

**MINISTER FOR ENERGY AND ENVIRONMENT
BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION**

What	Evidence session to Rural Affairs and Islands Committee on the Wildlife Management and Muirburn (Scotland) Bill. Ms Martin will be asked to give an opening statement of no more than 3 minutes.
Where	CR3 (ground floor), Scottish Parliament
When	Wednesday, 28 June 2023 08:30 to 10:00
Who	<u>Rural Affairs and Islands Committee</u> Finlay Carson, Convener - Scottish Conservative and Unionist Party Beatrice Wishart, Deputy Convener - Scottish Liberal Democrats Karen Adam , Member - Scottish National Party Alasdair Allan , Member - Scottish National Party Ariane Burgess , Member - Scottish Green Party Jim Fairlie , Member - Scottish National Party Rachael Hamilton , Member - Scottish Conservative and Unionist Party Christina Grahame - Scottish National Party Rhoda Grant , Scottish Labour <u>Substitute members</u> Emma Harper , SNP, South Scotland Liam McArthur , Scottish Liberal Democrat, Orkney Islands Edward Mountain , Conservative, Highlands and Islands Mercedes Villalba , Labour, North East Scotland
Why	The session will cover all aspects of the Wildlife Management and Muirburn (Scotland) Bill.
Supporting official	Leia Fitzgerald – Bill team leader Hugh Dignon – Head of Wildlife Management Norman Munro - SGLD
Briefing contents	Annex A: Lines to Take Annex B: Helpful tables and diagrams Annex C: Consultation analysis summary Annex D: Opening statement – provided separately
Media Handling	Comms will monitor the committee session and work up lines to take to respond to any media interest accordingly.

**MINISTER FOR ENERGY AND ENVIRONMENT
BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION**

Annex A: Lines to take 4

Glue Traps	4
Why introduce a ban.....	4
Professional pest controllers licensing scheme	4
Impact on hospitality and healthcare sector	4
Internal Market Act	5
Wildlife Traps	5
Why only spring traps and live capture traps?.....	5
Reporting requirements.....	6
Why isn't it an offence in the Bill to tamper with a legally set trap?	6
Vexatious claims	6
Suspension of licences.....	6
Relevant offences.....	7
Training requirements.....	7
Snaring	7
Grouse licensing	8
Raptor Persecution and Grouse Moors	8
Evidence basis for raptor persecution and grouse moors.....	8
Werritty recommended reviewing raptor numbers before acting	9
Licence Revocation and Suspension	9
Birds to be licenced	9
Reporting requirements.....	10
Code of practice	10
NatureScot must 'have regard to' rather than 'must adhere to' CoP	10
Duration of licence.....	11
Relevant offences.....	11
Medicated Grit.....	11
Appeals process.....	11
Financial Memorandum and BRIA	12
SSPCA powers	12
Scottish SPCA Financial position	13
Muirburn	13
Why extend the licensing scheme?	13
Why protect peatland?.....	13
Definition of peatland.....	14
What is the Precautionary Principle.....	14
Why not have just one licence scheme?	14
How peat will be measured	14
Wildfires.....	15

**MINISTER FOR ENERGY AND ENVIRONMENT
BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION**

Muirburn season.....	15
Muirburn code	15
NatureScot must ‘have regard to’ rather than ‘must adhere to’ Muirburn Code.....	15
Training	15
Cool burning/offence to burn peat	16
DPLRC report on muirburn powers	16
Licences in general	16
Species licensing review	16
Ethical principles of wildlife mgmt.....	17
NatureScot Capacity.....	17
Lead Ammunition	17
Annex B: Helpful tables and diagrams.....	18
Wildlife Traps new requirement flowchart.....	18
Wildlife Trap relevant offences	18
Grouse licensing relevant offences	19
Estimated annual average cost of wildlife trap licence administration	19
Estimated annual average cost of grouse licence administration.....	19
Estimated annual average cost of muirburn licence	20
Annex C: Wildlife Management in Scotland Consultation Summary	21
Licensing of grouse shooting.....	21
Muirburn	21
Wildlife management traps.....	21
Glue traps.....	22
Snares.....	22
Annex D: Opening Statement	Error! Bookmark not defined.

MINISTER FOR ENERGY AND ENVIRONMENT

BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

Annex A: Lines to take

Glue Traps

Why introduce a ban

- There has been significant and ongoing concern about 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.
- Glue traps are only one of several pest control methods available and they are often cited as being used as a last resort.
- In March last year, the Scottish Animal Welfare Commission published a report on glue traps which concluded that “...*the animal welfare issues connected with the use of glue traps would justify an immediate outright ban on their sale and use.*”
- I would note that the use of glue traps for birds and wild mammals other than rodents is an offence under the Wildlife and Countryside Act. The provisions in this Bill seek to expand this protection to rodents.

Professional pest controllers licensing scheme

- Due to the weight of evidence that glue traps are the least humane method of rodent control and cause unacceptable levels of suffering for the animals caught by them, continuing to allow their use was not considered to be a viable option.
- I considered whether to mirror the approach taken by the UK Government in England and restrict the use of glue traps to only professional pest controllers acting in accordance with a licence, however, this was not taken forward for the reasons set out in the Policy Memorandum.
- This includes that there is no Standard Occupational Classification Code for pest controllers, no qualifications or licence are needed to work in the pest control industry and no regulatory authority oversees them. This would make it extremely difficult to determine who should be exempted from the ban on use.
- Regardless of whether they are being utilised by a professional or member of the public, it is not possible to use a glue trap in a way that does not cause unnecessary suffering.

Impact on hospitality and healthcare sector

- I appreciate that rodents can cause a significant issue for the hospitality and healthcare sector however, having consulted widely with both key stakeholders and members of the public, I am satisfied that there are sufficient alternatives to allow businesses and hospitals to successfully deal with rodents.
- Alternative methods of rodent control, such as snap traps, live box traps or electric traps, are available and some professional pest controllers have already adopted a policy to not use glue traps due to welfare concerns.
- In addition to the public consultation, the Scottish Government also contacted all Scottish Local Authority pest control departments to ascertain the extent to which they used glue traps. Of the fourteen Local Authorities who responded, eleven confirmed that they would never use glue traps, two stated that they do not provide a pest control service, and one confirmed that, while they do not regularly use glue traps, however they would consider using them where there is justifiable concern for public health and no alternative practical solution.
- Internationally, glue traps are banned in the Republic of Ireland. In New Zealand, glue traps can only be used subject to Ministerial approval and I'm aware that the Committee has already

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

heard that this approval has not been granted at all in recent years. The Senedd has also recently passed a ban on the use of glue traps.

