on the role, including because they did not consider them to be impartial.

General comments about what would be required of a licensing authority included that it should be impartial and/or politically independent. For some, this suggested that a new body will be required, while others referred to the importance of a range of perspectives being represented and/or of stakeholder representation. However, there was also a view that, to ensure impartiality, a licensing authority must be free of any association with the shooting industry.

Other respondents (including some who had answered ‘Yes’, ‘No’ or ‘Unsure’) highlighted the importance of any licensing authority having sufficient resources to

operate a scheme; some of these respondents noted that they did not consider NatureScot to have those resources at present. An 'Animal welfare' organisation reported that information shared in response to Freedom of Information requests shows that NatureScot has not been undertaking necessary compliance monitoring of the four estates that are currently under a General Licence restriction, due to lack of resources. The associated suggestion was that NatureScot should be expanded to ensure that it can properly fulfil a licensing role.

In terms of those respondents who suggested an alternative body (around 270 respondents), the most frequent suggestions were:

- The Game and Wildlife Conservation Trust (GWCT).
- Police Scotland.
- The British Association for Shooting and Conservation (BASC).
- The SGA.
- The RSPB.
- Scottish Society for the Prevention of Cruelty to Animals (SSPCA).

Other less frequently made suggestions included the Scottish Government; Local authorities; Regional Moorland Groups; the Scottish Wildlife Trust; landowners; Scottish Land and Estates; Environmental Standards Scotland; and National Park Authorities if the licence would cover their Park.

**Question 8** – Do you think that a licence should be granted for a maximum period of one year (renewable on an annual basis thereafter)?

Responses to Question 8 by respondent type are set out in Table 6 below.

<b>Table 6: Question 8</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	11	1	1	13
Conservation, including representative bodies	21	1	0	22
Land management, including representative bodies	7	32	1	40
Pest control, including representative bodies	2	0	4	6
Public body, including law enforcement	4	2	0	6
Sporting organisations, including representative bodies	0	6	0	6
Other - private sector	2	15	1	18
Other - non private sector	6	0	2	8
<b>Total organisations</b>	<b>53</b>	<b>57</b>	<b>9</b>	<b>119</b>
<b>% of organisations</b>	<b>45%</b>	<b>48%</b>	<b>8%</b>	
<b>Individuals</b>				
	<b>3061</b>	<b>1502</b>	<b>129</b>	<b>4692</b>
<b>% of individuals</b>	<b>65%</b>	<b>32%</b>	<b>3%</b>	
<b>All respondents</b>				
	<b>3114</b>	<b>1559</b>	<b>138</b>	<b>4811</b>
<b>% of all respondents</b>	<b>65%</b>	<b>32%</b>	<b>3%</b>	

Please note that some percentages do not sum to 100% due to rounding.

A majority – 65% of those who answered the question – agreed that a licence should be granted for a maximum period of one year (renewable on an annual basis thereafter). Of the remaining respondents, 32% disagreed and 3% were unsure.

Organisational respondents were more evenly divided, with the largest group – 48% of those who answered the question – disagreeing, while 45% agreed and 8% were unsure. A clear majority of ‘Animal welfare’, ‘Conservation’, and ‘Other – non private sector’ respondents agreed, while the majority of ‘Land management’, ‘Sporting organisations’, and ‘Other – private sector’ respondents disagreed, and the majority of ‘Pest control’ respondents were unsure.

**Question 9** – If you answered ‘No’ to Question 8, please state what other option/s you think we should consider.

Around 1,580 respondents provided a comment at Question 9. Of these, around 1,520 had answered ‘No’ at Question 8 and around 60 respondents had either answered ‘Yes’ or that they were ‘Unsure’.

Respondents were most likely to raise concerns about an annual licence period being too short, including because it seems unnecessarily onerous and bureaucratic. It was noted that most estates aspire to shoot grouse every year and it was suggested that it would be better to grant licences for a longer period to reflect this reality. It was also reported that many people book shooting activities

well in advance. Other reasons given for favouring a longer licensing period included that it would:

- Reduce the resource implications for those requiring a licence. This would apply both to any fee to be charged and in terms of the time and resources required to complete licence applications or renewal forms.
- Reduce the burden on the licensing authority, giving them more time to process and review the applications or renewals that are required. It was suggested that an annual requirement would have a significant resource impact on the licensing authority for no obvious public benefit. There were also concerns that an annual process could result in delays and uncertainty, with potential knock-on effects for those running shooting businesses.
- Support medium to longer term business planning and land management. It was noted that the management of moorland to promote biodiversity requires long-term focus and investment, and there was a concern that the proposed one-year duration could put that investment at risk. It was suggested that to attract investment a minimum of a five-year period is needed.

In terms of alternative timeframes, the most-frequent suggestion was that licences should remain valid indefinitely unless ownership of the sporting rights changes, or the licence is suspended.

Other respondents suggested simply that the time period should be for longer than a year. Amongst those suggesting a specific time period, the most frequent suggestion was for a five-year licence period. Other suggestions were every three years, every five to ten years, or every ten years.

Finally, some respondents commented on licence conditions that should apply, including that any licence should be revoked on a breach involving the death of a raptor or other predator. Other suggestions included that even if licences were issued for periods longer than one year, reporting on management activities should be undertaken annually.

**Question 10** – Do you think that the civil rather than the criminal burden of proof is an acceptable test for the application of sanctions in relation to grouse moor licences?

Please note that a civil standard of proof would require NatureScot to base their decision on the 'balance of probabilities' whereas a criminal standard of proof requires satisfaction 'beyond reasonable doubt'.

Responses to Question 10 by respondent type are set out in Table 7 below.

<b>Table 7: Question 10</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	12	1	0	13
Conservation, including representative bodies	19	2	1	22
Land management, including representative bodies	8	31	0	39
Pest control, including representative bodies	1	0	5	6
Public body, including law enforcement	6	0	0	6
Sporting organisations, including representative bodies	0	6	0	6
Other - private sector	1	15	2	18
Other - non private sector	7	0	0	7
<b>Total organisations</b>	<b>54</b>	<b>55</b>	<b>8</b>	<b>117</b>
<b>% of organisations</b>	<b>46%</b>	<b>47%</b>	<b>7%</b>	
<b>Individuals</b>				
	<b>3034</b>	<b>1443</b>	<b>219</b>	<b>4696</b>
<b>% of individuals</b>	<b>65%</b>	<b>31%</b>	<b>5%</b>	
<b>All respondents</b>				
	<b>3088</b>	<b>1498</b>	<b>227</b>	<b>4813</b>
<b>% of all respondents</b>	<b>64%</b>	<b>31%</b>	<b>5%</b>	

Please note that some percentages do not sum to 100% due to rounding.

A majority – 64% of those who answered the question – thought that the civil rather than the criminal burden of proof is an acceptable test for the application of sanctions in relation to grouse moor licences. Of the remaining respondents, 31% disagreed and 5% were unsure.

However, organisational respondents were evenly divided with the largest group – 47% of those who answered the question disagreeing, while 46% agreed and 5% were unsure. While a clear majority of ‘Animal welfare’, ‘Conservation’, ‘Public body’ and ‘Other – non private sector’ respondents thought that the civil burden of proof is an acceptable test, the majority of ‘Land management’, ‘Sporting organisations’, and ‘Other – private sector’ respondents disagreed. The majority of ‘Pest control’ respondents were unsure.

**Question 11** – If you answered ‘No’ to Question 10, please state what other option/s you think we should consider.

Around 1,490 respondents provided a comment at Question 11.

### **Disagreement with a civil standard of proof**

Some respondents who disagreed at Question 10 did not think that a grouse moor licensing system is required and others that all grouse shooting should be banned, rather than introducing licensing.

### **Requirement for proof beyond reasonable doubt**

A frequent position was that it is not appropriate to suspend a licence on a 'balance of probabilities' that a wildlife crime has taken place, and that proof must be to a criminal standard or 'beyond reasonable doubt'. Some respondents argued that a licence should be suspended only following a successful criminal prosecution.

There was also a view that the role of the criminal standard of proof in protecting against wrongful conviction is essential in a democratic society. It was also argued that suspension of a licence on the basis of a wildlife crime that has not been proven to a criminal standard is not fair or proportionate and does not strike a fair balance between the interests of the rightsholder and the general public.

### **Consequences of losing a licence**

Other reasons given in support of the argument that there must be proof beyond reasonable doubt included the scale of the consequences of losing a licence. There were references to:

- The immediate financial loss for the licence holder which one respondent reported could, for them, run to hundreds of thousands of pounds.
- Loss of related jobs, livelihoods and, potentially, tied housing.
- Economic damage to other businesses and to local communities.
- A risk of rural depopulation.
- Ecological damage and reduction in biodiversity.

### **Risk of sabotage**

Another concern raised by many respondents was that individuals or groups opposed to grouse shooting could exploit a lower standard of proof to 'set up' estates in order to sabotage the grouse shooting business.

### **Human Rights**

A small number of respondents raised arguments based on human rights – specifically that the proposed approach would be covered by a number of articles of the ECHR:

- Article 6 – the right to a fair trial. It was suggested that imposition of sanctions on the basis of a civil standard violates Article 6.
- Article 8 – respect for private and family life. It was argued that the working and private lives of gamekeepers (who often live in tied accommodation) are intrinsically linked, meaning an impact on their ability to carry out their profession falls within the scope of Article 8.
- Article 1 of Protocol 1 (A1P1) – peaceful enjoyment of property. It was argued that gamekeepers have a long-standing economic interest in the land and grouse shooting activities on the estates where they work, and that this is linked to their livelihood and the security of their homes, amounting to a right of use, and so a possession, for the purposes of A1P1.

It was argued that to safeguard such rights, a licence to shoot grouse should only be suspended or revoked where it is beyond reasonable doubt that a relevant offence has been committed.

### **Existing legislation to deal with wildlife crime**

Some respondents referenced other legislation that is in place to cover wildlife crime, with an observation that existing provisions under criminal law include vicarious liability, long custodial sentences and General Licence restrictions. It was argued that penalties under the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 only came in to force in November 2020 and that insufficient time has elapsed to properly evaluate their effectiveness. There was also a view that, since wildlife crime occurs in a variety of situations, the same law should apply in all circumstances.

### **Procedure around removal of General Licences**

Many respondents referenced the existing application of the civil burden of proof to restriction of General Licences, allowing NatureScot to remove a General Licence where they have reason to suspect wildlife crime has taken place on a piece of land, but where they have insufficient evidence to meet the legal test of 'beyond reasonable doubt'. It was noted that, coupled with the fact there is no facility for an appeal (other than through Judicial Review) the procedure has damaged confidence in NatureScot as the regulator. Some respondents expressed concern at the prospect that a Licence to Shoot Grouse could be suspended without a right of appeal.

### **Requirements for a procedure to suspend a licence**

Some respondents set out the procedures that they would wish to see implemented if a civil standard of proof were to be adopted with respect to suspension of a licence to shoot grouse. These included that:

- The sole trigger for sanctions should be robust evidence of the licence holder, or someone acting on their behalf, committing raptor crime on the estate – a causal link between the licence holder as an individual and the penalty.
- Relevant offences should be limited to illegal killing of a golden eagle, hen harrier or peregrine by the licensee or a third party acting within their knowledge and control.
- It should be a defence for the rightsholder to show that they (a) did not know the offence was being committed by a third party; and (b) took all reasonable steps and exercised all due diligence to prevent the offence being committed. This would mirror the criminal defence in section 18A of the Wildlife Crime and Countryside Act 1981.
- Suspension of a licence should be for a period proportionate to the culpability of the rightsholder, the significance of the offence, the level of environmental harm arising from it, and the impact on the community arising from the penalty.

- There must be a statutory right of appeal to a court of law, with process that is accessible, robust and independent. A decision to suspend a licence should not be based solely on the judgement of NatureScot.
- Safeguards should be set out in primary legislation.

There was a view that Judicial Review is not an effective remedy, both because it allows only for a review of the procedure followed by NatureScot, and because it fails to adequately safeguard the rights of gamekeepers.

### **Grounds for an appeal**

There were also suggestions with respect to appropriate grounds for an appeal, namely that NatureScot's decision was:

- Based on an error in law or an error of fact.
- Unfair or disproportionate for any reason.

Further, it was argued that any penalties should not take effect until the outcome of the appeal is determined, to avoid parties suffering substantial damage pending an appeal.

### **Other proposals in relation to investigating wildlife crime/ revoking a licence**

It was also proposed that:

- There should be clear procedures for investigating wildlife crime.
- Only neutral, regulated bodies should conduct investigations that could lead to suspension or revocation of a licence. Campaign groups opposed to grouse shooting should not be involved.
- Prior to revoking a licence, proportionality should be addressed by carrying out an impact assessment to consider the number of gamekeepers and family members adversely affected by the decision.

### **Alternative views**

Very much a minority view among those who disagreed at Question 10 was that criminal rather than civil procedures would reduce the chance of illegal activities being perpetrated, including because the risk of a criminal prosecution and potentially a criminal record, would act as a greater disincentive to wildlife crime.

A small number of respondents who had not answered 'No' at Question 11 also made points explaining their views. Among respondents who agreed that the civil burden of proof is an acceptable test, reasons given included that:

- Securing convictions for wildlife crimes is very difficult as they are committed in remote areas where there is little chance that they will be witnessed, and that the civil standard of proof the only viable standard available to the licensing authority.
- Application of a civil burden of proof with respect to grouse moor licences would align with procedures in place with respect to General Licences.

It was also suggested that:

- The licensing authority should act reasonably with respect to any action taken and, as alternatives to loss of a licence, inspection regimes and payment in relation to those regimes could be considered.
- There should be a mechanism for review / appeal. As an example, it was observed that the Licensing (Scotland) Act 2005 makes provisions for an appeal to the sheriff or sheriff principal in connection with decisions of the Licensing Board under the scheme of liquor licensing.

**Question 12** – Do you agree that record keeping or reporting requirements should be part of the licence conditions:

- Record keeping
- Reporting requirements
- Neither
- Unsure

Please note that record keeping would involve noting down the activities carried out under the licence (e.g. the number of days on which grouse shooting took place, the number of grouse shot on each day, types of predator control undertaken, etc.) and providing these if/when they are requested. Reporting requirements would involve the active reporting of activities carried out under the licence on a regular basis.

Responses to Question 12 by respondent type are set out in Table 8 below.

<b>Table 8: Question 12</b>						
	<b>Both record keeping</b>	<b>Record keeping only</b>	<b>Reporting only</b>	<b>Neither</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>						
Animal welfare	10	2	1	1	0	14
Conservation, including representative bodies	19	2	0	1	0	22
Land management, including representative bodies	8	7	0	24	1	40
Pest control, including representative bodies	1	0	0	0	5	6
Public body, including law enforcement	3	2	0	0	1	6
Sporting organisations, including representative bodies	0	0	0	6	0	6
Other - private sector	2	3	0	11	2	18
Other - non private sector	6	2	0	0	0	8
<b>Total organisations</b>	<b>49</b>	<b>18</b>	<b>1</b>	<b>43</b>	<b>9</b>	<b>120</b>
<b>% of organisations</b>	<b>41%</b>	<b>15%</b>	<b>1%</b>	<b>36%</b>	<b>8%</b>	
<b>Individuals</b>						
<b>Individuals</b>	<b>2422</b>	<b>711</b>	<b>326</b>	<b>1150</b>	<b>84</b>	<b>4693</b>
<b>% of individuals</b>	<b>52%</b>	<b>15%</b>	<b>7%</b>	<b>25%</b>	<b>2%</b>	
<b>All respondents</b>						
<b>All respondents</b>	<b>2471</b>	<b>729</b>	<b>327</b>	<b>1193</b>	<b>93</b>	<b>4813</b>
<b>% of all respondents</b>	<b>51%</b>	<b>15%</b>	<b>7%</b>	<b>25%</b>	<b>2%</b>	

A small majority of respondents – 51% of those who answered the question – thought that both record keeping and reporting requirements should be part of licence conditions, while 25% thought neither should apply. Overall, 65% of respondents (i.e. 51% + 15%) agreed with a requirement for record keeping and 58% (51% + 7%) that reporting should be required.

The level of support was lower among organisational respondents, where only 41% agreed with both requirements. ‘Land management’, ‘Sporting organisations’, and ‘Other – private sector’ respondents typically thought that neither record keeping nor reporting should be required.

**Question 13** – If you answered ‘Neither’ to Question 12, outline why you believe this.

Around 1,235 respondents provided a comment at Question 13, including a small number who had not selected ‘neither’ at Question 12. Points made at Question 16 that are relevant to this topic are also covered in the analysis below.

Comments made at Question 13 illustrated that a large majority of those respondents who chose neither record keeping nor reporting requirements did so because they did not agree with introduction of grouse moor licences in principle, or

objected on one or more specific grounds. However, a small number did so because they would prefer to see a complete ban on grouse shooting.

### **Reasons given for opposing record keeping and reporting requirements**

The most frequently given reasons for thinking that neither record keeping nor reporting should be imposed were that:

- These requirements are not related to the core issue of preventing raptor persecution, or that it is not clear how they are related. Specifically, it was argued that there is no link between details of either shooting days/bags or predator control undertaken and the persecution of raptors.
- Other land management practices use predator control too, and it is unfair to single out grouse moors for particular recording and reporting requirements. It was argued that this would not be consistent with equality of treatment before the law.

It was also argued that while estates and keepers will have their own records, there should not be a statutory requirement to keep records or to report the information to the licensing authority. It was suggested that the proposed requirements would represent a disproportionate addition to the administrative burden on the licensee while providing little public benefit. There was also a view that the proposed approach is too adversarial, and does not provide scope for encouragement of positive outcomes, while a small number of respondents expressed concerns that even a minor error in record keeping or reporting could be used as a reason not to approve a licence renewal.

Some respondents suggested that:

- Only records that are relevant to the licence should be disclosed, upon request from the licensing authority and under relevant circumstances.
- This should not include records of predator control.

How predator control in the same area but for other purposes (for example to benefit upland sheep farming) can be separated from predator control for grouse moor management was also queried.

Other concerns raised with respect to reported data included that Freedom of Information requests to the licensing authority could see such information released in the public domain. Related points were that:

- Information about shoot days and number of grouse shot informs the capital value of the land and is commercially sensitive.
- Unaggregated data on predator control could increase abuse of gamekeepers and others working in the sector by those who oppose grouse shooting.

It was also suggested that the General Data Protection Regulation would require the licensing authority to demonstrate that they are using the data only for the purposes for which it was gathered – namely monitoring licence compliance – and not for informing broader policy decisions.

## Reasons given for supporting record keeping and reporting requirements

A small number of respondents to Question 13 – and others at Question 16 – noted their reasons for supporting record keeping and reporting as licensing requirements. Points made included that:

- The proposed reporting requirements in relation to grouse moor licences would align with reporting conditions for other NatureScot licences – for example with respect to ringing birds.
- Records should be returned as a matter of course, not solely on-demand.
- Failure to update records in a timely fashion should result in withdrawal or non-renewal of licence.
- Statutory reporting requirements would provide data to inform policy development and annual publication of anonymised statistics would allow transparency and public scrutiny.

In terms of the information that should be collected, suggestions included that:

- Annual reporting of both numbers of grouse counted in spring and shot in summer would allow fluctuations in local and national populations to be monitored to help inform conservation measures.
- Annual returns should include not only numbers of grouse shot but also records of other animals and birds (including non-target species) killed as part of management practices associated with grouse shooting. The licence renewal process could include a requirement to assess how all interventions (both prevention and killing) are working.
- Recording requirements should include details of use of medicated grit, and of muirburn.
- Information on the number of shots fired (particularly lead shot) and estimates for carbon emitted through shooting activities (from muirburn to transport across the land) should also be required.

It was also suggested that if a requirement to keep records is introduced, a template and guidelines should be provided to assist users with the information that should be recorded and level of detail required.

**Question 14** – Do you agree that, where a person holds a valid licence, and there is sufficient evidence to show that, on the balance of probabilities a wildlife crime has been committed on their property, NatureScot should have the power to impose the following penalties:

- Issue a written warning
- Temporarily suspend a licence
- Permanently revoke a licence.

Responses to Question 14 by respondent type are set out in Table 9 below.

<b>Table 9: Question 14</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	13	1	0	14
Conservation, including representative bodies	21	1	0	22
Land management, including representative bodies	8	29	0	37
Pest control, including representative bodies	1	0	5	6
Public body, including law enforcement	5	1	0	6
Sporting organisations, including representative bodies	0	6	0	6
Other - private sector	3	15	0	18
Other - non private sector	7	0	1	8
<b>Total organisations</b>	<b>58</b>	<b>53</b>	<b>6</b>	<b>117</b>
<b>% of organisations</b>	<b>50%</b>	<b>45%</b>	<b>5%</b>	
<b>Individuals</b>				
	<b>3273</b>	<b>1377</b>	<b>50</b>	<b>4700</b>
<b>% of individuals</b>	<b>70%</b>	<b>29%</b>	<b>1%</b>	
<b>All respondents</b>	<b>3331</b>	<b>1430</b>	<b>56</b>	<b>4817</b>
<b>% of all respondents</b>	<b>69%</b>	<b>30%</b>	<b>1%</b>	

A majority – 69% of those who answered the question – agreed that where a person holds a valid licence, and there is sufficient evidence to show that, on the balance of probabilities a wildlife crime has been committed on their property, NatureScot should have the power to impose the proposed penalties. Of the remaining respondents, 30% disagreed and 1% were unsure.

Organisational respondents were more evenly divided, with 50% of those who answered the question in agreement, while 45% disagreed and 5% were unsure. A clear majority of ‘Animal welfare’, ‘Conservation’, ‘Public body’ and ‘Other – non private sector’ respondents agreed, while a majority of ‘Land management’, ‘Sporting organisations’, and ‘Other – private sector’ respondents disagreed, and the majority of ‘Pest control’ respondents were unsure.

**Question 15** – If you answered ‘No’ to Question 14, outline why you believe this.

Around 1,440 respondents commented at Question 15.

The points raised at this question were often similar to those discussed earlier at Question 11, including in relation to the burden of proof for sanctions relating to grouse moor licences. This included some who repeated their objection to grouse shooting and who wished to see a total ban on grouse shooting.

Others who disagreed with proposals did not think that NatureScot should have the power to impose the listed penalties, again consistent with views expressed at Question 11. These respondents expressed concern that NatureScot’s judgement

does not provide sufficient grounds for penalties that could have a significant impact on the lives and livelihoods of licence-holders. Many respondents noted that they objected to NatureScot having the power to revoke a licence.

### **Proportionality of punishment**

Concerns around the potential impact of penalties were also linked to a view that the proposed penalties are disproportionate to the offences. A number of respondents described the proposed punishment as too severe for wildlife crime offences. This included particular objection to the imposition of any permanent penalties, although some also felt that temporary suspension of a licence would also be a disproportionate punishment.

Some respondents also expressed concerns around the location-based nature of wildlife crime, and the challenges this creates for landowners. For example, it was noted that landowners do not have complete control over access to their land, nor the actions of those who access their land. It was also noted that illegally killed raptors may be found several miles from the site of the poisoning. There was a view that clear evidence of a causal link between the landowner and the crime would be required to justify the proposed penalties. Respondents also referred to the Werritty Report's recommendations, noting that these were focussed on the illegal killing of golden eagles, peregrines, and hen harriers. It was suggested that proposed penalties would extend the scope of the licensing scheme 'far beyond' this original policy aim.

### **The burden of proof**

As was noted at Question 11, a frequent view was that the severity of proposed penalties should require more than a 'balance of probabilities' that a wildlife crime has taken place. This was most commonly linked to a view that a criminal standard of proof should be required, including some who argued that a licence should be suspended or revoked only following a successful criminal prosecution.

These respondents highlighted particular concerns around potential for vexatious and false accusations, and suggested that the civil standard of proof would not be sufficient to protect against these. Objection to the use of a civil standard were also linked to the concerns noted above in relation to the location-based nature of wildlife crime.

### **Impact of punishment**

A key reason given in support of calls for a stronger burden of proof was the potential impact of the proposed penalties. Concerns about the potential impact were especially acute in relation to the potential revocation of a licence, but some also noted the potential for temporary suspension of a licence to have significant impacts for the licence holder and local communities.

Respondents referred to a range of direct consequences associated with losing a licence including immediate financial impacts and loss of employment, potentially also leading to the loss of tied housing. Wider economic and community impacts were also highlighted, with many of those commenting highlighting the importance of grouse shooting for local economies. There was reference to damage to local

businesses, loss of community investment and the risk of rural depopulation (including an associated risk to local amenities such as schools and shops). Some also saw the potential for the proposed penalties to lead to ecological damage and a reduction in biodiversity, including loss of investment in programmes contributing to biodiversity and climate targets.

Based on these concerns, some respondents suggested that suspension or revocation of a licence required the additional safeguards provided by a criminal burden of proof.

### **Risk of sabotage**

Concerns around the use of a civil burden of proof were also related to suggestions that this could be exploited by those opposed to grouse shooting to 'set up' land owners. This view was linked to comments noted earlier around the proposed focus on the location of crime; this was seen by some as providing an opportunity for sabotage and/or vexatious allegations against licence holders.

### **Human Rights**

A number of respondents objected to the proposals based on human rights-related concerns. As was discussed in relation to Question 11, this included reference to the potential for proposals to violate specific ECHR articles such as those relating to the right to a fair trial and equal treatment before the law. Concerns about the logic of linking the location of a crime to the landowner were noted. Some also saw the proposals as discriminatory against those with a licence to shoot grouse, in that these individuals would be subject to tougher sanctions than other licence holders.

On this basis, it was argued that a criminal burden of proof would be required for any suspension or revocation to protect such rights.

### **Existing wildlife crime legislation**

Some respondents referred to existing legislation relating to wildlife crime, including raptor persecution specifically. It was suggested that this legislation makes sufficient provision for sanctioning of wildlife crime, and that licensing is not required. There was also a view that the same law (and associated penalties) should apply across all wildlife crime irrespective of location.

It was also suggested that proposals would add an unnecessary additional layer of bureaucracy in addition to existing legislation, and that guidance should be sufficient to ensure effective application of existing laws.

### **The role of NatureScot**

Concerns about the proposed role for NatureScot were a source of concern for some of those opposed to the proposals. Associated comments included that licence revocation should not be within the power of any licensing body. There were also specific concerns around the capacity of NatureScot to take on the proposed role, with respondents referring to the potential for legal challenges that may detract from their 'core' work. Some suggested that NatureScot would require additional resourcing.

A small number of respondents also expressed a lack of confidence in NatureScot. This was linked to concerns around the existing application of restriction of General Licences where there is insufficient evidence to meet the legal test of 'beyond reasonable doubt'. It was suggested that this has damaged confidence in NatureScot as the regulator such that the new role proposed would not be appropriate.

A small number of respondents suggested alternative organisations that might deliver any requirements introduced through the proposals. Specific suggestions included local authorities, SSPCA, RSPB, Wildlife Crime Officers and the SGA or GWCT.

### **Procedure to suspend a licence**

Some of those raising concerns around proposed penalties set out procedural elements they would wish to see introduced if a civil standard of proof is to be adopted. Specific suggestions included:

- Sanctions should only be triggered when there is robust evidence of a causal link between the licence holder and the crime – for example, that wildlife crime has been committed by the licence holder or a third party acting on their behalf. Some suggested that a licence should be suspended or revoked following successful criminal prosecution and/or following determination of any appeal.
- Suspension or revocation of a licence should be limited only to the individual committing wildlife crime - land owners and estates should be subject only to a written warning.
- In determining appropriate penalties, there should be consistency with the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020. The length of any suspension of a licence should be proportionate to the offence and based on an impact assessment to consider the number of gamekeepers and family members adversely affected by the decision.
- A wider range of potential sanctions should be available, including financial penalties and seizing of land.
- Safeguards should be set out in primary legislation.
- A right to appeal should apply where there is a suspension or revocation of a licence – this was cited by some as a key reason for their objection to a civil burden of proof.

There were also specific suggestions relating to a robust appeals process, including that appeals should be to an independent body and should not be limited to Judicial Review.

### **Alternative views**

A small number of those who disagreed at Question 14 felt that criminal rather than civil procedures would reduce the chance of illegal activities being perpetrated.

Similar reasoning was also cited in opposition to proposals for written warnings; a small number of respondents wished to see a stronger and more immediate response to wildlife crime. Among respondents who agreed with proposals, reasons given included that:

- A civil burden of proof is the only realistic standard, given the challenges in securing criminal convictions for wildlife crimes committed in remote areas.
- A lower burden of proof based on a balance of probability was affirmed for use in similar circumstances by Lord Armstrong<sup>1</sup>.

**Question 16** – Please provide any further comments on the questions in this section here.

Around 2,330 respondents provided a comment at Question 16. Many comments reiterated points made at Questions 2 to 15, and issues already addressed at these questions are referenced only briefly in the analysis below.

### **Comments in support of a licensing regime or further controls**

A number of respondents noted their general support for the introduction of a licensing regime, with further comments including that this is a proportionate approach to tackling some longstanding issues of public concern. There was particular reference to crimes against birds of prey and other wildlife and the misuse and abuse of traps. It was also reported that:

- Attempts to cover up evidence continue to occur regularly, and particularly on land managed intensively for driven grouse shooting.
- There is a wealth of peer-reviewed evidence providing a clear and ongoing link between raptor persecution and grouse moor management.

A 'Conservation' organisation reported that their investigations team has assisted and supported the police in the follow-up to hundreds of raptor persecution and other wildlife crime incidents in Scotland over the last three decades, providing witness statements and testimony that has contributed to multiple successful prosecutions of those engaged in such crimes. The vast majority of these have been employees of gamebird shooting estates. An 'Animal welfare' organisation reported similar work from their special investigations unit.

There were also references to the impact on wild animals more widely, and it was reported that larger terrestrial invertebrates and birds of prey are generally not welcome on land managed for grouse shooting. It was suggested that, in circumstances where conflict arises between the presence of wild animals and their natural habitats and human interests, [international consensus principles for ethical wildlife control](#) should guide decision making.<sup>2</sup> The associated view was that all

<sup>1</sup> Raeshaw Farms Ltd v Scottish Natural Heritage (2017) CSOH 50.

<sup>2</sup> These are: 1) modify human practices when possible; 2) justify the need for control; 3) have clear and achievable outcome-based objectives; 4) cause the least harm to animals; 5) consider community values and scientific information; 6) include long-term systematic management; and 7) base control on the specifics of the situation.

wildlife management, including that on grouse moors, should be required to follow these ethical principles.

Some respondents made a connection between grouse moor management and the nature and climate emergencies, including that the [State of Nature Scotland Report \(2019\)](#) highlighted that ‘widespread sporting management since the 19<sup>th</sup> century had significant effects on upland wildlife’. The Report’s reference to inappropriate muirburn was also noted. It was suggested that driven grouse moors are artificial landscapes where wildness, biodiversity, natural regeneration and carbon sequestration are severely compromised to ensure an abundance of red grouse for a few days shooting each year. There was also reference to some wildlife management practices on grouse moors damaging and polluting the environment, for example through the use of lead ammunition.