- Where glue traps have been banned in other countries, pest controllers have been able to adapt their approach and use alternative methods of rodent control.
- Animal welfare is a priority for the Scottish Government and, even when used by professional pest controllers, glue traps cannot be considered a humane method of trapping a rodent due to a high risk of suffering.
- However, in recognition that individuals and professional pest controllers who currently use glue traps will need time to adapt to and develop alternative methods of rodent control, the Bill provides that the glue trap provisions will be brought into force by regulations. I intend to bring these regulations into force after a transition period

Internal Market Act

- The Internal Market Act means that where regulations diverge with other parts of the UK, we cannot enforce a ban on the sale of products in Scotland, even if it is within our competence to do so, if they have been lawfully produced in, or imported into, another part of the UK.
- In order to prohibit the sale and possession of glue traps in a way that does not have limited legal effect, our assessment is that an exclusion from the UK Internal Market Act will be necessary.
- Glue traps are sold throughout the UK and we understand at present there are no plans to ban the sale of them in England, Wales or Northern Ireland.
- Last week I wrote to my counterpart in the UK Government outlining our position and to make clear that we are looking to progress this matter as quickly as practically possible so that we have certainty that a devolved ban of these cruel and inhumane traps will be effective.

Wildlife Traps

Why only spring traps and live capture traps?

- The Werritty review only considered the use of traps in relation to grouse moor management and raptor persecution. Other uses of traps were not considered by the Werritty review, and did not form the evidence base that led to the training and registration recommendations.
- In developing the provisions of the Bill, discussions with key stakeholders and responses to the consultation highlighted a wide variety of purposes for which live capture trapping is undertaken across Scotland.
- Those purposes range from routine for example trapping feral cats or foxes for relocation, to project based including the relocation of beavers under licence and research involving the live capture wild mammals, and to ad-hoc and unplanned Scottish SPCA trapping an injured wild mammal to treat it.
- I therefore believe that it is neither practicable nor reasonable to require those undertaking any live capture of mammals to require registration and training, as the activity does not pose a risk to raptors, and in the majority, such activities have no link to grouse moor management.
- The Bill does however, provide Scottish Ministers the ability to amend by secondary legislation, the types of traps to which these provisions apply. This will allow a flexible response to the way traps are used in the future.
- This power could be used, for example, should evidence come to light that traps that do not fall within these provisions are linked to raptor persecution. It would also allow flexibility to respond to the emergence of new types of traps in the future that may also pose the same risk.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

Reporting requirements

- The Bill sets out the overarching principles of how the licensing system will work, as well as the mandatory requirements of the system.
- This will be built on through detailed accompanying guidance, and further operational and administrative elements of the system will be carefully considered and developed by NatureScot as part of that process.
- Section 12C allows NatureScot to specify any conditions the relevant authority considers appropriate to attach to the licence.
- This allows the licensing scheme to be responsive and dynamic, for example, it provides the flexibility to implement the findings of the Species Licensing Review required under the Bute House Agreement.
- I believe that the reporting requirements are best decided by NatureScot in collaboration with Stakeholders as the licensing scheme and accompanying guidance is developed.
- It is not standard practice to include this kind of information on the face of a Bill (e.g., for section 16 licences under the Wildlife and Countryside Act or the licensing schemes introduced by the Hunting with Dogs Act).
- The wildlife trap provisions included in the Bill are based on the recommendations from the Werritty review which did not specify that reporting requirements were a necessary part of the licensing scheme.

Why isn't it an offence in the Bill to tamper with a legally set trap?

- I am aware that this has been discussed at a number of the committee's evidence session. I know that my officials have committed to discuss this matter further with Police Scotland and the Crown Office to ascertain whether a new offence would be helpful.
- Interference with traps is already capable of being prosecuted as a statutory offence of vandalism under the Criminal Law Consolidation Act 1995. It is also capable of being prosecuted as a common law malicious mischief.

Vexatious claims

- There is already a requirement for snares to have unique ID numbers for snares.
- I do appreciate the concerns of gamekeepers and other members of the public. I am listening closely to these and will consider any suggestions made in the committee's report.
- There is a defence under section 12A(6) for a person to show that the trap was set legally.

Suspension of licences

- There is also no "unlimited" scope for NatureScot to suspend or revoke a licence.
- Grounds for suspension or revocation include a failure to comply with conditions of the licence or where NatureScot is satisfied that a "relevant offence" has been committed.
- NatureScot also has a power to suspend a licence where the licence holder or a person involved in managing the land is the subject of an investigation of a relevant offence.
- As part of the exercise of that power there is a test for the suspension of a licence which is that an investigation is ongoing and that NatureScot are not - at the stage of the suspension - satisfied that a relevant offence has been committed but they would be so satisfied if the accused were to be convicted of a relevant offence.
- This power is for use in the case of a particularly egregious sort of offence where it appeared that something terrible had happened and it would be unacceptable for the business to continue while a police investigation was ongoing.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

Relevant offences

- The Bill contains a precise definition of “relevant offences”. These cover related wildlife offences relating to the killing and taking of wild birds and wild animals.
- These offences have been identified as being relevant as the grouse moor management review was undertaken to examine ongoing evidence of raptor persecution on or around grouse moors.
- I am aware that not all offences committed under the listed legislation will be relevant in all circumstances, but I was pleased to hear the Werritty review group’s support for the legislation included in this section.
- I have been listening to stakeholder’s thoughts on the appropriateness of these offences.
- The Bill includes a power to amend the list of relevant offences via secondary legislation.
- The DPLRC considered this power and said “*The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure*”
- I want to be clear that the commission of an offence under the listed legislation does not automatically require the licensing authority to suspend or revoke a licence and the licensing authority may ultimately elect not to do so if they consider that course of action to be appropriate in the circumstances.