Some respondents, including some who saw the proposed licensing regime as a useful first step, were looking for more extensive changes. There was reference to the Werritty Report’s suggestion that reflecting ‘on the fundamental structure of the controls on hunting would be appropriate for a much deeper and more far-reaching review of the law and policy affecting that activity and related land use’. In particular, it was suggested that reform of grouse moor management could help deliver the Government’s land reform aspirations and support a transition to more economically and environmentally productive uses of land. There was also reference to supporting the forthcoming Scottish Biodiversity Strategy and plans to halt biodiversity loss by 2030 and reverse it with large-scale restoration by 2045.

As noted above, those commenting in favour of introducing controls sometimes noted their support for the introduction of a licensing regime, albeit some were either looking for the licensing proposals to be strengthened or saw them as a first step. However, a number of respondents were either looking for more extensive controls to be introduced as soon as possible and/or simply favoured a ban on grouse shooting. Arguments made included that, in light of the twin crises of biodiversity loss and climate change, use of land for grouse moors, and the over production of game birds for to be killed for ‘sport’ should not be tolerated. It was also suggested that grouse shooting causes immense suffering to both target and non-target species. There was reference to the killing of foxes, stoats, weasels, corvids and other animals for the purpose of increasing grouse numbers for sports shooting.

In terms of particular activities, there was reference to making driven grouse shooting illegal, and a suggestion that ultimately the only truly sustainable form of game shooting possible over large areas of the uplands will be low intensity ‘walked up’ shooting, carried out in the context of a wider suit of restoration and economically productive approaches to land management. It was also suggested that licences should prohibit the most intensive grouse moor management practices, including the burning of heather. This issue is covered in the Muirburn section (Questions 17 to 29). Other suggestions relating to licensing conditions and the management of grouse moors are set out below.

## **Parameters and basic conditions of licensing**

Some of the suggestions made related to what or who should be covered by any licence. They included that:

- The licence should apply to both an individual landowner/sporting rights holder and a relevant area (or areas) of land.
- Any person responsible for or working on a grouse moor should have regard to the ethical principles of wildlife management - to protect against harm to ecosystems and wild animals.
- At initial licence application, factors such as being currently under a General Licence restriction should be taken into consideration.
- There should be protocols in place to ensure that violations of the licence terms or Code of Practice (discussed further below) are identified and result in licence revocation.

Respondents also raised wider concerns about limiting the licensing system to 'driven grouse shooting', and there were calls for it to cover all forms of grouse shooting in order to avoid loopholes that could be exploited to bypass licensing requirements. There was reference to red-legged partridges and pheasants increasingly being released on to land managed for grouse shooting. The associated concern was that if shooting of these species is not included in the licensing scheme it would be very easy for shoot managers to shift their focus to shooting red-legged partridge instead of grouse.

### **Code of Practice**

The consultation paper sets out that the new licensing scheme will be accompanied by a Code of Practice for grouse moor managers. The Code of Practice will set out legal requirements, as well as strongly recommended practice and best practice guidance for moorland management. The Bill will provide that NatureScot may have regard to the Code of Practice when taking licensing decisions.

A number of those who supported some form of licensing commented on the important role they saw a Code of Practice playing. It was suggested that the Code should set out what must be done rather than what should be done, and that adhering to it should be a statutory requirement. A 'Conservation' organisation reported that their experience of the current Muirburn Code, as well as gamebird shooting industry voluntary best practice standards, is that non-statutory requirements are routinely ignored.

In terms of the Code itself, it was suggested that it should be based on an evidence-based approach signed off by the NatureScot Scientific Advisory Committee, and should:

- Include all regulation and best practice guidance relating to wildlife 'management', including trapping.
- Include issues relating to wider stewardship of the land such as the natural regeneration of native trees and preservation of mature trees.
- Outlaw the maintenance of deer numbers at artificially high levels in grouse shooting areas.

It was suggested that failing to adhere to the Code of Practice should result in automatic revocation of a licence.

### **Licences for shooters**

Another common theme was that people involved in shooting gamebirds, or any wildlife, should need to have a shooting proficiency certificate or should need to pass a shooting proficiency test. It was reported that such proficiency tests are standard in many European countries and that typically certification includes a training course and then both theoretical and practical tests.

In terms of the requirements of such a certification, respondents referred to firearms safety and proficiency, wildlife identification, animal welfare, and understanding of the appropriate laws and best practice.

Other suggestions included that:

- Responsibility for ensuring all shooters have the necessary certification should lie with the licence holder.
- Certification should also be necessary for the killing of other game birds such as the red-legged partridge and pheasants. It was noted that in its response to the [Deer Working Group Report](#) the Scottish Government agreed that 'it is important to ensure that everyone who shoots deer in Scotland has the same basic level of training which would benefit both deer welfare and public safety.' It was suggested that, if this is the case for deer, there is no logical or scientific reason that it would not be the case for every other species being shot.

### **Medicated grit stations**

A number of respondents commented on the use of medicated grit, including that the use of medicated grit stations should be banned due to the toxic effects on non-target species. The approach was described as amounting to mass medication that is unmonitored and unregulated, with an 'Animal welfare' organisation estimating that around two hundred thousand unregulated and unmonitored medicated grit stations may be spread throughout the uplands. They also reported that research shows contaminated grit stations to be a significant route for rapid disease transmission, not just in red grouse but other species of high conservation concern.

There was a call for use of medicated grit stations to be grounds for revoking of licence to operate. There was also a suggestion that, as part of a grouse licence return, a licence-holder should provide to NatureScot and the Veterinary Medications Directorate a copy of the prescription that permits the use of such veterinary medication, including details of the amounts used and period of use.

### **Licence fees**

There was a view that the public should not have to cover the costs of the licensing regime and that licence fees should be charged at a level that would cover the costs of operating the licensing regime. With reference to NatureScot, it was suggested that fees should be charged on a cost-recovery basis to ensure that

there is no impact on their wider conservation resources. However, it was also suggested that there may be a need for additional financial support from the Scottish Government to NatureScot.

The importance that a licence fee covers monitoring and enforcement costs was highlighted, with other views including that licence fees could be set at a higher level in order to support measures to address the harms to wildlife and the environment caused by grouse shooting. It was also suggested that monies could be raised for the Scottish Land Fund, to aid the Scottish Government in its land reform goals for more equitable land ownership and more community buyouts.

### **Additional concerns about a licensing regime or further controls**

A number of respondents who had generally disagreed with the proposals set out, and in particular who had disagreed that a licensing regime should be introduced, also went on to make a further comment. As noted above, many of these comments reflected points made at previous questions and the focus of the analysis below is on other issues raised.<sup>3</sup>

### **Economic and social impacts of licensing**

Respondents raised a number of concerns relating to the potential social and economic impact of licensing grouse shooting. It was suggested that there seems to be little focus from the Scottish Government on the benefits the grouse shooting sector produces, particularly in terms of income and employment in rural areas. It was suggested that the impact of licensing proposals on the rural economy will be severe.

In terms of particular types or scale of impact that shooting businesses have:

- There was reference to shooting estates providing permanent and seasonal employment. For example, one 'Land management' organisation reported that they own and manage an upland estate with a grouse moor, employing three gamekeepers and providing housing for them and their families.
- Some respondents, including some private sector business owners, noted their concerns about the possible 'knock-on' impact on their own or other businesses in the local area.
- It was suggested that the provision of employment and housing helps retain population in rural areas, including remote rural areas, and that this helps local services, including local schools, remain viable.

It was also suggested that shooting has been shown to provide a unique mix of wellbeing benefits for participants – from getting people active, to reducing social isolation and encouraging engagement with the natural environment.

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<sup>3</sup> Please note also that the sometimes extensive arguments made in relation to human rights and ECHR cannot be adequately represented in an analysis of this type, but that all responses are available to the Scottish Government.

## **Environmental benefits of grouse moor management**

The other main theme was that the proposals do not recognise the important role that grouse moor management plays in successful habitat management and in tackling climate change and biodiversity loss. For example, a 'Land management' organisation referred to having staff to manage the land for wildlife, carry out peatland restoration work and work on other environmental projects. There was also reference to activities associated with managing a grouse moor helping to facilitate safe public access for those wishing to spend time in remote rural areas. In terms of the connection to grouse shooting as a business, it was suggested that it provides a workable model for managing upland areas that helps fund environmental and other work.

There was an associated concern that a licensing process could risk abandonment of upland management or inappropriate changes in land use without adequate research. One possible alternative land use cited was tree planting, and there was reference to [research](#) suggesting that planting of trees onto heather moorland did not lead to an increase in net ecosystem carbon stocks even decades after planting. It was also reported that the SRUC's 2020 report on the [Socio-economic and biodiversity impacts of driven grouse moors in Scotland](#) found no demonstrably better land use alternatives.

### 3. Muirburn

Muirburn is the burning of vegetation in moorland areas, usually in a controlled manner, in order to promote growth and maintain open moorland. It is a tool used traditionally by land managers in Scotland to improve grazing, provide food and shelter for red grouse and other gamebirds, reduce the risk of wildfires and for selected conservation objectives for habitats and species. The muirburn season runs from 1 October to 15 April inclusive in Scotland, but this can be extended to 30 April at the landowner's discretion.

Research suggests that muirburn can have both beneficial and adverse effects. If it is undertaken without due consideration of all the possible consequences, it has the potential to have a serious negative impact on wildlife, soil quality, carbon sequestration, and the wider environment. However, it can also bring positive benefits in some cases, for example by helping to reduce fuel loads and thereby reducing the risk of wildfires.

The impacts of burning on carbon release and sequestration on moorland are disputed and there is conflicting scientific evidence. However, given the importance of peatland to Scotland's net zero target, the Scottish Government takes the view that a precautionary approach is required until there is more consensus on the impacts of muirburn.

**Question 17** – Currently a licence is only required to undertake muirburn outwith the muirburn season. Do you agree that a licence should be required to undertake muirburn regardless of the time of year that it is undertaken?

Responses to Question 17 by respondent type are set out in Table 10 below.

<b>Table 10: Question 17</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
Organisations:				
Animal welfare	11	1	0	12
Conservation, including representative bodies	22	1	0	23
Land management, including representative bodies	10	29	2	41
Pest control, including representative bodies	1	0	5	6
Public body, including law enforcement	5	0	1	6
Sporting organisations, including representative bodies	0	6	0	6
Other - private sector	1	11	1	13
Other - non private sector	8	0	0	8
<b>Total organisations</b>	<b>58</b>	<b>48</b>	<b>9</b>	<b>115</b>
<b>% of organisations</b>	<b>50%</b>	<b>42%</b>	<b>8%</b>	
Individuals				
	<b>3211</b>	<b>1377</b>	<b>73</b>	<b>4661</b>
<b>% of individuals</b>	<b>69%</b>	<b>30%</b>	<b>2%</b>	
<b>All respondents</b>				
	<b>3269</b>	<b>1425</b>	<b>82</b>	<b>4776</b>
<b>% of all respondents</b>	<b>68%</b>	<b>30%</b>	<b>2%</b>	

Please note that some percentages do not sum to 100% due to rounding.

A majority – 68% of those who answered the question – agreed that a licence should be required to undertake muirburn regardless of the time of year that it is undertaken. Of the remaining respondents, 30% disagreed and 2% were unsure.

Organisational respondents were more evenly divided, with 50% of those who answered the question in agreement, while 42% disagreed and 8% were unsure. A clear majority of ‘Animal welfare’, ‘Conservation’, ‘Public body’ and ‘Other – non private sector’ respondents agreed, while a majority of ‘Land management’, ‘Sporting organisations’, and ‘Other – private sector’ respondents disagreed, and the majority of ‘Pest control’ respondents were unsure.

**Question 18 – If you answered ‘No’ to Question 17, please outline why you believe this.**

Around 1,380 respondents provided a comment at Question 18.

The issues raised most frequently by respondents who disagreed with licensing were the role of muirburn as a vital land management tool, its benefits for mitigation of wildfires, and its positive impacts on biodiversity, including in mosaic habitat creation. One respondent quoted extensively from the recent NatureScot research report [Reviewing, assessing and critiquing the evidence base on the impacts of muirburn on wildfire prevention, carbon storage and biodiversity](#) to illustrate their arguments on these points. Concerns were expressed that introduction of a

muirburn licensing system will have negative effects on both biodiversity and wildfire mitigation.

A much smaller proportion of respondents who answered 'No' at Question 17 did so because they wished to see a ban on muirburn rather than an extension of licensing arrangements.

### **Muirburn and biodiversity**

Some respondents cited evidence that muirburn can have positive impacts for bird species other than red grouse with curlew, golden plover, merlin, whinchat, black grouse and lesser redpoll all referenced. The range of habitat and variety of ground cover created by muirburn, and the control of predation on managed grouse moors were considered beneficial for other ground nesting birds. With respect to plant species, it was argued that there is evidence to suggest that, depending on burning rotations, muirburn either has no adverse impact or can be beneficial for sphagnum moss species associated with peat formation. Deer, sheep and hares were also referenced as benefiting from the new growth promoted by muirburn.

### **Muirburn and wildfire mitigation**

An important role for muirburn in reducing both the risk and intensity of wildfires was also cited by respondents with some quoting the NatureScot review as recognising 'a plausible mechanism' through which muirburn can influence wildfire intensity via structural alterations to fuel load. It was also reported that the Scottish Fire and Rescue Service (SFRS) recognise the importance of muirburn in preventing, reducing and tackling wildfires.

Some respondents referenced the increasing risk of wildfires as a result of climate change and drier summers, with factors including increased public access and plans for increased tree planting also seen as contributing to elevated risk.

### **Risk of damage to peat**

Respondents also argued that, while properly executed muirburn does not damage underlying peat, uncontrolled wildfires are likely to do so, and SFRS were reported to have found little evidence to suggest damage to peatland by correctly performed cool burn techniques. It was argued that sub-surface temperatures remain low during muirburn, meaning that the underlying peat is not damaged or burned and that, since the primary purpose is typically to reinvigorate vegetation, burning underlying soil and killing vegetation would defeat the purpose of the exercise.

Limiting muirburn to a season when the weather is cold and wet was also observed to reduce the risk that peat catches fire during muirburn.

### **Impact on carbon sequestration**

There were relatively few comments specifically on the impact of muirburn on carbon sequestration, although it was argued that it may prove beneficial and it was noted that the NatureScot review recorded findings that charcoal created during muirburn can function as a carbon sink. In addition, recently published, long-term

research not included in the NatureScot review<sup>4</sup> was reported to have found that, although there was a short-term carbon loss over 3-5 years after muirburn, analysis over 10 years showed that the burnt areas rapidly recovered to show the greatest net carbon gain, while unmanaged areas showed a continuing slow decline in their ability to lock up carbon.

### **Evidence base to support licensing**

There was also a view that the proposals with respect to muirburn are not evidence-based, with numerous gaps in knowledge about the impacts of muirburn. It was argued that, in the absence of evidence that muirburn is having a net negative effect, it would be better to focus resources on long-term scientific research to support evidence-based policymaking.

### **Unnecessary regulation**

Some respondents saw the proposed licence for muirburn as unnecessary regulation, adding to paperwork and administrative costs for estates. In addition, two respondents who provide muirburn equipment suggested licensing could harm their businesses.

It was also argued that muirburn is a longstanding practice that is already adequately regulated under the Muirburn Code. Respondents highlighted:

- The levels of skill and experience among those who practice muirburn on grouse moors. For example, it was noted that gamekeepers have provided SFRS with training on how to control moorland fires, and one respondent reported that their head keeper, responsible for running muirburn, is a member of the fire brigade.
- That burning is only carried out during the season when environmental impacts are lowest, and when conditions are safe to do so.
- That muirburn techniques are evolving.

### **Characteristics of a licensing system**

If muirburn is licenced, it was argued that a proportionate approach would be to licence individual practitioners on successful completion of prescribed training. It was noted that such training has already been developed by the SFRS, SGA and NatureScot, and it was suggested that such training could be part of Continuing Professional Development. It was also thought that such an approach could easily be implemented in a consistent manner, incentivising responsible behaviour, and following recommendations in the Werritty Report in respect of training and fire safety.