A table outlining the current list of relevant offences is outlined in Annex B

Training requirements

- The Werritty review recommended that trap operators must be required by law to complete training on the relevant category of trap.
- The traps covered by the provisions in the Bill are largely used by professionals, such as gamekeepers and land managers rather than for domestic use.
- I expect the training to be based around the existing conditions for the use of each type of trap, for example as set out in the Spring Traps Approval Order.
- This means the training should be easily completed for anyone currently undertaking legal trapping.
- In developing the framework to endorse training course, the Scottish Government and NatureScot will work with stakeholders to ensure that training courses are available at a cost that is accessible.
- Training requirements are common in other professions, especially those relating to animal welfare. I know that the Scottish Gamekeepers Association and similar organisations already do a lot of training.
- I was pleased to hear that Alex Hogg indicated that the Scottish Gamekeepers Association were happy with the training requirements outlined in the Bill.

Snaring

- There are no snaring provisions in the Bill as yet, as I am currently considering the findings of the Scottish Animal Welfare Commission Snaring Review alongside a review produced by the Rural and Environment Land Management Group and will announce a decision on the future of snaring in Scotland soon.
- If snaring is to be further regulated or banned, then I will bring forward provisions at Stage 2.
- I will work with officials to ensure that the committee and the Parliament has sufficient time to scrutinise the provisions.
- We published the outcome of the statutory review of snaring last year, and it can be found on the Scottish Government webpages.

**MINISTER FOR ENERGY AND ENVIRONMENT
BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION**

Grouse licensing

Raptor Persecution and Grouse Moors

- I believe my officials wrote to the committee outlining the evidence for the connection between raptor persecution and grouse moors.
- The illegal killing of Scotland’s magnificent birds of prey cannot be tolerated. This Bill will seek to tackle the destructive minority who would continue to commit these wildlife crimes.
- Licensing will provide an effective means of deterring wildlife crime, as well as encouraging compliance with a Code of Practice for grouse moor management.
- The Scottish Government recognises that grouse shooting makes an important contribution to the rural economy and this Bill is not about stopping this activity.
- However, it is clear that grouse moors must be managed in a sustainable and responsible way ensuring any environmental impacts are minimised.

Evidence basis for raptor persecution and grouse moors

- I believe my officials have already provided the committee with evidence of the link between raptor persecution and grouse moors.
- Professor Newton has also outlined multiple strands of evidence, including birds disappearing during the breeding season, nesting success, breeding populations having a higher percentage of young individuals, and fluctuations in raptor numbers following a change in management of the grouse moor that further indicate the link between raptor persecution on grouse moors.
- The United Nations 2021 report on Wildlife and Forest Crime for the United Kingdom considered raptor persecution and recommended that the UK should focus on:
“Enhancing the powers of licensing authorities to revoke licences for gamebird shoots or amend those licences where abuse occurs with a proven link to estate management”
- In the 10 years of annual wildlife crime reports from 2010/11 – 2020/21 Police Scotland recorded 164 crimes against birds of prey.

Recorded Bird of Prey Crimes in Scotland

Year	2012	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Total	13	19	18	26	11	24	17	25	11

- Information provided by the National Wildlife Crime Unit shows the land use category most associated with raptor persecution incidents is grouse moors.
- NatureScot have restricted General Licences on 8 occasions of which 4 have been since the publication of the Werritty report.
- Raptor persecution hotspot reports produced by the Partnership for Action Against Wildlife Crime (using data from 2014-2018) show an increased prevalence of raptor persecution on land managed for grouse shooting in Scotland.
- The report commissioned by SNH by Whitfield and Fielding (Analyses of the fates of satellite tracked golden eagles in Scotland) concluded *“that a relatively large number of the satellite tagged golden eagles were probably killed, mostly on or near some grouse moors where there is recent, independent evidence of illegal persecution”*.
- I know you have also heard from the police that since Werritty report, have been 11 crimes against birds of prey reported happening on or very near to grouse shooting estates. In addition to this there have been 20 suspicious cases where there has been insufficient evidence to conclude that a crime has definitely occurred. This includes sudden failures in satellite tags, birds of prey carcasses reported by members of public which are no longer present once the police arrive, birds of prey carcasses found where the forensic investigation is yet to be concluded.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

Werritty recommended reviewing raptor numbers before acting

- Professor Werritty noted in his introduction to the report that this recommendation was a compromise and that the majority of the group, including the Chair, were in favour of immediate introduction.
- While I understand why the review made the recommendation, I believe that the Government needed to act sooner than this and which is why we are bringing forward legislation to introduce a licensing scheme now.

Licence Revocation and Suspension

- Revocation of a licence may take place only when the licensing authority is satisfied that a relevant offence has been committed.
- A licence will not be automatically suspended if there is an investigation. If there is an investigation, NatureScot must consider, based on the circumstances and degree of alleged offence, whether it would be appropriate to exercise their power to suspend a licence pending the conclusion of the investigation.
- So, in the case of a vexatious claim against a grouse moor, unless there is evidence to link a crime to the management of that land, NatureScot will not suspend the licence.
- Revocation of a licence will not occur while an investigation is on-going.

NatureScot has too much power

- The Bill attempts to balance clarity and licence holder safeguards while allowing sufficient flexibility for NatureScot to react to individual circumstances.
- This inevitably introduces a certain amount of discretion for NatureScot, but this is necessary to allow them to respond adequately to a wide variety of circumstances in which licenses are required.
- NatureScot has a significant amount of experience and currently issues around 90 different types of licences to approximately 5,000 individuals per year.
- I was pleased to hear Professor Reid said, *“In an area where the scientific evidence is uncertain and changing, where the natural environment is always changing, and where you are dealing with enterprises of a vast range of size, scale and nature, I think that having flexibility is almost inevitable and is the best, fairest and most proportionate way to operate a licence system.”*
- I would like to reassure the committee, however that NatureScot is a public body, and therefore must act reasonably at all times.
- As with every public body, if people are not happy with a decision from NatureScot they have a right to appeal. I know that NatureScot has an internal appeals process, there is also the option of the Public Services Ombudsman and, ultimately a judicial review.
- In recognition of the significant impact that the revocation, suspension or non-granting of a licence for the shooting of grouse could have on a business and the surrounding community, the Bill also allows for appeals to be made to the sheriff court.
- Additionally, in this Bill, as with other wildlife licences overseen by NatureScot, the power to grant and revoke licences is delegated by Scottish Ministers. This means that, if there were serious concerns over NatureScot’s abilities and impartiality, this power could be revoked.

Birds to be licenced

- The Werritty review which forms the base for this Bill specifically considered grouse moor management rather than gamebird shooting in general.
- I currently do not have any plans to licence the shooting of other types of game birds (e.g., pheasants or red-legged partridges) as there is not the same evidence base to link the management of these birds to raptor persecution or associated wildlife crime.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

- However, I am conscious that a small minority who are intent on circumventing the legislation, may, on losing their licence, release pheasants as well.
- In line with existing sections of the Wildlife and Countryside Act, the Bill includes provisions that would allow the Scottish Government to add or remove birds from Part 1B of Schedule 2.
- This would allow Scottish Ministers to add other species of birds to the list of birds which can only be taken under a section 16AA licence.
- This power could be used if evidence were to come to light that raptor persecution was being carried out in relation to another species of grouse; or that greater regulation of the taking of a bird listed in Part 1 of Schedule 2 was necessary for another reason.
- This power is subject to the affirmative procedure to ensure that it undergoes sufficient scrutiny. The Scottish Government would also be required to undertake consultation on their proposals before bringing it before parliament.

Reporting requirements

- The Bill was designed to include a framework for licences so that guidance could be set out in consultation with stakeholders. This allows the licensing scheme to be responsive and dynamic. Any other approach may also restrict the ability to implement the findings of the Species Licensing Review required under the Bute House Agreement.
- The Bill already provides NatureScot can specify *“any conditions the relevant authority considers appropriate to attach to the licence”* (section 16AA(5))
- We believe that the reporting requirements are best decided by NatureScot in collaboration with Stakeholders as the licensing scheme and accompanying guidance is developed. It is not standard practice to include this kind of information on the face of a Bill (e.g., for section 16 licences under the Wildlife and Countryside Act or the licensing schemes introduced by the Hunting with Dogs Act).

Code of practice

- The Code was a recommendation of the Werritty review, which the Government accepted.
- Werritty recommended: *“That a framework Code of Practice on grouse shooting be produced reflecting regulation specific to the sector and advising on best management practices. If statutory provisions are included, the Code would need approval by Scottish Ministers with [NatureScot] having oversight and ownership”*.
- The Code will cover the issues identified by Werritty such as medicated grit.
- The code will be developed in conjunction with stakeholders as the code and they will have opportunities to provide feedback.
- The Code will be regularly reviewed, every five years, so that it remains relevant.

NatureScot must ‘have regard to’ rather than ‘must adhere to’ CoP

- The Bill presents a licensing framework and further guidance will be set out in consultation with stakeholders. This allows the licensing scheme to be responsive and dynamic.
- The current wording in the Bill allows NatureScot a degree of flexibility when considering which areas of the Code of Practice are relevant to which licence. It is likely that there are certain things in the Code of Practice that will not be relevant to all licences.
- Section 16AA(7) specifically mentions that some of the conditions that NatureScot can attach to a licence may be drawn from the Code of Practice outlined in section 16AC.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

Duration of licence

- Each licence may be granted for a maximum period of one year and may be renewed for a further year thereafter.
- I recognise that there have been a number of concerns raised about this, I have been listening and will consider it ahead of Stage 2
- There is to be no limit on how many times a licence may be renewed annually.
- The benefit from licences requiring renewal annually, as noted by the Grouse Moor Management Review Group, is that it provides an opportunity to monitor compliance with the conditions of the licence regularly.

Relevant offences

- The offences selected were related to the mismanagement of grouse moors.
- I am aware that not all offences committed under the listed legislation will be relevant in all circumstances, but I was pleased to hear the Werritty review group's support for the legislation included in this section.
- I have been listening to stakeholder's thoughts on the appropriateness of these offences.
- The Bill includes a power to amend the list of relevant offences via secondary legislation.
- The DPLRC considered this power and said "*The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.*"
- I want to be clear that the commission of an offence under the listed legislation does not automatically require the licensing authority to suspend or revoke a licence. The licensing authority may ultimately elect not to do so if they consider that course of action to be appropriate in the circumstances.
- For example, if evidence of badger baiting was found on a grouse moor but there was no connection to someone involved in the management of that land, NatureScot would not be able to suspend the licence.
- However, if the police found evidence that someone involved with the management of a grouse moor had killed a badger to stop it preying on grouse eggs, then that may be a relevant offence and lead NatureScot to reevaluate a licence.

A table outlining the current list of relevant offences is outlined in Annex B

Medicated Grit

- The Werritty report recommended that medicated grit should be subject to increased regulation, including the publication of a Code of Practice which all land managers using medicated grit should adhere to. It also recommended that NatureScot should have powers to check compliance with the Code of Practice.
- This Bill will implement these recommendations.
- The Code of Practice developed by NatureScot will include a section on medicated grit.
- NatureScot will take adherence to the code of practice into consideration when making licensing conditions, including those sections on medicated grit.

Appeals process

- The revocation of a grouse moor licence may have serious economic impacts on grouse moor businesses, their employees, and the surrounding community.
- In recognition of this, in addition to NatureScot's internal appeals process, the Bill provides a right for a person to appeal to the sheriff against a decision made by NatureScot to
 - Refuse to grant the person a licence
 - Attach a condition to the person's licence
 - Modify, suspend, or revoke the person's licence.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

- NatureScot, as a public body, falls under the remit of the Scottish Public Services Ombudsman. Therefore, if, having gone through NatureScot's complaints procedure, the licence applicant is still dissatisfied with the decision, they may be able to appeal to the Scottish SPSO.

Financial Memorandum and BRIA

- The BRIA and Financial memorandum set out the cost to businesses of compliance with the provisions in the Bill.
- The Scottish Government and NatureScot will work with stakeholders to ensure that costs incurred by applicants in this regard are kept to a minimum and the licensing schemes do not place an undue or unnecessary administrative burden on businesses.
- We have consulted extensively with businesses and stakeholders on this issue.
- The Werritty review group was comprised of representatives from academia, grouse moor management and conservation.
- In undertaking the review, the group met with a number of organisations and businesses, including grouse moor estates and conducted a targeted questionnaire to organisations representing land-owners and land managers, gamekeepers, sport shooting, groups of estates, as well as other interested bodies.
- In 2020, our commissioned research to assess the socioeconomic and biodiversity impacts of driven grouse moors report included collated financial information from 24 estate-based enterprises.
- Throughout the development of the Bill, officials met with Scottish Land and Estates, who represent grouse moor businesses, and other stakeholders with an interest in grouse moor management.
- Our public consultation received responses from a wide range of people, which included several grouse moor businesses, and those responses were considered in the drafting of the policy.
- All of this consultation was in depth and ongoing as part of the policy development and so it was not necessary to duplicate that work for the BRIA.