In contrast it was suggested that landowners do not generally have any involvement in starting or managing muirburn and, as they do not control this decision-making, it would be unfair for them to suffer land-based penalties. It was

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<sup>4</sup> [Restoration of heather-dominated blanket bog vegetation for biodiversity, carbon storage, greenhouse gas emissions and water regulation: comparing burning to alternative mowing and uncut management : Final 10-year Report to the Project Advisory Group of Peatland-ES-UK.](#)

noted that the Hill Farming Act 1946 places liability for offences on the person making muirburn.

### **Issues relating to crofting and farming**

A small number of respondents, including some who agreed with muirburn licences and some who did not, raised issues relating to burning of vegetation by crofters and farmers.

It was suggested that the licensing system being proposed would have a broader effect than limiting muirburn, extending to any use of fire to control vegetation, apart from stubble burning. Potential implications for crofters in particular were noted – for example, that many crofters rely on burning for the health and wellbeing of their animals. However, it was observed that the Werritty Report does not mention crofting, and there was a concern that measures are being designed without proper consideration for the crofting community.

It was argued that:

- Licensing requirements could be challenging for some older crofters or could put people off crofting.
- Use of fire at very small scale should continue as a land management tool without a requirement for a muirburn licence.
- Any licensing requirements should be proportionate to risk, and specific training should target the small-scale crofting context.

There was also a view that some crofters lack appropriate knowledge and training with respect to muirburn and may be harming the reputation of gamekeepers.

### **Alternative views**

A small number of respondents who had not answered 'No' at Question 17 made points explaining their views, with the most frequent position being that muirburn should be banned altogether. Others made points in support of licensing, including that it could:

- Ensure greater control over muirburn and provide an opportunity to collect information on its impacts.
- Ensure best practice in muirburn, subject to provision of suitable, accessible training and awareness raising.

With respect to circumstances where respondents thought licences should be granted, comments included that this should be only under exceptional circumstances, for example where there would otherwise be a very high risk of wildfires, or that it should not be for sporting purposes.

**Question 19** – If we introduce a licensing scheme, do you agree that NatureScot should be the licensing authority?

Responses to Question 19 by respondent type are set out in Table 11 below.

<b>Table 11: Question 19</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
Organisations:				
Animal welfare	10	0	1	11
Conservation, including representative bodies	21	0	1	22
Land management, including representative bodies	31	1	7	39
Pest control, including representative bodies	2	0	4	6
Public body, including law enforcement	6	0	0	6
Sporting organisations, including representative bodies	6	0	0	6
Other - private sector	11	2	0	13
Other - non private sector	8	0	0	8
<b>Total organisations</b>	<b>95</b>	<b>3</b>	<b>13</b>	<b>111</b>
<b>% of organisations</b>	<b>86%</b>	<b>3%</b>	<b>12%</b>	
Individuals				
	<b>3652</b>	<b>482</b>	<b>505</b>	<b>4639</b>
<b>% of individuals</b>	<b>79%</b>	<b>10%</b>	<b>11%</b>	
All respondents				
	<b>3747</b>	<b>485</b>	<b>518</b>	<b>4750</b>
<b>% of all respondents</b>	<b>79%</b>	<b>10%</b>	<b>11%</b>	

Please note that some percentages do not sum to 100% due to rounding.

A majority – 79% of those who answered the question – agreed that if muirburn licensing is introduced, NatureScot should be the licensing authority. Of the remaining respondents, 10% disagreed and 11% were unsure.

Among organisational respondents a larger majority – 86% – agreed that NatureScot should be the licensing authority, while only 3% disagreed and 16% were unsure. A clear majority of all organisational respondent groups were in agreement, with the exception of ‘Pest control’ respondents, where the majority were unsure.

### **Alternative licensing authorities**

Respondents were also given the opportunity to suggest bodies other than NatureScot that might act as a licensing authority if a muirburn licensing scheme were to be introduced. Answers given at Question 21 closely reflected those at Question 7, with many respondents making exactly the same remarks.

Around 440 respondents made a comment, with some respondents who thought there should be no muirburn licensing scheme seeing no requirement for any licensing authority. Among other respondents, the most frequent suggestion was that an existing organisation with an interest in field sports should be the licensing authority – with the GWCT, BASC and SGA all proposed.

Other frequently made suggestions were that Police Scotland, or a wildlife/animal welfare NGO such as the RSPB or SSPCA could be the licensing authority. Less

frequent suggestions included: the Scottish Government, Local or regional authorities, and the Scottish Environment Protection Agency (SEPA).

### **General characteristics of any licensing body**

On a more generic level, some respondents argued that the licensing body should be independent or impartial. In some instances this was associated with being impervious to political pressures although also, less frequently, as being independent of influence by shooting interests.

There were also calls for a new body to be set up, or for any licensing body to have a range of stakeholder representation including NatureScot, shooting organisations, landowners, and environmental groups.

Some respondents expressed a view that, whatever the licensing authority, it must be adequately resourced and have appropriate powers.

### **NatureScot as the licensing authority**

Specifically with respect to NatureScot, there were views that the organisation does not have the resources to administer an extended muirburn licensing scheme, or that it would require additional resources to do so.

Some respondents explained other reservations about NatureScot as the licensing authority, including both a lack of confidence that they would take an even-handed approach, and with respect to what was seen as an insufficiently robust approach in some areas. Potential conflicts with other aspects of NatureScot's relationship with landowners/managers were also suggested.

Other points made with respect to NatureScot as the licensing authority included that this would provide consistency with the current licensing regime, although there was also a request that the Cairngorm National Park Authority should be a statutory consultee on muirburn licensing in the National Park to ensure alignment with the National Park Partnership Plan.

**Question 20** – Do you agree that there should be a ban on muirburn on peatland unless it is done under licence as part of a habitat restoration programme approved by NatureScot?

Responses to Question 20 by respondent type are set out in Table 12 below.

<b>Table 12: Question 20</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	11	1	0	12
Conservation, including representative bodies	20	1	0	21
Land management, including representative bodies	9	29	3	41
Pest control, including representative bodies	1	0	5	6
Public body, including law enforcement	2	1	3	6
Sporting organisations, including representative bodies	0	6	0	6
Other - private sector	2	11	0	13
Other - non private sector	7	0	1	8
<b>Total organisations</b>	<b>52</b>	<b>49</b>	<b>12</b>	<b>113</b>
<b>% of organisations</b>	<b>46%</b>	<b>43%</b>	<b>11%</b>	
<b>Individuals</b>	<b>3232</b>	<b>1333</b>	<b>69</b>	<b>4634</b>
<b>% of individuals</b>	<b>70%</b>	<b>29%</b>	<b>1%</b>	
<b>All respondents</b>	<b>3284</b>	<b>1382</b>	<b>81</b>	<b>4747</b>
<b>% of all respondents</b>	<b>69%</b>	<b>29%</b>	<b>2%</b>	

A majority – 69% of those who answered the question – agreed that there should be a ban on muirburn on peatland unless it is done under licence as part of a habitat restoration programme approved by NatureScot. Of the remaining respondents, 29% disagreed and 2% were unsure.

Organisational respondents were more evenly divided, with 46% of those who answered the question in agreement, while 43% disagreed and 11% were unsure. A clear majority of ‘Animal welfare’, ‘Conservation’ and ‘Other – non private sector’ respondents agreed, while a majority of ‘Land management’, ‘Sporting organisations’, and ‘Other – private sector’ respondents disagreed, and the majority of ‘Pest control’ respondents were unsure.

**Question 21** – Other than for habitat restoration, public safety (e.g. fire prevention), and research, are there any other purposes for which you think muirburn on peatland should be permitted?

Responses to Question 21 by respondent type are set out in Table 13 below.

<b>Table 13: Question 21</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	2	10	0	12
Conservation, including representative bodies	2	21	0	23
Land management, including representative bodies	24	10	7	41
Pest control, including representative bodies	0	0	5	5
Public body, including law enforcement	2	1	3	6
Sporting organisations, including representative bodies	6	0	0	6
Other - private sector	11	2	0	13
Other - non private sector	0	6	2	8
<b>Total organisations</b>	<b>47</b>	<b>50</b>	<b>17</b>	<b>114</b>
<b>% of organisations</b>	<b>41%</b>	<b>44%</b>	<b>15%</b>	<b>100%</b>
<b>Individuals</b>				
	<b>1336</b>	<b>2996</b>	<b>298</b>	<b>4630</b>
<b>% of individuals</b>	<b>29%</b>	<b>65%</b>	<b>6%</b>	<b>100%</b>
<b>All respondents</b>				
	<b>1383</b>	<b>3046</b>	<b>315</b>	<b>4744</b>
<b>% of all respondents</b>	<b>29%</b>	<b>64%</b>	<b>7%</b>	<b>100%</b>

A majority – 64% of those who answered the question – did not think that there are additional purposes (other than for habitat restoration, public safety (e.g. fire prevention), and research) for which muirburn on peatland should be permitted. Of the remaining respondents, 29% thought that there are such purposes, and 7% were unsure.

Organisational respondents were more evenly divided, with 44% of those who answered the question not seeing any other reasons to permit muirburn, while 41% did think there were additional reasons and 15% were unsure. A majority of 'Animal welfare', 'Conservation' and 'Other – non private sector' respondents did not think there were additional reasons to permit muirburn, while a majority of 'Land management', 'Sporting organisations', and 'Other – private sector' respondents thought there were reasons, and all 'Pest control' respondents were unsure.

**Question 22 – Do you agree that the definition of peat set out in the Muirburn Code should be amended to 40cm?**

Responses to Question 21 by respondent type are set out in Table 14 below.

<b>Table 14: Question 22</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
Organisations:				
Animal welfare	4	7	1	12
Conservation, including representative bodies	6	16	0	22
Land management, including representative bodies	6	29	6	41
Pest control, including representative bodies	0	1	5	6
Public body, including law enforcement	0	2	4	6
Sporting organisations, including representative bodies	0	6	0	6
Other - private sector	0	10	3	13
Other - non private sector	2	4	1	7
<b>Total organisations</b>	<b>18</b>	<b>75</b>	<b>20</b>	<b>113</b>
<b>% of organisations</b>	<b>16%</b>	<b>66%</b>	<b>18%</b>	
Individuals				
	<b>1777</b>	<b>2031</b>	<b>827</b>	<b>4635</b>
<b>% of individuals</b>	<b>38%</b>	<b>44%</b>	<b>18%</b>	
<b>All respondents</b>	<b>1795</b>	<b>2106</b>	<b>847</b>	<b>4748</b>
<b>% of all respondents</b>	<b>38%</b>	<b>44%</b>	<b>18%</b>	

The most common view – expressed by 44% of those who answered the question – was that the definition of peat set out in the Muirburn Code should not be amended to 40cm. Of the remaining respondents, 38% thought that the definition should be 40cm and 18% were unsure.

Among organisations a majority – 66% of those who answered the question – did not agree with a definition of 40cm, while 16% did agree and 18% were unsure. No respondent groups showed a majority in favour of the proposed definition.

**Question 23** – If you answered ‘No’ to Question 22, please outline why you believe this.

Around 2,100 respondents provided a comment at Question 23.

Answers at Question 23 revealed that respondents who had disagreed at Question 22 did so for very different reasons – including both that there should be no change to the existing definition of 50cm and that, rather than 40cm, the amended definition should instead be 30cm or less. There were also calls for a complete ban on muirburn (including both calls for a ban on muirburn in general and, more specifically, for a ban on muirburn on peat).

Among the small number of respondents who answered ‘Yes’, ‘Unsure’ or did not answer Question 22 but commented at Question 23, over a third indicated that they would, in fact, prefer a definition of 30cm, less than 30cm, or a ban on muirburn.

The analysis below is therefore structured on a thematic basis, rather than according to answers at the closed question. It should be noted that, while few of the respondents who commented at Question 23 *supported* the proposed definition of 40cm, many of the respondents who answered 'Yes' at the closed question and made no further comment may have done so.

One point of agreement for some respondents who otherwise had divergent views, was that it is important that peat is protected. However, they disagreed on how this should be achieved, with some seeing muirburn as a means of protecting peat, while others viewed muirburn as damaging or destroying it.

## **Support for retaining the current definition**

### **Lack of evidence of harm**

Some respondents simply noted they saw no reason to change the current definition of 50cm. Others argued that:

- There is no evidence that muirburn carried out correctly affects underlying peat. Depth-based restrictions are logical for activities such tree planting where the impact on underlying peat is clear, but not to above ground activities such as cool muirburn where underlying peat is not disturbed.
- NatureScot found a 'lack of evidence to determine the impacts of muirburn on different depths of peat', and no evidence has been presented to support introduction of a lower, 40cm threshold.
- Any change in definition should be informed by scientific evidence and that, in the absence of such evidence, the choice of 40cm is arbitrary or represents an inappropriate application of the precautionary principle.

### **Risk of increasing wildfires**

In contrast, it was argued muirburn can help to reduce the risk and severity of wildfires that do damage peat. NatureScot's recognition that muirburn may influence the intensity of wildfires via alterations to fuel load structure was seen as providing a reason to ensure that muirburn can take place where needed to manage the fuel load, irrespective of peat depth.

A 'Public body' expressed a view that muirburn should be considered a useful tool for reducing vegetation load and reducing incidence and intensity of wildfire over all soil types, regardless of depth. They noted that reducing the peat depth from 50cm to 40cm will create more areas where muirburn cannot be used.

Impacts of the change to a 40cm peat depth threshold in England were also referenced, with a suggestion that Scotland should learn from resulting fuel load build up.

### **Practical difficulties in measuring peat depth**

Some respondents argued that peat depth alone should not be used to determine where burning can take place. It was noted that, even in a relatively small area, peat depth can vary substantially and that this could create major practical problems for land managers seeking to comply with new requirements.

NatureScot's advice that the only practical approach to measuring peat depth is by using a probe was seen as too time consuming, costly and environmentally damaging, and as failing to give a muirburn practitioner confidence that they will not inadvertently break the law. How observance of a 40cm peat depth limit for muirburn could be monitored or enforced was also queried.

### **Lack of impact assessment**

It was argued that there has been no assessment of how much moorland would be affected by a 40cm depth based muirburn ban, how many holdings/businesses would be affected by reduced muirburn, or what that financial impact would be.

### **Support for a definition of 40cm**

As noted above, the way the question is phrased means comments in support of the proposed 40cm threshold were limited. A small number of respondents highlighted the benefits of consistency with the 40cm definition of peat used in England and Wales.

However, it was also argued that consistency with the English definition should not be a justification for the proposed change and it was noted that, in England, the ban on prescribed burning is '40cm and on a protected site', so the proposal for Scotland is potentially more restrictive.

### **Support for setting a limit at less than 40cm**

Some respondents argued that the Scottish Government should amend the definition to less than 40cm peat depth, with the most frequent suggestions being either 30cm or a complete ban on muirburn. A small number of respondents commented specifically on the extent or vulnerability of shallow peat in Scotland.

It was also argued that the proposed 40cm threshold would not fully implement the Climate Change Committee's recommendation to the Scottish Government that burning must be ended on all peatlands and these habitats fully restored if the UK is going to achieve its ambition to achieve net-zero.

### **Support for 30cm**

Points in support of amending the definition of peat in the Muirburn Code to 30cm included that this would:

- Send a signal that the Scottish Government is serious about protecting peat from burning.
- Increase environmental protection for a greater area, with a number of references to the importance of peat as a carbon store or to minimising the risk of carbon dioxide loss.
- Be in line with the definition accepted in the scientific literature and by most ecologists, or with a growing international consensus that peatland is 'a wetland soil composed largely of semi-decomposed organic matter deposited *in-situ*, having a minimum organic content of 30% and a thickness greater than 30cm'.