SSPCA powers

- The Bill contains enabling powers to allow Scottish Ministers the power to extend the powers of Inspectors appointed under the Animal Welfare (Scotland) Act 2006 to investigate certain wildlife crime offences.
- Scottish SPCA inspectors have certain powers under the Animal Welfare (Scotland) Act 2006 to investigate offences relating to companion and domestic animals.
- The report of the taskforce set up to examine the issue of whether the powers of Scottish SPCA Inspectors should be extended to allow them to investigate wildlife crime has been published.
- While the report sets out a number of options and a clear recommendation, that recommendation is based almost entirely on the supposition that the police and COPFS would not support any extension of powers to the SSPCA.
- Instead, as a reasonable compromise, the Scottish Government instead suggests the below additional powers and limitations:
 - The SSPCA could only use the new powers in situations and on land or property where they are already responding to a case under their existing powers in the Animal Health and Welfare (Scotland) Act 2006.
 - The SSPCA can only use equivalents of some of the powers outlined in Section 19 of the W&CA.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

- This would mean that an inspector, having entered land in exercise of an existing power under the 2006 Act, may search for, examine and seize any thing tending to provide evidence of the commission of, or participation in, a relevant wildlife offence.
- I believe this will address the main concern about evidence being lost because Police Scotland are said to be frequently slow to show up to an incident previously attended by the Scottish SPCA, by which time evidence of illegal activity or items may be lost. At the same time it would not lead to the Scottish SPCA becoming an alternative first port of call for the public reporting wildlife crime.
- We will carry out further stakeholder consultation before bringing forward any proposal

Scottish SPCA Financial position

- Scottish Government officials meet regularly with Scottish SPCA to discuss current issues and provide support when appropriate, through policy advice and sharing of wider communications.
- The Scottish SPCA is not government funded.
- Like many charities its income comes from other means including, membership, fundraising and legacy donations, amongst others.
- Furthermore, in 2021, 86.4% of the charities income was spent on operating its inspectorate, animal rescue centres and wildlife centre, amounting to a total of approx. £13.8m.

Muirburn

Why extend the licensing scheme?

- The purpose of the muirburn licensing scheme is 'to minimise risk of damaging effects and address potential benefits such as the reduction of fuel loads' (Werritty Report).
- It will ensure that muirburn is being undertaken in an environmentally sustainable manner, with due consideration of all the possible consequences.
- If it is undertaken without due consideration of all the possible consequences, it undoubtedly has the potential to have a serious negative impact on wildlife and the wider environment.
- However, I am aware that muirburn can have a positive impact, creating habitats for certain species or helping reduce fuel loads and lower the risk of wildfires.
- Muirburn is a complex issue and, while important research is being done in this area, I am aware that there is still no strong scientific consensus in relation to some of the potential impacts and effects of it.
- I have carefully considered all of the evidence that has been put forward to date and will continue to consider new evidence as it emerges.
- I believe a licensing scheme will be helpful in enabling us to build up our evidence base by allowing us to monitor where muirburn is being undertaken and the purposes it is being undertaken for.
- I was particularly glad to hear that Professor Werritty believes that the Bill currently delivers on the recommendations his review made in relation to muirburn.

Why protect peatland?

- Peatlands are an integral part of Scotland's cultural and natural heritage, and cover over 2.5 million hectares of Scotland's land area, storing around 1.8 billion tonnes of carbon.
- 60% of all UK peatlands are found in Scotland, and our blanket bog represents around 10% of the global total.
- In good condition, they provide multiple benefits: storing carbon, supporting nature, reducing flood risk, cleaning water bodies, and providing places that can support physical and mental wellbeing.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

- However, it is estimated that around 75% of Scotland's peatlands (1.6 million hectares) are degraded, when these multiple benefits are lost and they become a source of greenhouse gases, releasing around 15% of Scotland's annual gross carbon emissions.

Definition of peatland

- For the purposes of the Bill, peatland is described as *“land where the soil has a layer of peat with a thickness of more than 40cm”* and *“peat” means “soil which has an organic content of more than 60%.”*
- This is in line with The Heather and Grass etc. Burning (England) Regulations 2001
- There is a lack of strong scientific consensus relating to muirburn on peatlands, national survey data for peat is based on peat of a depth of 50cm or more and a 2022 report by NatureScot has shown that there is limited and unclear evidence on the impact of muirburn on the total carbon budget. What we do know is that peat, when in good ecological condition, can store significant amounts of carbon and that this can help address the impacts of climate change.
- Therefore, to protect areas of peatland associated with shallower peat, and in line with a precautionary, risk-based approach, for the purpose of muirburn, the Bill defines peatland as land with layer of peat with a thickness of 40cm or more.
- In recognition of the lack of strong scientific consensus relating to muirburn on peatlands, the Bill contains a regulation making power which allows the Scottish Ministers to amend the definitions of “peat” and ‘peatland’. The power to do so is subject to the affirmative procedure and before exercising the power, Scottish Ministers must consult NatureScot and such other persons likely to be interested in or affected by the making of muirburn.

What is the Precautionary Principle

- When using the term “precautionary approach” or “principle” in relation to the policy decisions within the Bill, I am using it as defined in the UN Rio Declaration on Environment and Development, that *“where there are threats of serious or irreversible damage, lack of full scientific certainty is not to be used as a reason for postponing cost-effective measures to prevent environmental degradation. A precautionary approach enables protective measures to be taken without having to wait until the harm materialises.”*
- It's one of the guiding principles on the environment listed in the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#) and Scottish Ministers, once that Act is fully commenced, will have a legal duty to have due regard to those principles in making policies and legislation.

Why not have just one licence scheme?

- The Bill doesn't set out that there will be two separate licence schemes for muirburn, instead, it sets out that the licence for burning on peatland is subject to a higher degree of scrutiny and that more stringent restrictions are in place.

How peat will be measured

- How peatland is to be determined by land managers is to be set out by NatureScot. We expect this to be in line with the peatland determination set out in the Peatland Code and currently used on designated sites in England.
- The assessment of peat thickness will be reliant on surveys undertaken by land managers and those applying for a licence, and would require only simple equipment such as a peat probe, and no specialist skill or knowledge.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

Wildfires

- Wildfires are becoming increasingly topical with more droughts as a result of climate change. Predicting a wildfire is very difficult. My officials and I are working to understand the evidence and risks around the role of muirburn in wildfire prevention and its relationship to wildfire.
- The Scottish Fire and Rescue Service provided a full response to this consultation and their responses was considered as the provisions for the Bill were developed. I have also been listening carefully to what they said during their evidence session.
- The Bill therefore includes provision to enable NatureScot to issue muirburn licences for the purpose of preventing wildfires, on both peat and non-peat land.

Muirburn season

- The Muirburn season currently runs from 1 October to 15 April
- I know there has been some discussion in previous evidence sessions about moving the date back to in March.
- In recognition of the fact that climate change will affect breeding seasons, wildfire risk, and water levels, the Bill contains a regulation making power for Scottish Ministers to amend the dates of the muirburn season for the purposes of conserving, restoring, enhancing or managing the natural environment, or for the purpose of public safety.

Muirburn code

- The Bill requires that the Scottish Ministers must prepare a statutory muirburn code which must be reviewed and, where required, revised every five years.
- We will work very closely with stakeholders, including the Scottish Fire and Rescue Service.
- The licensing authority must have regard to compliance with the muirburn code when granting a licence and licence holders must have regard to the muirburn code.
- In recognition that not all of the Muirburn Code is likely to be relevant in every case (e.g., it currently includes lines on burning around the edge of waterbodies) licences granted for muirburn under the Bill may specify parts of the Muirburn Code to which the person intending to make muirburn must adhere.

NatureScot must 'have regard to' rather than 'must adhere to' Muirburn Code

- The Bill presents a licensing framework and further guidance will be set out in consultation with stakeholders. This allows the licensing scheme to be responsive and dynamic.
- The current wording in the Bill allows NatureScot a degree of flexibility when considering which areas of the Code of Practice are relevant to which licence. It is likely that there are certain things in the Code of Practice that will not be relevant to all licence applications.

Training

- In the discussion of muirburn, the Werritty review report gave the following examples of conditions that could be attached to such a muirburn licence; *"Substantial compliance with the Muirburn Code (and any subsequent updates); Mandatory training for the staff directly involved in setting and managing fires; Keeping a record (ideally a map showing the location and date) of each operation."*
- I agree with what has been said in previous evidence sessions that those undertaking muirburn must have adequate training, while it is not on the face of the Bill, it is envisaged that training will form part of the licensing scheme.
- A muirburn training course has been developed by SFRS through the Scottish Wildfire Forum. This will be Lantra approved. It has an on-line and a practical element. It will include what needs to be considered on the day (e.g. weather conditions), what equipment is required and the need to understand the habitat which is being burnt.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

Cool burning/offence to burn peat

Background: SLE and GWCT are advocating a ban on the burning of peat soil rather than a ban of burning the surface vegetation which sits on peatland. The approach utilises the findings in the Peatland – ES – UK – 10 year report that muirburn can potentially increase carbon sequestration on peatland.

- ‘Cool burning’ is not a viable alternative approach as it presents a number of practical difficulties to ensure compliance and good practice.
- If a ‘cool burn’ has been undertaken, there is no clear way for NatureScot to determine whether only the surface vegetation had been burnt and not the underlying peat soil.
- Our understanding is that conditions can change quickly, a ‘cool burn’ can become a ‘hot burn’ or wildfire quite quickly if the wind changes direction or speed for example.
- I know that there is a huge amount of conflicting opinions and scientific evidence about muirburn – I will continue to reflect on everything that has been said during these evidence sessions.

DPLRC report on muirburn powers

- The powers in the Bill to amend the definition of peat and peatland, and to modify the purposes for which a muirburn licence can be granted are necessary to allow a flexible and timely response to developing science in the future.
- The approach taken in developing the provisions on muirburn follow the precautionary principle and is based on the latest available scientific evidence and reflects the recommendations of the Climate Change Committee.
- However, as you’ve heard, the evidence of the harm and benefits of muirburn on peatland is contested.
- A delegated power is therefore necessary to enable the Scottish Ministers to adapt the approach to muirburn if new evidence emerges that a different approach is required.
- These powers could be used to either relax or restrict further the way in which muirburn may lawfully be undertaken.
- I should add that these powers are an improvement on the status quo, in that they limit the way in which such power can be used and require that there must be a consultation with NatureScot and any other people likely to be interested or affected by the making of muirburn
- The Hill Farming Act 1946 contains a very wide power that allows Scottish Ministers to modify the existing muirburn licence provisions in any way and without any requirement for consultation.

Licences in general

Species licensing review

- In the Bute House agreement we have committed to a general review of licensing including giving consideration to introducing a public register of licenses (subject to data protection and the safety of licences applicants).
- The review is due to begin later this year.
- The review will enable us to take a consistent approach to for all licences issued by NatureScot, including those introduced in the recently passed Hunting with Dogs and the licences which will be included in this Bill.
- This review will also consider cost recovery of wildlife management licences.
- NatureScot do not currently charge the applicant for licences relating to wildlife management

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

- The Bill therefore allows for the possible introduction of charges for licences issued under these provisions at a later date, by providing that the licensing authority may charge a reasonable fee

Ethical principles of wildlife mgmt.

- NatureScot have agreed a Shared Approach to Wildlife Management with land managers and conservation groups to promote best practice.
- A huge amount of what we are already doing is aligned with the ethical principles.
- The Scottish Government will be shortly begin reviewing the licensing system, under which much wildlife management operates.
- The species licensing review will also be an opportunity to look at how the system operates through the lens of wildlife welfare, balanced against the need to protect crops and livestock.
- The review will ensure that in addition to the existing statutory licensing requirements, welfare principles are baked in to how the system operates.
- I think it's important to wait for that review to conclude so that consideration can be given to this issue in relation to all licences operated by NatureScot, not just those included in this Bill.

NatureScot Capacity

- My officials have discussed the Bill with NatureScot and they are confident that they can meet the requirements of the licensing scheme
- They are aware that there will be a higher level of demand once the licensing scheme is introduced and also when those original licences come up for renewal. The same is true for a number of other licenses that they manage which require renewal.
- We are currently discussing the best way to handle this with them.