It was also reported that a 30cm definition is in use elsewhere – for example with respect to forestry planting in England.

### **Support for less than 30cm**

While some respondents called for the definition to be 20cm peat depth or less, others argued that any muirburn on peat is unjustifiable, or called for muirburn to be banned. More specifically, some respondents argued that muirburn to support grouse shooting should not be permitted.

It was also noted that Scottish Forestry does not accept forestry grant scheme applications which include ploughing on soils where peat depth exceeds 10cm.

One suggestion was that it might be appropriate to vary peat depth according to location, since peat at high altitude may take longer to regenerate after burning.

### **Clarity and consistency**

As noted above, some respondents referenced peat depths used in other contexts to support their argument with respect to any definition used in respect of muirburn.

It was also noted that both that England and Wales use a 40cm definition of peat, and it was suggested that, for consistency and to avoid confusion it would be best if all land management sectors adopted the same standard.

### **Alternatives**

#### **Mapping**

Some respondents who highlighted practical difficulties in using peat depth to determine whether muirburn is acceptable suggested scope for use of ecological constraints maps to help in decision making, with muirburn maps (commissioned and/or approved by NatureScot) seen as a possible alternative. It was reported that environmental constraints mapping, recording muirburn sites and monitoring for adaptive management are already happening on many upland estates.

It was also reported that the Cairngorms National Park Authority has proposed use of a constraints map, agreed with the licensing authority.

Potential constraints that might be identified in such mapping are discussed further at Question 24.

#### **Cutting**

A small number of respondents suggested that cutting or flailing vegetation could be good alternatives to using muirburn and it was reported that the RSPB cuts heather on peatland reserves.

However, it was also argued that regrowth after cutting is slower than regeneration following muirburn, that scope for cutting is limited by terrain and ground conditions, and that it creates greater ground disturbance.

## **Ban deliberate or reckless burning of peat of any depth**

Finally, it was suggested that, if looking to protect the carbon locked up in peatlands, the Scottish Government should amend the Hill Farming Act 1946 to ban the deliberate or reckless burning of peat of any depth through muirburn, which is not currently illegal.

**Question 24** – Please provide any further comments on the questions in this section here.

Around 1,710 respondents provided a comment at Question 24.

Many comments reiterated points made at Questions 18 and 23 and issues already addressed at these questions are referenced only briefly in the analysis below.

### **Differing views on the impacts of muirburn**

#### **No further restrictions are necessary**

Respondents who disagreed with further restrictions on muirburn often referenced wildfire prevention or biodiversity improvements and the creation of mosaic habitats as reasons that muirburn should be seen as a positive land management practice, that is used beyond sporting estates, for example to provide improved livestock grazing. Lack of clear evidence of harm or lack of evidence on impacts of muirburn on differing peat depths were also referenced, with views that more research is needed before changes are implemented, and that the existing Muirburn Code is sufficient to allow practitioners to carry out muirburn in safe manner. Some respondents also highlighted:

- The skill set, experience and local knowledge of these muirburn practitioners.
- The very small proportion of wildfires attributed to loss of control of muirburn.
- The major contribution that Estates, farmers and gamekeepers make to fire-fighting efforts when wildfires do start, and a risk that restriction of muirburn may result in loss of local expertise and equipment that is currently taken for granted when combating wildfires in remote areas.

Rather than setting prescriptive rules that apply across the board, it was argued that an informed, trained professional should be permitted to evaluate risk versus benefit of a particular situation based on their professional experience.

The economic importance of driven grouse shooting and, by extension, muirburn to Scotland's rural economy was also highlighted and a small number of respondents expressed concerns for their own businesses if muirburn is restricted.

While many expressed a view that muirburn licensing is unnecessary, it was also argued that, if introduced, a licensing scheme should be based on operator licences or should make it easy to do right thing. Specifically, it was suggested that there should be industry-led, tailored, affordable, local provision with respect to any training requirements, and that any scheme should be reviewed to assess its effectiveness.

## **Muirburn should be subject to greater control**

In contrast, among respondents who thought that muirburn should be subject to greater control, arguments included that it can or does:

- Harm wildlife and/or reduce biodiversity.
- Damage peat and its capacity for carbon storage. The importance of protecting carbon stored in peat was emphasised in the context of the climate emergency.
- Create atmospheric pollution and add to greenhouse gases during burning of above ground vegetation, with a suggestion that an estimate of carbon emitted by a burn should be submitted as part of any licence application.
- Prevent natural regeneration of vegetation.
- Limit a natural transition from heather moorland to scrub and woodland that would improve biodiversity and carbon sequestration potential.
- Create run-off that can pollute watercourses.
- Lead to mineral loss and reduced soil fertility in upland areas.
- Reduce the ability of upland areas to hold water after rainfall, exacerbating flooding.
- Have negative visual impact on the landscape.
- Deter predators from an area.
- Lead to serious wildfires.

On the last point, it was argued that SFRS data indicates that prescribed muirburn that gets out of control is one of the main causes of wildfires and that NatureScot's recent review concluded that there is evidence that muirburn directly causes a proportion of wildfires that occur on moorland.

Grazing or cutting vegetation were seen as better alternatives to generate variable age structure in heather, although there was also concern that, in the long term, cutting is not sustainable for peatland conservation since excessive removal of vegetation leaves peatland exposed to the elements and susceptible to erosion.

In terms of wildlife communities and organisms that may be harmed by muirburn, examples included:

- Soil micro-organisms.
- Invertebrates, including aquatic species.
- Ground nesting birds that begin nesting early in the year.
- Reptiles such as adder, slow worm and lizards.
- Mammals including female otters in natal holts.
- Raptor species whose breeding attempts are disturbed.

Also with respect to animal welfare, it was noted that individuals that survive the fire may be forced from an area, causing displacement and separation of social groups.

Comments on the effectiveness of the current Muirburn Code included one 'Conservation' organisation reporting their own experience that its requirements are widely ignored. They noted that they have documented and reported multiple breaches of the code, including destruction of active bird nests (including Schedule 1 species) and fires causing damage to woodland and damage to screes on steep slopes. A 'Public body' noted their awareness of the risk of criminality relating to muirburn, particularly with respect to burning out of season and burning in close proximity to protected birds and their nests.

Some individual respondents reported personal experiences of muirburn in their local area, including concerns with respect to visual impact and air quality, and reports of seeing burning (or evidence of burning) that is not in accordance with the Muirburn Code.

In addition to those respondents arguing in favour of greater control over muirburn, some sought a complete ban on the practice. A frequently made point, including by many individual respondents was that muirburn licences should never be given for the purpose of grouse shooting. A connected point made by some of these respondents was that muirburn is often carried out in remote areas that are difficult to police.

### **Differing views on a precautionary approach**

#### **Views on why the proposed approach is inappropriate**

As noted previously, some respondents who disagreed with further restrictions argued that the Scottish Government's proposed approach is not consistent with application of the precautionary principle, including because adverse impacts of muirburn on different depths of peat have not been identified. The impacts of climate change and resulting increase in wildfire risk were seen as reasons to continue muirburn as a land management practice and examples of wildfires elsewhere seen as resulting from lack of managed burning were given.

Related views included that the correct precautionary approach should instead involve:

- Use of muirburn to protect against wildfires.
- Drawing on the local knowledge of experienced muirburn practitioners who are intimately connected to the land.
- Mandatory training with enhanced fire planning.

#### **Support for the proposed approach**

However, other respondents supported the Scottish Government's proposals for adopting a precautionary approach to muirburn, with some advocating a licensing scheme, coupled with muirburn plans and constraint mapping of areas that should not be burned. As a general point on the effectiveness of a muirburn season in controlling risk, it was suggested that increasingly variable weather patterns mean that the season is a less reliable indicator of risk, and that applying a precautionary principle would provide an argument for a licence to be required at all times.

Some respondents who favoured greater control of muirburn commented on the argument that muirburn helps to prevent wildfires, with suggestions that:

- Muirburn can cause wildfires.
- The risk of extreme fires due to lack of removal of fuel load is low compared to the instance of muirburn causing serious fires.
- A wildfire that started on a grouse moor was slowed by rewetted peatland on neighbouring RSPB reserve.

Also in the context of wildfire risk it was argued that:

- Some estate management deliberately creates drier conditions that increase fire load.
- Decisions on muirburn affect much more than the landowner and so should be subject to scrutiny through public consultation and licensing.

If fire prevention is permitted as a reason for muirburn on peatland, it was argued that relevant licence applications should be interrogated to ensure both that there is genuine cause for concern, and that other alternatives have been explored.

In addition, it was argued that rewetting peatland is more effective than muirburn with respect to reducing fire risk, a position reported to be in-line with the view of the [IUCN UK Peatland Programme](#) that the best management for peatlands is to re-wet and restore them, not to burn them. It was noted that there is some evidence that muirburn allows the top layer of peat to dry out, becoming hydrophobic and potentially reducing the functionality of the whole peat column.

There was also a view that it is not logical for the Scottish Government to provide funding to support peatland restoration while still allowing burning of peat to take place.

While acknowledging that evidence on muirburn is contested, there was a view that a precautionary approach requires that action is taken now rather than awaiting further research.

### **Constraint mapping**

Some respondents proposed geography, habitats or species that should be protected from muirburn by constraint mapping. Suggestions included:

- Exposed summits and ridges.
- Sites above 300m in the northwest above 600m in the south and east.
- Steep slopes and scree.
- Montane areas and alpine vegetation.
- Patches of tall heather or areas of wind clipped heather.
- Areas of juniper, hawthorn or montane willows.
- Areas adjacent to watercourses, for protection of freshwater ecosystems.
- Peatland or areas of deep peat.

- Blanket bog and wet areas on thick peat.
- Native woodlands and woodland edges.
- Natural regeneration areas.
- Important areas for rare and threatened species.

It was also proposed that constraint maps should be agreed between the landholding and the licensing agency, and should be reviewed at three to five-year intervals, allowing amendments to reflect changes in knowledge of the site, spatial priorities or scientific knowledge. Publication of Estate burning maps so they are available for public scrutiny was also suggested.

### **Other proposed conditions**

Respondents also proposed other conditions that should be imposed on muirburn going forward, including that :

- Burning should be limited to smaller areas and longer rotations.
- A mandatory Certificate of Competence in Fire Operations or similar should be required of all those responsible for muirburn. This must be supported by comprehensive training, and importantly funding provided, to ensure there are no barriers to people becoming properly trained.
- Licensing regulations must be enforced. It was reported that the rarity of prosecutions arising from damaging fires has provided little incentive to adhere to the Muirburn Code.

### **Points on other closed questions**

Some respondents used Question 24 to note their views relating to topics at closed Questions 19 – 21. These are summarised below where not already recorded elsewhere.

<p><b>If we introduce a licensing scheme, do you agree that NatureScot should be the licensing authority (Question 19)</b></p>
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Comments with respect to NatureScot as the licensing authority included that this would provide consistency with the current licensing regime although there was also a request that the Cairngorm National Park Authority should be a statutory consultee on muirburn licensing in the National Park to ensure alignment with the National Park Partnership Plan.

However, concerns were raised regarding what was considered NatureScot's insufficiently robust approach in some areas, with specific reference to what was seen as a failure to achieve effective control of deer numbers or protection of beavers. Potential conflicts with other aspects of NatureScot's relationship with landowners/managers were also suggested.

Issues were also raised with respect to resources – both that NatureScot does not have the resources to administer an extended muirburn licensing scheme, and that it must be given additional resources to do so.

**Do you agree that there should be a ban on muirburn on peatland unless it is done under licence as part of a habitat restoration programme approved by NatureScot? (Question 20)**

**Definition of peatland**

Points raised included that there is a lack of clarity around the definition of peatland, with an associated risk that muirburn practitioners could be penalised for acting on the basis of their own understanding.

It was also suggested that, if all muirburn is to be prohibited unless a licence has been granted, a specific prohibition on burning on peatland appears unnecessary. Protecting a particular category of land within the licensing regime was seen as a more flexible approach than introducing a ban that would require issues around definition to be resolved.

**Defining ‘habitat restoration’**

Issues raised with respect to permitting muirburn on peatland included that ‘habitat restoration’ should be clearly defined to stop grouse moors being considered as a restored habitat and prevent muirburn that is intended to maximise grouse numbers.

It was also suggested that the text should be amended to allow for ‘sustaining habitat’ in addition to ‘habitat restoration management’ in order to provide flexibility for conservation-orientated burning.

**Other than for habitat restoration, public safety (e.g. fire prevention), and research, are there any other purposes for which you think muirburn on peatland should be permitted? (Question 21)**

One answer to the question on other purposes for which muirburn on peatland should be permitted was to encourage young grass and heather for summer grazing for livestock.

With respect to the question as it was posed, other respondents noted that they would only support muirburn when there is a risk to human health, public safety, or conservation, and there was a call to explicitly exclude cultivation of land for hunting.

With respect to allowing muirburn for research it was noted that there is no indication of the type of activities that could be permitted. Further suggestions included that the licensing authority should review research licence applications to ensure the scientific merits of the work proposed and devise a mechanism to evaluate the outputs and quality of each research project.

## 4. Trapping and snaring

### Wildlife Traps

The control of mammal predators is regulated by the laws on animal cruelty and controls on the sort of traps and snares that can be used, with new regulations on certain forms of traps in the course of being implemented in accordance with the Agreement on International Humane Trapping Standards (affecting traps for stoats). The protected status of some predatory species (e.g. badgers) must also be taken into account.

Increased regulation on the use of snares was introduced a few years ago and provides a model for other activities. For both cage traps and spring traps, further measures are recommended in addition to the existing rules applying to each type of trap.

The lawful use of traps to catch corvids (members of the crow family) can result in the capture of, and on occasion, injury to, raptors and other traps can also cause unintended harm to wildlife. The Scottish Government proposes new legislation to mitigate the risk of this occurring.

**Question 25:** The Scottish Government proposes that a person operating a wildlife management trap must apply for a unique identification number which they must then attach to any traps that they set outdoors, do you agree that this proposal should apply to (select all that apply):

- i Live capture traps for birds
- ii Live capture traps for mammals (except rodents)
- iii Traps listed in the Spring Trap Approval Order
- iv Rodent kill traps
- v Live capture traps for rodents
- vi None of the above
- vii Unsure
- viii Other traps (please specify)

Responses to Question 25 by respondent type are set out in Table 15 below.

<b>Table 15: Question 25</b>							
	<b>Live capture traps for birds</b>	<b>Live capture traps for mammals (except rodents)</b>	<b>Traps listed in the Spring Trap Approval Order</b>	<b>Rodent kill traps</b>	<b>Live capture traps for rodents</b>	<b>None of the above</b>	<b>Unsure</b>
<b>Organisations:</b>							
Animal welfare	16	15	15	14	15		
Conservation, including representative bodies	22	22	21	19	20		
Land management, including representative bodies	23	20	14	6	8	8	4
Pest control, including representative bodies	3	3	1	1	2	1	3
Public body, including law enforcement	4	4	4	3	4		1
Sporting organisations, including representative bodies	1					2	
Other - private sector	7	7	3	3	3		2
Other - non private sector	6	6	6	6	6		1
<b>Total organisations</b>	<b>82</b>	<b>77</b>	<b>64</b>	<b>52</b>	<b>58</b>	<b>11</b>	<b>11</b>
<b>% of organisations</b>	<b>79%</b>	<b>74%</b>	<b>62%</b>	<b>50%</b>	<b>56%</b>	<b>11%</b>	<b>11%</b>
<b>Individuals</b>	<b>3760</b>	<b>3604</b>	<b>3248</b>	<b>2560</b>	<b>2577</b>	<b>484</b>	<b>159</b>
<b>% of individuals</b>	<b>85%</b>	<b>82%</b>	<b>74%</b>	<b>58%</b>	<b>58%</b>	<b>11%</b>	<b>4%</b>
<b>All respondents</b>	<b>3842</b>	<b>3681</b>	<b>3312</b>	<b>2612</b>	<b>2635</b>	<b>495</b>	<b>170</b>
<b>% of all respondents</b>	<b>85%</b>	<b>81%</b>	<b>73%</b>	<b>58%</b>	<b>58%</b>	<b>11%</b>	<b>4%</b>

The highest level of support – 85% of those answering the question – was for a unique identification number to be attached to live capture traps for birds, with 81% support for a similar requirement for live capture traps for mammals (except rodents), and 73% for traps listed in the Spring Trap Approval Order. Live capture traps for rodents and rodent kill traps attracted a rather lower level of support at 58% in each case. While 11% of respondents selected ‘none of the above’, 51% supported a unique identification number for all five types of trap.