Lead Ammunition

- Scottish Ministers recognise the risk posed by lead ammunition to wildlife, especially birds, that may accidentally ingest this toxic heavy metal, and welcome this restriction proposal under UK REACH.
- Scottish Ministers, together with responsible Ministers from the UK and Welsh governments, requested that the Health and Safety Executive, as the Agency for UK REACH (registration, evaluation, authorisation and restriction of chemicals) Regulation, prepare a restriction dossier for the use of lead ammunition in April 2021.
- I understand the reasons for the delay in HSE forming their recommendation for UK REACH Appropriate Authorities, and although frustrating it is important that all stakeholders' voices and concerns are analysed and considered as part of the process for the published HSE recommendation
- Scottish ministers will consider the HSE's opinion in due course once it is published, working with the UK and Welsh Governments, to make a decision in accordance with the legislated process under the UK REACH Regulation on the need and conditions for a restriction on the use of lead in ammunition in Great Britain.

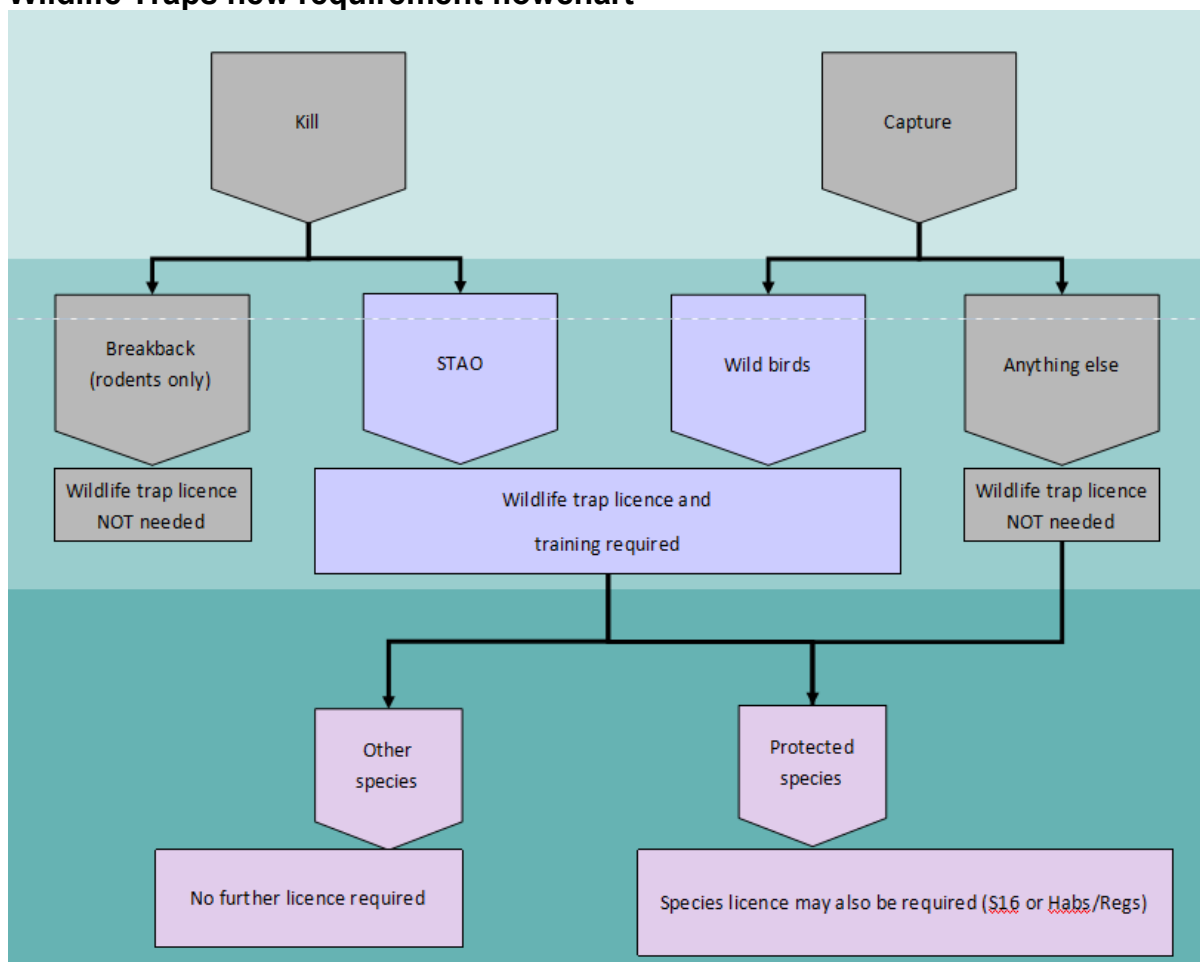
Background

[REDACTED 10 (4)(e) – Internal Communications]

**MINISTER FOR ENERGY AND ENVIRONMENT
BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION**

Annex B: Helpful tables and diagrams

Wildlife Traps new requirement flowchart



Wildlife Trap relevant offences

Wildlife Trap Relevant offences		
Act	Sections	Offences (summary)
Wildlife and Countryside Act	Section 11-11C, 11E	Snaring offences – must display tag, inspect every 24 hours, have landowner permission and keep records
Wildlife and Countryside Act (inserted by WM&M Bill)	Section 12A, 12 F	Wildlife traps offences introduced by WM&M Bill. Display tag and have licence. Must have authorization from landowners
Wildlife and Countryside Act	Section 17	Make a false statement for obtaining registration for snaring, sale of live or dead wild bird eggs, or registration of certain captive birds.
Agriculture (Scotland) Act 1948	Section 50, 50A	Prohibition of night shooting and use of spring traps, open trapping of hares and rabbits
The Conservation (Natural Habitats, &c.) Regulations 1994	Section 41	Prohibition of certain methods of taking or killing wild animals

**MINISTER FOR ENERGY AND ENVIRONMENT
BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION**

Wild Mammals Protection Act 1996	All	Limited protection to all wild species of mammal.
Wildlife Management and Muirburn (Scotland) Act	Section 1, 2	Offence of using and purchasing glue traps.