The level of support from organisational respondents was rather lower than among individuals, although still with a majority in favour of a unique identification number for all but rodent kill traps, where 50% approved. Among organisations, 39% supported a unique identification number for all five types of trap.

Other traps (please specify)

Around 340 respondents made a comment at Question 25, although many of these used the opportunity to elaborate on their views around licensing of traps. Around 220 of those commenting suggested other traps.

The majority of these respondents wished to see proposals applied to all wildlife traps. This included calls for unique ID numbers to be applied to snares and glue traps.

In terms of other specific types of wildlife traps which respondents wished to see covered by proposals, these were:

- Camera traps set in the vicinity of protected birds or mammals.
- Crow traps.
- Fenn traps.
- Live traps for amphibians or fish.
- Rabbit drop traps.
- Rodenticide bait boxes or traps.
- Cage traps used for neuter and return of feral cats.
- Traps set indoors.
- Tunnel-type traps.

Some respondents were looking for clarity about the scope of the traps listed at Question 25. For example, it was noted that rodent traps could cover traps for beavers; respondents suggested that proposals should be clear around whether this was the intention of proposals.

**Question 26:** The Scottish Government proposes that a person operating a wildlife management trap outdoors must successfully complete an approved course dealing with the relevant category of trap, do you agree that this proposal should apply to (select all that apply):

- i Live capture traps for birds
- ii Live capture traps for mammals (except rodents)
- iii Traps listed in the Spring Trap Approval Order
- iv Rodent kill traps
- v Live capture traps for rodents
- vi None of the above
- vii Unsure
- viii Other traps (please specify)

Responses to Question 26 by respondent type are set out in Table 16 below.

<b>Table 16: Question 26</b>							
	<b>Live capture traps for birds</b>	<b>Live capture traps for mammals (except rodents)</b>	<b>Traps listed in the Spring Trap Approval Order</b>	<b>Rodent kill traps</b>	<b>Live capture traps for rodents</b>	<b>None of the above</b>	<b>Unsure</b>
Organisations:							
Animal welfare	15	14	14	13	14		
Conservation, including representative bodies	22	22	21	21	21		
Land management, including representative bodies	24	24	20	4	5	6	5
Pest control, including representative bodies	4	4	2	2	3		3
Public body, including law enforcement	4	4	4	3	4		1
Sporting organisations, including representative bodies	1	1	1	1	1	2	
Other - private sector	7	7	3	3	3		2
Other - non private sector	6	6	6	6	6		1
<b>Total organisations</b>	<b>83</b>	<b>82</b>	<b>71</b>	<b>53</b>	<b>57</b>	<b>8</b>	<b>12</b>
<b>% of organisations</b>	<b>81%</b>	<b>80%</b>	<b>69%</b>	<b>51%</b>	<b>55%</b>	<b>8%</b>	<b>12%</b>
<b>Individuals</b>	<b>3774</b>	<b>3705</b>	<b>3426</b>	<b>2660</b>	<b>2682</b>	<b>436</b>	<b>169</b>
<b>% of individuals</b>	<b>86%</b>	<b>84%</b>	<b>78%</b>	<b>60%</b>	<b>61%</b>	<b>10%</b>	<b>4%</b>
<b>All respondents</b>	<b>3857</b>	<b>3787</b>	<b>3497</b>	<b>2713</b>	<b>2739</b>	<b>444</b>	<b>181</b>
<b>% of all respondents</b>	<b>85%</b>	<b>84%</b>	<b>77%</b>	<b>60%</b>	<b>61%</b>	<b>10%</b>	<b>4%</b>

The highest level of support – 85% of those answering the question – was for a person operating a live capture traps for birds to successfully complete an approved course, with 84% support for a similar requirement for live capture traps for mammals (except rodents), and 77% for traps listed in the Spring Trap Approval Order. Live capture traps for rodents and rodent kill traps attracted a rather lower level of support at 61% and 60% respectively. While 10% of respondents selected ‘none of the above’, 53% of all respondents supported a training requirement for five types of trap.

The level of support from organisational respondents was a little lower than among individuals, although still with a majority in favour of successful completion of an approved course in all cases, although this dropped to only 51% approval with respect to rodent kill traps. Among organisations, 40% supported a training requirement for all five types of trap.

## Other traps (please specify)

Around 240 respondents made a comment at Question 26. As at Question 25, many of commenting used the opportunity to elaborate on their views around training requirements for traps. Around 160 of those commenting suggested other traps.

Again, the majority of these respondents wished to see proposals applied to all wildlife traps. This included calls for training requirements to be applied to snares and glue traps. Other specific types of wildlife traps referenced by respondents were also similar to those highlighted at Question 25, including:

- Camera traps.
- Crow traps.
- Live traps for amphibians or fish.
- Rodenticide bait boxes or traps.
- Cage traps used for neuter and return of feral cats.
- Traps set indoors.

**Question 27:** *This question should only be answered if you agree that training should be required for at least one of the traps listed in Question 26.*

The Scottish Government proposes that a person operating a wildlife management trap outdoors must undergo refresher training every 10 years, do you agree that this proposal should apply to:

- i Live capture traps for birds
- ii Live capture traps for mammals (except rodents)
- iii Traps listed in the Spring Trap Approval Order
- iv Rodent kill traps
- v Live capture traps for rodents
- vi None of the above
- vii Unsure
- viii Other traps (please specify)

Responses to Question 27 by respondent type are set out in Table 17 below.

<b>Table 17: Question 27</b>							
	<b>Live capture traps for birds</b>	<b>Live capture traps for mammals (except rodents)</b>	<b>Traps listed in the Spring Trap Approval Order</b>	<b>Rodent kill traps</b>	<b>Live capture traps for rodents</b>	<b>None of the above</b>	<b>Unsure</b>
<b>Organisations:</b>							
Animal welfare	15	14	14	13	14		
Conservation, including representative bodies	22	22	22	20	21		
Land management, including representative bodies	21	22	20	4	5	5	3
Pest control, including representative bodies	4	4	2	2	3		3
Public body, including law enforcement	4	4	4	3	4		1
Sporting organisations, including representative bodies	1	1	1	1	1	1	
Other - private sector	6	6	3	3	3	1	2
Other - non private sector	6	6	6	6	6		1
<b>Total organisations</b>	<b>79</b>	<b>79</b>	<b>72</b>	<b>52</b>	<b>57</b>	<b>7</b>	<b>10</b>
<b>% of organisations</b>	<b>81%</b>	<b>81%</b>	<b>73%</b>	<b>53%</b>	<b>58%</b>	<b>7%</b>	<b>10%</b>
<b>Individuals</b>							
<b>Individuals</b>	<b>3643</b>	<b>3587</b>	<b>3305</b>	<b>2530</b>	<b>2548</b>	<b>287</b>	<b>160</b>
<b>% of individuals</b>	<b>89%</b>	<b>88%</b>	<b>81%</b>	<b>62%</b>	<b>62%</b>	<b>7%</b>	<b>4%</b>
<b>All respondents</b>							
<b>All respondents</b>	<b>3722</b>	<b>3666</b>	<b>3377</b>	<b>2582</b>	<b>2605</b>	<b>294</b>	<b>170</b>
<b>% of all respondents</b>	<b>89%</b>	<b>87%</b>	<b>80%</b>	<b>62%</b>	<b>62%</b>	<b>7%</b>	<b>4%</b>

The highest level of support – 89% of those answering the question – was for a person operating a live capture trap for birds to undergo refresher training every 10 years, with 87% support for a similar requirement for live capture traps for mammals (except rodents), and 80% for traps listed in the Spring Trap Approval Order. Live capture traps for rodents and rodent kill traps attracted a rather lower level of support at 62% in each case. While 7% of respondents selected ‘none of the above’, 51% of all respondents supported requirement for refresher training for five types of trap.

The level of support from organisational respondents was a little lower than among individuals, although still with a majority in favour of successful completion of an approved course in all cases, although this dropped to only 53% approval with respect to rodent kill traps. Among organisations, 40% supported a requirement for refresher training for all five types of trap.

### Other traps (please specify)

Around 240 respondents made a comment at Question 27, and again many used the opportunity to elaborate on their views around proposals for refresher training. Around 140 of those commenting suggested other traps.

As at Questions 25 and 26, the majority of respondents wished to see proposals applied to all wildlife traps. This included calls for training requirements to be applied to snares and glue traps. Other specific types of wildlife traps referenced by respondents were also similar to those highlighted at previous questions and included:

- Camera traps.
- Live traps for amphibians or fish.
- Rodenticide bait boxes or traps.
- Cage traps used for neuter and return of feral cats.
- Traps set indoors.

**Question 28** – Do you agree that record keeping and reporting requirements should be part of the registration scheme?

- Record keeping
- Reporting requirements
- Neither
- Unsure

Please note that record keeping would involve noting down the activities carried out under the licence (e.g. the number and kind of traps used under the licence, the number of each species caught or killed using licenced traps, and the number of days the traps were set for) and providing these if/when they are requested. Reporting requirements would involve the active reporting of activities carried out under the licence on a regular basis.

Responses to Question 28 by respondent type are set out in Table 18 below.

<b>Table 18: Question 28</b>						
	<b>Both record keeping</b>	<b>Record keeping only</b>	<b>Reporting only</b>	<b>Neither</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>						
Animal welfare	13	1	2	1	0	17
Conservation, including representative bodies	21	1	0	0	0	22
Land management, including representative bodies	7	15	0	10	2	34
Pest control, including representative bodies	2	1	1	0	3	7
Public body, including law enforcement	3	0	0	0	2	5
Sporting organisations, including representative bodies	0	0	0	3	0	3
Other - private sector	2	1	0	6	0	9
Other - non private sector	5	2	0	0	0	7
<b>Total organisations</b>	<b>53</b>	<b>21</b>	<b>3</b>	<b>20</b>	<b>7</b>	<b>104</b>
<b>% of organisations</b>	<b>51%</b>	<b>20%</b>	<b>3%</b>	<b>19%</b>	<b>7%</b>	
<b>Individuals</b>	<b>2693</b>	<b>591</b>	<b>233</b>	<b>803</b>	<b>118</b>	<b>4438</b>
<b>% of individuals</b>	<b>61%</b>	<b>13%</b>	<b>5%</b>	<b>18%</b>	<b>3%</b>	
<b>All respondents</b>	<b>2746</b>	<b>612</b>	<b>236</b>	<b>823</b>	<b>125</b>	<b>4542</b>
<b>% of all respondents</b>	<b>60%</b>	<b>13%</b>	<b>5%</b>	<b>18%</b>	<b>3%</b>	

Overall, 60% of those who answered the question agreed with a requirement for both record keeping and reporting. Of the remaining respondents, 13% supported record keeping only, 5% reporting only and 18% thought neither should be required.

**Question 29:** Do you agree that an individual found guilty of the offence of:

- using a trap without valid training from an approved body;
- using a trap without being registered to do so;
- using a trap without displaying an identification number correctly on the trap;
- falsifying records or identification number;
- using a trap on land without landowner permission;
- failing to comply with the duty to keep trapping records.

should be liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). A level 5 fine is currently £5,000.

Responses to Question 29 by respondent type are set out in Table 19 below.

<b>Table 19: Question 29</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	12	3	1	16
Conservation, including representative bodies	20	1	0	21
Land management, including representative bodies	10	21	4	35
Pest control, including representative bodies	3	1	3	7
Public body, including law enforcement	4	0	1	5
Sporting organisations, including representative bodies	0	3	0	3
Other - private sector	2	6	1	9
Other - non private sector	5	0	1	6
<b>Total organisations</b>	<b>56</b>	<b>35</b>	<b>11</b>	<b>102</b>
<b>% of organisations</b>	<b>55%</b>	<b>34%</b>	<b>11%</b>	
<b>Individuals</b>				
<b>Individuals</b>	<b>3146</b>	<b>1087</b>	<b>230</b>	<b>4463</b>
<b>% of individuals</b>	<b>70%</b>	<b>24%</b>	<b>5%</b>	
<b>All respondents</b>				
<b>All respondents</b>	<b>3202</b>	<b>1122</b>	<b>241</b>	<b>4565</b>
<b>% of all respondents</b>	<b>70%</b>	<b>25%</b>	<b>5%</b>	

Please note that some percentages do not sum to 100% due to rounding.

A majority – 70% of those who answered the question – agreed with the proposed penalties with respect to the offences listed. Of the remaining respondents, 25% disagreed and 5% were unsure.

Among organisational respondents a smaller majority – 55% – agreed, while 34% disagreed and 11% were unsure. A majority of ‘Animal welfare’, ‘Conservation’, ‘Public body’ and ‘Other – non private sector’ respondents agreed, while the majority of ‘Land management’, ‘Sporting organisations’, and ‘Other – private sector’ respondents disagreed. ‘Pest control’ respondents were divided on this issue.

**Question 30** – If you answered ‘No’ to Question 29, explain the reason for your answer.

Around 1,125 respondents made a comment at Question 30. Of these, around 990 respondents had answered ‘No’ at Question 30 and around 135 had answered ‘Yes’ or that they were ‘Unsure’.

The analysis of written comments across the questions on traps suggests that most of those who disagreed with proposals were either of the view that the proposed punishment would be disproportionate for administrative and training-related

offences, or that the proposals do not go far enough and stronger penalties should be available.

It is also notable that some of those commenting indicated that they were drawing on first-hand experience. These respondents referred to experience from the point of view of a land manager, including of accidental or deliberate damage to traps, and of being involved in prosecution of similar offences.

### **Proportionality of proposals**

The most frequently given reason for those objecting to the proposals was that they are excessive, with particular concerns about the potential for a custodial sentence. Some of those answering 'No' at Question 29 agreed that financial penalties could have a role to play, but felt that a custodial sentence would be excessive. It was also noted that a custodial sentence could result in individuals losing their livelihood, home and employment; this was seen as a disproportionate response to the listed offences. There was also a view that the level of punishment proposed equates to discrimination against the hunting sector.

Some respondents were concerned about the proposed punishments being applied to what were seen as 'administrative' offences, such as failure to keep records, registration and training, where these do not have a direct impact on animal welfare. It was also suggested that:

- The proposed punishments would be excessive for first-time offenders.
- There is the potential for honest mistakes or a misunderstanding of the law to result in an offence. There was concern that proposals would mean that this kind of error could lead to a severe punishment.

Reflecting these concerns, it was suggested that the proposals should not apply to 'administrative' offences such as record keeping, reporting and training. Others went further and wished to see the proposed punishment applied only to unlawful or improper use of traps which results in animal suffering.

Respondents also suggested alternative, lesser penalties for the offences listed at Question 29. In addition to suggestions of lower fines and/or shorter prison sentences, respondents proposed the following as alternative punishments:

- Withdrawal of trapping licences.
- A ban on other wildlife or animal-related activities.
- Mandatory attendance at an education or awareness raising course (speed awareness courses were cited as a potential model).
- A written warning for a first offence.

There were also suggestions for when exceptions should be in place, including trapping for research purposes, and organisations using live capture traps for the purposes of trapping, neutering and releasing for population control.

### **Potential for abuse of regulations**

The potential for malicious tampering with, or damage to, traps was a key concern of some of those who felt that the proposed penalties are too severe. These respondents referred to examples of accidental or deliberate tampering with traps, and it was suggested that the proposals risk imposing severe punishment on land managers as a result of the action by members of the public or campaign organisations.

Similar concerns were raised around the potential for land managers to be 'set up' by malicious parties setting illegal traps on their land, or for issues such as ID tags detaching from traps as a result of weather or wildlife. Again there was concern that proposals could result in substantial penalties being imposed on land managers or game keepers in these circumstances.

### **An equivalent offence for interfering with traps**

Some of those who disagreed at Question 29 suggested that, if proposals are taken forward, there should be an equivalent offence of interfering with legally-set traps. This appeared to be linked to a wider view that lawbreaking should be treated equally whether it is by land managers or members of the public. This was also reflected in suggestions that punishments for interfering with traps should be equivalent to those imposed on land managers.

### **Need for, and possible consequences of, proposals**

Some of those who felt that proposed offences and punishments are excessive also suggested that proposals are not necessary. These respondents were of the view that existing regulations and penalties are sufficient, and that further regulation would be disproportionate.

Some of these respondents noted the strengthening of existing regulation over recent years, such as in relation to animal welfare protections and raptor persecution, and suggested that there is limited evidence of continuing abuse of regulations. Reference was also made to improvements in trap technologies and training standards as having reduced the risk of inappropriate use of traps. In this context, it was suggested that more effective enforcement of existing regulations should be sufficient. This also appeared to reflect a wider view that regulation and enforcement should be focused on the functionality and use of traps, rather than administrative issues such as registration and record keeping.

Finally for those who felt that proposals are excessive, some pointed to the potential for unintended consequences. For example, it was suggested that additional regulation could make it more difficult to eradicate non-native species.

### **Sufficiency of proposals**

As noted earlier, many others who answered 'No' at Question 29 thought that the proposals do not go far enough to deter offending and prevent animal cruelty. This included some who wished to see a ban on all trapping but who felt that, in the absence of an outright ban, regulation should reflect a 'zero tolerance' approach to animal cruelty.

Some of those who felt that the proposed penalties are insufficient wished to see harsher punishment for the listed offences. Several specific offences or circumstances were highlighted as requiring stronger penalties. These included cases where there has been unnecessary harm to animals, offences affecting protected species and/or locations, falsifying records and repeat offending.

Specific proposals for stronger offences were primarily focused on larger fines and/or longer prison sentences. In relation to financial penalties, it was suggested that a fine of £5,000 would not be a sufficient deterrent for many larger estates. Some suggested fines of £10 -15,000 or more, and there was a view that larger fines should be imposed on businesses or estates. Some were also of the view that, to act as a meaningful deterrent, longer prison sentences would be required, and there was reference to the maximum sentencing set out in Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2000 as a potential guide. Additional penalties suggested by respondents included revocation of wildlife-related or other licences.

### **Implementation of proposals**

Respondents also highlighted several issues relating to how proposals would be implemented. For example, there was concern about the evidence required to justify the proposed punishments, with some suggesting that a criminal burden of proof would be required. Other comments included that:

- A right of appeal should be available, again reflecting the significant proposed punishments.
- The effectiveness of proposals would be dependent on enforcement, with some suggesting that the nature of any punishment would be an academic issue without effective enforcement. Respondents noted that additional resourcing would be required to support effective enforcement and associated activities.
- Awareness raising activity will be required to support compliance with any new regulations.

Several queries were also raised, including which traps the proposed offences would relate to, and which parties would be held liable for offences? In relation to the latter point, some asked whether the land manager or owner should also be liable, where the offender is an employee or agent?

**Question 31** – Please provide any further comments on the questions in this section here.

Around 1,660 respondents made a comment at Question 31, albeit many addressed issues already covered at the previous questions on traps.

### **Concerns around the impact of trapping**

The most commonly raised issue was animal welfare impacts of trapping, including that traps can cause severe and prolonged suffering for wildlife. There were calls

for specific types of wildlife traps to be banned, or for an outright ban on all trapping. For some respondents this was linked to a particularly strong objection to trapping for the purposes of sport. In particular, there was a view that 'kill to kill' trap setting should not be permitted.

Respondents also suggested additional regulation to ensure that available traps are humane, and avoid unnecessary animal suffering. This included reference to specific standards having a potential role in ensuring that regulation minimises unnecessary suffering – for example international consensus principles for ethical wildlife control, those set out in the Animal Health and Welfare (Scotland) Act 2006, and the AnimalKind [Wildlife and Rodent Control Standards](#).

### **Calls for a review of the animal welfare impact of traps**

Many of those raising concerns around the impacts of trapping called for a specific review of animal welfare in relation to traps. This was linked to concerns that the existing regulatory framework is open to abuse; there was reference to particular issues associated with the impact on non-target species, and to the persecution of protected raptors continuing under the current system.

In this context, there was thought to be a need for further research, including into the development of alternative wildlife deterrents and more humane methods of trapping and killing wildlife. Some also wished to see an overall approach that prioritises mitigation measures, with lethal options treated as a last resort and only permitted after non-lethal measures have been considered and tried.

### **Proposals for additional regulation**

Respondents also suggested specific changes or additions to the existing regulatory framework to minimise the negative impact of trapping on animal welfare. These included calls for:

- Development of a stronger evidence base to inform regulation.
- A stronger focus on training, including reference to a potential role for specific training bodies.
- Standardisation of trap design.

### **The necessity of trapping**

Others who commented suggested that trapping is sometimes necessary for effective wildlife management, and raised concerns that proposals are overly restrictive in terms of ensuring land managers have access to the tools they need. There were associated concerns that further restrictions and/or the banning of some traps could lead to negative, unintended consequences.

Linked to concerns about the impact of the proposals on land managers, a number of respondents repeated concerns raised at Question 30 around potential for proposals to incentivise sabotage of legally set traps. As noted earlier, there were calls for tampering, vandalism or theft of legally set traps to be regarded as a bespoke criminal offence.

Respondents also highlighted other concerns or sought clarification regarding:

- The burden of proof that should be applied.
- The scope of liability where individuals are acting on behalf of a land owner or organisation.

### **Points on other closed questions**

Some respondents used Question 31 to note their views relating to topics at closed Questions 25 – 29. These are summarised below where not already recorded elsewhere.

**The Scottish Government proposes that a person operating a wildlife management trap must apply for a unique identification number which they must then attach to any traps that they set outdoors, do you agree that this proposal should apply to the following types of trap? (Question 25)**

**The Scottish Government proposes that a person operating a wildlife management trap outdoors must successfully complete an approved course dealing with the relevant category of trap, do you agree that this proposal should apply to the following types of trap? (Question 26)**

**The Scottish Government proposes that a person operating a wildlife management trap outdoors must undergo refresher training every 10 years, do you agree that this proposal should apply to the following types of trap? (Question 27)**

With reference to the types of trap, and the proposals considered previously at Questions 25, 26 and 27, comments included that they should not apply to rodent kill traps. These were said to raise more limited animal welfare issues, and there was also concern about the potential for the proposals to lead to greater use of rodenticides by households left to deal with rodent issues in private spaces. There was also concern that extending the application of unique ID numbers beyond live capture traps for birds could create an unreasonable administrative burden for estates, given that other trap types are more regularly and extensively deployed.

Finally, there was reference to specific types of trap as potentially requiring further regulation including year-round use of crow traps, and large aperture traps in forest rides or at high altitude. It was also suggested that consideration should be given to controls on the use of other indiscriminate wildlife traps (such as invertebrate traps) to prevent unnecessary biodiversity loss.

**Do you agree that record keeping and reporting requirements should be part of the registration scheme? (Question 28)**

Respondents highlighted a number of points in relation to proposed record keeping and reporting requirements, considered earlier at Question 28. They included that better reporting would have the potential to improve the evidence base to support policy development and enforcement. There were calls for recording of non-target

species caught or killed using licensed traps and the altitude of large aperture crow traps.

Other comments included that there may be a need for additional support around reporting requirements to ensure these are not a barrier to community engagement in conservation. However, it was also suggested that public dissemination of reports could breach data protection regulations.

## Glue traps

There has been significant and ongoing concern regarding the welfare implications of the use of rodent glue traps. They can result in prolonged suffering and are indiscriminate in nature, meaning that non-target species can easily be caught. They are only one in a number of pest control methods available and glue traps are often cited as being used as a last resort.

In response to a recent report from the Scottish Animal Welfare Commission, the Scottish Government has committed to ban the use of glue traps in this parliamentary term. It is also proposing a ban on the sale of glue traps in Scotland, provided that this can be achieved under the terms of the Internal Market Act 2020.

**Question 32** – Do you agree that the use of glue traps designed to catch rodents should be banned in Scotland?

Responses to Question 32 by respondent type are set out in Table 20 below.

<b>Table 20: Question 32</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	16	1	0	17
Conservation, including representative bodies	22	0	0	22
Land management, including representative bodies	9	7	14	30
Pest control, including representative bodies	1	6	0	7
Public body, including law enforcement	3	1	1	5
Sporting organisations, including representative bodies	1	2	1	4
Other - private sector	5	4	0	9
Other - non private sector	7	1	0	8
<b>Total organisations</b>	<b>64</b>	<b>22</b>	<b>16</b>	<b>102</b>
<b>% of organisations</b>	<b>63%</b>	<b>22%</b>	<b>16%</b>	
<b>Individuals</b>				
<b>Individuals</b>	<b>3380</b>	<b>486</b>	<b>429</b>	<b>4295</b>
<b>% of individuals</b>	<b>79%</b>	<b>11%</b>	<b>10%</b>	
<b>All respondents</b>				
<b>All respondents</b>	<b>3444</b>	<b>508</b>	<b>445</b>	<b>4397</b>
<b>% of all respondents</b>	<b>78%</b>	<b>12%</b>	<b>10%</b>	

Please note that some percentages do not sum to 100% due to rounding.

A majority – 78% of those who answered the question – agreed that the use of glue traps designed to catch rodents should be banned in Scotland. Of the remaining respondents, 12% disagreed and 10% were unsure.

Among organisational respondents a smaller majority – 63% – agreed that the use of glue traps designed to catch rodents should be banned, while 22% disagreed and 16% were unsure. ‘Pest control’ respondents were the only group while where a majority of respondents disagreed, while a clear majority of ‘Animal welfare’, ‘Conservation’, and ‘Other – non private sector’ respondents agreed with the proposal.

**Question 33** – Do you agree that the sale of glue traps designed to catch rodents should be banned in Scotland?

Responses to Question 33 by respondent type are set out in Table 21 below.

<b>Table 21: Question</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	16	1	0	17
Conservation, including representative bodies	22	0	0	22
Land management, including representative bodies	10	6	13	29
Pest control, including representative bodies	1	6	0	7
Public body, including law enforcement	3	1	1	5
Sporting organisations, including representative bodies	1	2	1	4
Other - private sector	5	4	0	9
Other - non private sector	7	1	0	8
<b>Total organisations</b>	<b>65</b>	<b>21</b>	<b>15</b>	<b>101</b>
<b>% of organisations</b>	<b>64%</b>	<b>21%</b>	<b>15%</b>	
<b>Individuals</b>	<b>3386</b>	<b>486</b>	<b>420</b>	<b>4292</b>
<b>% of individuals</b>	<b>79%</b>	<b>11%</b>	<b>10%</b>	
<b>All respondents</b>	<b>3451</b>	<b>507</b>	<b>435</b>	<b>4393</b>
<b>% of all respondents</b>	<b>79%</b>	<b>12%</b>	<b>10%</b>	

Please note that some percentages do not sum to 100% due to rounding.

A majority – 79% of those who answered the question – agreed that the sale of glue traps designed to catch rodents should be banned in Scotland. Of the remaining respondents, 12% disagreed and 10% were unsure.

Among organisational respondents a smaller majority – 64% – agreed that the sale of glue traps designed to catch rodents should be banned, while 21% disagreed and 15% were unsure. ‘Pest control’ respondents were the only group while where a majority of respondents disagreed, while a clear majority of ‘Animal welfare’,

'Conservation', and 'Other – non private sector' respondents agreed with the proposal.

**Question 34** – Do you agree that there should be a two year transition period before the ban on glue traps comes into force?

Responses to Question 34 by respondent type are set out in Table 22 below.

<b>Table 22: Question 34</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	3	13	1	17
Conservation, including representative bodies	2	18	2	22
Land management, including representative bodies	4	13	13	30
Pest control, including representative bodies	2	3	1	6
Public body, including law enforcement	1	3	1	5
Sporting organisations, including representative bodies	0	2	2	4
Other - private sector	4	3	2	9
Other - non private sector	1	6	1	8
<b>Total organisations</b>	<b>17</b>	<b>61</b>	<b>23</b>	<b>101</b>
<b>% of organisations</b>	<b>17%</b>	<b>60%</b>	<b>23%</b>	
<b>Individuals</b>				
	<b>698</b>	<b>2957</b>	<b>628</b>	<b>4283</b>
<b>% of individuals</b>	<b>16%</b>	<b>69%</b>	<b>15%</b>	
<b>All respondents</b>				
	<b>715</b>	<b>3018</b>	<b>651</b>	<b>4384</b>
<b>% of all respondents</b>	<b>16%</b>	<b>69%</b>	<b>15%</b>	

A majority – 69% of those who answered the question – did not agree that there should be a two-year transition period before a ban on glue traps comes into force. Of the remaining respondents, 16% agreed with the proposed transition period and 15% were unsure.

Among organisational respondents, there were no groups where a majority of respondents agreed with a two-year transition period.

**Question 35** – Please provide any further comments on the questions in this section here.

Around 1,955 respondents made a comment at Question 35.

### **The necessity of glue traps**

The main issue for many was whether there is a continuing need for glue traps. Some respondents were strongly opposed to any continuing use of glue traps, with

the majority of those commenting at Question 35 wishing to see the proposed ban introduced immediately. Some of these respondents suggested that the availability of alternative wildlife management options makes the use of glue traps unnecessary. Alternatives that were described as more humane options than glue traps included deterrence and exclusion-based rodent management, spring traps, electrocution traps and cyanide fumigation.

However, others suggested that there is still a place for responsible use of glue traps. These respondents described glue traps as an effective 'last resort' means of rodent control in cases where other methods would not resolve the issue; there was reference, for example to rodenticide resistance or 'bait shyness'.

There was also reference to specific circumstances where the use of glue traps may be necessary, most commonly at 'high risk' sites where rapid control is required and animal welfare must be weighed against public health. Specific 'high risk' sites cited included schools, healthcare locations, where there is pharmaceutical or food production and in relation to critical infrastructure. In this context, some felt that glue traps should only be used for public health reasons, and not as wildlife management products. Some also highlighted potential adverse impacts associated with any increase in use of rodenticides as a result of a ban on glue traps.

Those who saw a continuing role for glue traps also suggested alternatives to the proposed ban on sale and use of these traps. Specific suggestions included a ban only on their use by the public, and a licensing scheme for sale of glue traps to professional pest control operators. Some referred to equivalent schemes operating elsewhere in the UK, and noted the potential for confusion and compliance issues if different approaches are taken across Scotland, England and Wales.

Some of those commenting also noted that glue traps are not relevant to grouse moor management or raptor persecution. This included some concern that the consultation has associated a ban on glue traps with grouse management.

### **Points on other closed questions**

Some respondents used Question 35 to note their views relating to topics at closed Questions 32 – 34.

**Do you agree that the use of glue traps designed to catch rodents should be banned in Scotland? (Question 32)**

**Do you agree that the sale of glue traps designed to catch rodents should be banned in Scotland? (Question 33)**

Many of those commenting reiterated their support for a ban on sale and use of glue traps. This support was primarily linked to the animal welfare impacts of glue traps, including their indiscriminate nature and risks to non-target wild and domestic species. These respondents cited specific evidence of the animal welfare impacts of glue traps, with reference to potential for traps to result in dehydration, hunger,

distress, torn skin, broken limbs, hair removal, suffocation, starvation, exhaustion and self-mutilation. Some described such traps as ‘inhumane’ and ‘outdated’.

**Do you agree that there should be a two-year transition period before the ban on glue traps comes into force? (Question 34)**

The majority of commenting on Question 35 were opposed to a transition period before the ban on glue traps comes into force, or felt that a two year transition period would be too long.

These respondents noted that alternative trapping options are already available, and suggested that industry and stakeholders have had sufficient time to consider a move away from glue traps (e.g. following introduction of legislation in England and Wales). On this basis, many respondents wished to see the ban introduced immediately. However, others suggested a shorter transition period, with most suggestions falling in the range of 6 – 12 months.

Other comments on the proposed transition period included recommendations that the Scottish Government should make best use of this period for evaluation of alternative rodent trapping methods, industry education and carrying out a public awareness campaign. It was also suggested that engagement with industry should be used to identify and assess instances where pest controllers felt they were unable to tackle an infestation without use of glue traps.

## **Snares**

The Scottish Government recognises that there is the potential for snares to cause significant injury, prolonged suffering and death to wildlife. There is also a risk that non-target wildlife species and pet animals such as cats and dogs can be caught in them. However, snares can be a useful tool needed for the control of some species, such as rabbits and foxes in order to protect livestock and agriculture. In view of this balance, Scotland already has robust rules and regulations on the use of snaring. However, in reflection of the importance of this discussion, the Scottish Government is required to undertake a review of snaring every 5 years. The latest statutory [Review of Snaring](#) was undertaken in 2021/2022 and the Scottish Government proposes to implement its recommendations.

A further review of the impacts of snaring on land management and on animal welfare is also in progress, with a remit including consideration of whether a ban on the use of snares should be introduced. Depending on the outcome, there may be further proposals to be brought forward for this Bill at a later stage.

**Question 36** – Do you agree with the recommendations from the statutory review of snaring that operators should be required to update their records at least once every 48 hours, unless they have a reasonable excuse not to and that these records should be made available to the Police on demand if the police arrive at the location where the records are kept, or within 7 days to the police station?

Responses to Question 36 by respondent type are set out in Table 23 below.

<b>Table 23: Question 36</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	7	1	1	9
Conservation, including representative bodies	13	1	1	15
Land management, including representative bodies	13	20	2	35
Pest control, including representative bodies	1	0	4	5
Public body, including law enforcement	3	0	1	4
Sporting organisations, including representative bodies	2	1	0	3
Other - private sector	3	5	1	9
Other - non private sector	3	1	0	4
<b>Total organisations</b>	<b>45</b>	<b>29</b>	<b>10</b>	<b>84</b>
<b>% of organisations</b>	<b>54%</b>	<b>35%</b>	<b>12%</b>	
<b>Individuals</b>				
	<b>2851</b>	<b>730</b>	<b>288</b>	<b>3869</b>
<b>% of individuals</b>	<b>74%</b>	<b>19%</b>	<b>7%</b>	
<b>All respondents</b>				
	<b>2896</b>	<b>759</b>	<b>298</b>	<b>3953</b>
<b>% of all respondents</b>	<b>73%</b>	<b>19%</b>	<b>8%</b>	

Please note that some percentages do not sum to 100% due to rounding.

A majority – 73% of those who answered the question – agreed that operators should be required to update their records at least once every 48 hours, unless they have a reasonable excuse not to and that these records should be made available to the Police on demand if the police arrive at the location where the records are kept, or within 7 days to the police station. Of the remaining respondents, 19% disagreed and 8% were unsure.

Among organisational respondents a smaller majority – 54% – agreed with the proposal, while 35% disagreed and 12% were unsure. A majority of ‘Land management’ and ‘Other – private sector’ respondents disagreed.

**Question 37** – Do you agree with the recommendations from the statutory review of snaring that a power of disqualification should be introduced for snaring offences?

A disqualification order can stop you from owning, keeping, selling, transporting or working with animals or running a service which involves being in charge of animals.

Responses to Question 37 by respondent type are set out in Table 24 below.

<b>Table 24: Question 37</b>				
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>	<b>Total</b>
<b>Organisations:</b>				
Animal welfare	8	1	1	10
Conservation, including representative bodies	13	1	1	15
Land management, including representative bodies	8	24	3	35
Pest control, including representative bodies	1	0	4	5
Public body, including law enforcement	2	0	2	4
Sporting organisations, including representative bodies	1	2	0	3
Other - private sector	3	7	1	11
Other - non private sector	4	0	0	4
<b>Total organisations</b>	<b>40</b>	<b>35</b>	<b>12</b>	<b>87</b>
<b>% of organisations</b>	<b>46%</b>	<b>40%</b>	<b>14%</b>	
<b>Individuals</b>				
	<b>2765</b>	<b>959</b>	<b>203</b>	<b>3927</b>
<b>% of individuals</b>	<b>70%</b>	<b>24%</b>	<b>5%</b>	
<b>All respondents</b>	<b>2805</b>	<b>994</b>	<b>215</b>	<b>4014</b>
<b>% of all respondents</b>	<b>70%</b>	<b>25%</b>	<b>5%</b>	

Please note that some percentages do not sum to 100% due to rounding.

A majority – 70% of those who answered the question – agreed that a power of disqualification should be introduced for snaring offences. Of the remaining respondents, 25% disagreed and 5% were unsure.

However, among organisational respondents only 46% of respondents agreed with the proposal, while 40% disagreed and 14% were unsure. While a clear majority of ‘Animal welfare’, ‘Conservation’ and ‘Other – non private sector’ respondents were in agreement, a majority of ‘Land management’ and ‘Other – private sector’ respondents disagreed.

**Question 38** – Please provide any further comments on the questions in this section here.

Around 2,045 respondents made a comment at Question 38.

### **A ban on snares**

The majority of those commenting indicated that they opposed the proposals because they supported a ban on the sale and use of snares. These respondents suggested that any additional regulation of snares would not be appropriate, and that a ban on use of snares by both the public and trained operators is ‘long overdue’. Reference was also made to examples of bans on use of snares elsewhere in the UK and overseas, to various organisations and reports recommending a ban on snares (including the Scottish Animal Welfare

Commission, British Veterinary Association and Wild Animal Welfare Committee), and to evidence of public support for a ban.

It was also suggested that an outright ban would be more consistent with the Scottish Government's wider approach to protecting animal welfare and biodiversity. There were concerns about the significant negative animal welfare impacts, even when best practice is followed; respondents also highlighted that snares are indiscriminate, presenting significant risk to non-target species including protected species. Other comments included that:

- Free running snares still result in significant injury and suffering as animals panic and try to free themselves.
- Snares do not meet standards set out in the Agreement on International Humane Trapping Standards, and that the burden of proof should be on those who wish to continue using snares to demonstrate that they can be used humanely.

Some of those calling for a ban on snares suggested that existing regulations, such as modified snare design and mandatory training, have failed to effectively protect wild animal welfare. There was a view that there are no humane snare designs, and that regulation cannot prevent significant negative animal welfare impacts. Some respondents also referred to the availability more humane alternatives to snares. It was noted that land managers involved in conservation work are able to deter unwanted wildlife without use of snares; this was seen as undermining the argument that snares are necessary for effective wildlife management. In this context, some specifically suggested that the negative impacts of snares cannot be justified to protect grouse numbers for the purposes of sport.

Those who supported a ban on snares also raised concerns around enforcement of existing and any new regulations. It was noted that snaring occurs primarily on private land in remote locations, such that significant resources would be required for effective monitoring and enforcement. They also stated that there was evidence that the current requirement to check snares every 24 hours is not always met.

### **Ethical principles for wildlife control**

Reflecting concerns around the animal welfare impact of snares, some wished to see ethical principles applied to all methods of wildlife control. This included specific reference to international consensus principles for ethical wildlife control as a potential approach. It was noted that these principles require wildlife control to be justified by evidence of substantial harm to people, property, livelihoods, ecosystems and/or other animals. Respondents also highlighted that this approach would require the selection of specific wildlife controls to prioritise those with the lowest overall animal welfare impact. As noted above, some suggested that snares would not pass this test.

### **Other suggestions**

Others suggested that, rather than a ban there should be additional controls on snares, included a ban on less humane snare designs.

Other suggestions for control or regulation of snares included that additional recommendations of the Review of Snaring should be covered under The Wildlife Management (Grouse) Bill. There was specific reference to increasing the stop position and number of swivels on fox snares.

### **Points on other closed questions**

Some respondents used Question 38 to note their views relating to topics at closed Questions 36 and 37.

**Do you agree with the recommendations from the statutory review of snaring that operators should be required to update their records at least once every 48 hours, unless they have a reasonable excuse not to and that these records should be made available to the Police on demand if the police arrive at the location where the records are kept, or within 7 days to the police station? (Question 36)**

Comments on proposed record keeping requirements included some respondents who supported the proposals, but noted that additional resources will be required for effective enforcement and awareness raising.

Some also proposed amendments or alternatives to the proposals. These were most commonly around less frequent updating of records, for example every three to five days or weekly. However, some wished to see the proposals strengthened to require daily updating of records and/or shorter timescales for provision of records to the Police.

There was also a query about what would be accepted as a 'reasonable excuse'.

**Do you agree with the recommendations from the statutory review of snaring that a power of disqualification should be introduced for snaring offences? (Question 37)**

Most of those commenting on Question 37 suggested that disqualification would be a disproportionate punishment for the offences. This included concern that disqualification would effectively prohibit game keepers from working again, given the importance of working dogs to their role. It was also suggested that there is no logical connection between snaring offences and an individual's capacity to own, keep, sell, transport or work with animals.

Some of those commenting opposed the proposal on the basis that it is unnecessary in the context of what was seen as strict existing legislation and regulation. These respondents referred to legislation already in place for specific offences, and to improvement in snare design to minimise animal welfare impacts. In this context, it was suggested that further regulation is not required.

Others raised concerns about how the proposals would work in practice. These included a perceived risk of unfair prosecution as a result of deliberate tampering with snares, due to weather conditions or because of human error. It was also

suggested that the proposals would only penalise law-abiding land managers, and would not be a deterrent to those who currently use illegally set snares (and who were seen as being responsible for the majority of snaring offences).

Respondents also raised concerns that the proposals represent efforts to further reduce the range of wildlife management tools available to land managers. These respondents described snares as an 'invaluable' tool for land managers where other methods cannot be used, especially in relation to the reduction of fox predation on gamebirds and livestock.

Several lesser penalties were suggested as more appropriate alternatives to disqualification as punishment for snaring offences. These included suspension of snaring accreditation and/or other relevant licences (such as gun licences), fines, loss/damage restitution and compulsory training. Some also suggested a written warning for first time offences. It was also suggested that disqualification should not apply to genuine mistakes such as minor administrative offences with no direct impact on animal welfare. Examples given included accidental failure to replace a missing ID tag or omission of a date check record.

In contrast, others wished to see stronger penalties for snaring offences, including fines and custodial sentences.

## **Annex 1 - Organisations responding to the consultation**

### **Animal welfare**

Act Against Corvid Traps

Animal Aid

Animal Concern

Animal Interfaith Alliance

Blaikiewell Animal Sanctuary

British Deer Society

British Veterinary Association (BVA)

Cats Protection

Forget-me-not Animal Rescue

Humane Society International/UK

JBF (Scotland)

National Anti snaring Campaign

OneKind

Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA)

UFAW

West Sussex Wildlife Protection

Wild Animal Welfare Committee

### **Conservation, including representative bodies**

Badenoch & Strathspey Conservation Group

Buglife - the Invertebrate Conservation Trust

East Kent Wildlife Group

Fisheries Management Scotland

Game & Wildlife Conservation Trust (Scotland)

Heart of Argyll Wildlife Organisation

Hushwing Ranger Service  
John Muir Trust  
National Trust for Scotland  
North East Mountain Trust  
North East Scotland Raptor Study Group  
Organic Growers of Fairlie  
Reforestation Scotland  
RSPB Scotland  
Scottish Badgers  
Scottish Environment Link  
Scottish Raptor Study Group  
Scottish Rewilding Alliance  
Scottish Wildlife Trust  
Skye & Lochalsh Environment Forum  
Tayside Raptor Study Group  
The Cairngorms Campaign  
Wild Moors

**Land management, including representative bodies**

Angus Glens Moorland Group  
Avochie Estate (Sporting) Ltd  
Balavil Estate Ltd  
Ballogie Estate Enterprises  
Ben Alder Estate  
Black Mountain Farms  
Cadogan Estates  
Dalhousie Estates  
Dallam Tower Estate

Dalmigavie Estate  
Dalswinton Estate, Dumfriesshire  
Dawnay Estates  
DM Carnegie & Son  
Donald Mcphillimy Associates Ltd.  
Dunmaglass Estate  
Farm and woodland property manager - Little Tombane  
Forest Policy Group  
Game and Country Ltd  
Grimersta Estate Ltd  
Highland Boundary Ltd.  
Hunthill Estate, Glen Lethnot, Angus  
Invercauld Estate  
Kilchoan Management  
Loch Ness Rural Communities  
Logiealmond Estate  
Milton of Drimmie Farming  
Moorland Association  
Newbie  
NFU Scotland  
Pitmain and Glenbanchor Estates  
Remony Estate Partnership  
REVIVE: the coalition for grouse moor reform  
Rewilding Kinkell  
Rottal Estate, Glen Clova, Angus  
Scottish Crofting Federation (SCF)  
Scottish Land & Estates

Southern Uplands Moorland Group

Tayside and Central Scotland Moorland Group

The Heather Trust

The Scottish Gamekeepers Association

Wemyss and March Estate

**Pest control, including representative bodies**

All Pest Services

Chanlon Facilities Management Ltd - Pest Control Division

Elite Pest Control Glasgow Ltd

Humane Wildlife Solutions

Killgerm Group Ltd

Pro-check Environmental Services Ltd

Strathearn Pest Control

Waspsrats.com

**Public body, including law enforcement**

Aberdeen City Council

Cairngorms National Park Authority

Crown Estate Scotland

National Wildlife Crime Unit

Police Scotland

Scottish Animal Welfare Commission

Scottish Fire and Rescue Service

**Sporting organisations, including representative bodies**

Angus Falconry Services Limited

Blubberhouses Moor Ltd

British Association for Shooting and Conservation (Scotland) (BASC)

Game Conservancy Deutschland E.V.

Scottish Countryside Alliance

The Scottish Country Sports Tourism Group (Country Sport Scotland)

**Other - private sector**

Bryan Contractors

Carey Tourism

Cessford Motors Ltd

David Petrie Joiners Ltd

Equine Unlimited

Gatehouse Mechanical Services Ltd

GWT Plant Hire

Highland Industrial Supplies Ltd

Land4raptors Ltd

M Farmer Plumbing and Heating Solutions

Osborne Gun Company Ltd

Power Washer Services Ltd

Precision Rifle Services Ltd

Rosehill Timber

Tomatin Firewood Ltd

Westro Pets

Wilding on a Whim

Young Engineering

**Other - non private sector**

Common Weal

Cove and Kilcreggan Youth Cafe

Hattons Garden

Law Society of Scotland

Perth & Kinross Green Party

Royal Environmental Health Institute of Scotland

Royal Society of Edinburgh

St Andrews Women for Independence

The James Hutton Institute



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