Grouse licensing relevant offences

Grouse Licence Relevant offences		
Act	Sections	Offences (summary)
Wildlife & Countryside Act	Part 1	Recklessly killing, injuring, taking wild birds. Destroying/damaging nests/eggs Possession of pesticides
Protection of Badgers Act 1992	All	Willfully killing/taking/injuring or attempting to injure/kill/take a badger.
Conservation (Natural Habitats &c.) Regulations 1994	Part 3	Capture/kill/disturb/destroy eggs or breeding site of Schedule 2 animal unless licensed. Pick/collect/cut/destroy wild plant of a European protected species (schedule 4) unless licensed.
Wild Mammals (Protection) Act 1996	Section 1	Use a variety of methods to intentionally cause suffering to a wild mammal.
Hunting with Dogs (Scotland) Act 2023	All	Using a dog to hunt a wild mammal/trail hunt

Estimated annual average cost of wildlife trap licence administration

	Current situation*	50% increase	100% increase	200% increase
Number of licences	500	750	1000	1500
Annual cost of licences	£25,000	£37,500	£50,000	£75,000
Number of licence decision review	1	1.5	2	3
Additional cost of licence decision review	£1,500	£2,250	£3,000	£4,500
Additional cost to NatureScot	£26,500	£39,750	£53,000	£79,500

* We do not have data on the number of people who use spring traps, we have therefore used the total number of licences issued by NatureScot adjusted for the fact that licences will only be issued every 10 years.

Estimated annual average cost of grouse licence administration

	Current situation	50% increase	100% increase	200% increase
Number of licences	120*	180	240	360
Annual cost of licences	£12,000	£18,000	£24,000	£36,000

**MINISTER FOR ENERGY AND ENVIRONMENT
BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION**

Number of licence decision review	0.24	0.36	0.48	0.72
Additional cost of licence decision review	£360	£540	£720	£1,080
Additional cost to NatureScot	£12,360	£18,540	£24,720	£37,080

**Based on the Werritty report estimated the number of grouse moor businesses to be 120.*

Estimated annual average cost of muirburn licence

Number of licences *	200	500	1000
Annual cost of licences	£50,000	£125,000	£250,000
Number of licence decision review	0.4	1	2
Additional cost of licence decision review	£600	£1,500	£3,000
Additional cost to NatureScot	£50,600	£126,500	£253,000

** To estimate the potential number of muirburn licences, the Scottish Government used information collated by NatureScot, deducted from satellite imagery on the geographical spread of burning activity (muirburn and wildfire). This data was then overlain with data on Business Reference Numbers (BRNs), which is required to apply for funding from the Rural Payments and Inspections Division and/or to keep livestock, and details of areas which have received funding through the Agri-Environment Climate. The number of muirburn licence applications can be estimated to be between 200 per year up to a maximum of 1000 per year.*

MINISTER FOR ENERGY AND ENVIRONMENT

BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

Annex C: Wildlife Management in Scotland Consultation Summary

Licensing of grouse shooting

- 67% of respondents agreed that grouse shooting should be licenced.
- Some argued that a licensing regime would be disproportionate, that the current arrangements are sufficient, and that it wasn't required as incidents of raptor persecution related to grouse moor management are at an historic low. Others called for a complete ban on grouse shooting or recreational shooting.
- 51% of respondents thought that the licence conditions should include record keeping and reporting requirements.
- 64% of respondents thought that sanctions for grouse moor licences should be based on the civil standard of proof
- Those disagreeing, believed it is inappropriate 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. 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.
- 65% of respondents agreed that licences should be granted for a maximum period of one year.

Muirburn

- 68% of respondents agreed that that a licence should be required to undertake any muirburn.
- Those who disagreed highlighted 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 those disagreeing wanted a complete ban on muirburn rather than an extension of licensing arrangements.
- 69% of respondents agreed with a ban on muirburn on peatland unless it is done under licence as part of a habitat restoration programme approved by NatureScot.
- 44% of respondents thought that the definition of peat set out in the Muirburn Code should not be amended to 40cm
- Reasons for this included that 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.
- 38% of respondents thought that the definition should be 40cm.
- 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.

Wildlife management traps

- 85% of respondents agreed that a person operating a trap should apply for a unique identification number
- 85% of respondents agreed that a person operating a trap should complete an approved training course
- 89% of respondents agreed that a person operating a trap should undergo refresher training every 10 years.
- The most frequently-given reason for objecting to the proposals was that they are excessive, with particular concerns about the proposed custodial sentence. 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

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

felt that, in the absence of an outright ban, regulation should reflect a 'zero tolerance' approach to animal cruelty.

Glue traps

- 78% of respondents agreed that the use of glue traps should be banned
- 79% of respondents agreed that the sale of glue traps should be banned
- 16% of respondents **agreed** that there should be a two-year transition period
- Many respondents were strongly opposed to any continued use of glue traps, with the majority of those commenting wishing to see the proposed ban introduced immediately.
- 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

- 73% of respondents agreed that snare operators should be required to update their records at least once every 48 hours
- 70% of respondents agreed that a power of disqualification should be introduced for snaring offences
- Many opposed the proposals because they supported a ban on the sale and use of snares, suggesting 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.

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

Additional Briefing Provided

BRIA/ Engagement with Businesses

Background

The Business and Regulatory Impact Assessment (BRIA) sets out the cost to businesses of compliance with the provisions in the Bill. It must be completed for all Bills and it uses a set template. One of the questions regarding consultation asks for details of 6-12 businesses the Scottish Government has had discussions with.

[REDACTED 10 (4)(e) – Internal Communications]

Meetings with businesses or representatives in last year

16/02/2022	Scottish Land and Estates (SLE)	NatScot/Officials
11/04/2022	British Pest Control Association (BCPA)	Officials
26/05/2022	SLE	NatScot/Officials
16/06/2022	Scottish Gamekeepers Association (SGA)	Officials
28/09/2022	SLE	Officials
07/11/2022	SLE	NatScot/Officials
16/01/2023	Scottish Crofting Federation	Officials
28/02/2023	SLE	Minister ELR
06/04/2023	British Association for Shooting and Conservation (BASC)	Officials
01/06/2023	SLE	Officials
13/06/2023	BASC	Cab Sec RALRI
13/06/2023	SGA	Cab Sec RALRI
Minister EE to meet with SLE after Committee on Wed 28th June 2023		

Lines to take

Meetings

- Throughout the development of the Bill, Scottish Land and Estates, who represent grouse moor businesses, met at least 6 times with officials, NatureScot and the previous Environment Minister and I'll be meeting them this afternoon.
- This is alongside several other meetings with other stakeholders who represent businesses such as the Scottish Gamekeepers, BASC and the British Pest Control Association

Public Consultation

- The public consultation on the Bill received responses from a wide range of people, which included 19 estates, and those responses were considered in the drafting of the policy.
- The consultation also received responses from other businesses that may be affected by the provisions in the Bill, such as those delivering services to grouse shooting businesses.

Werritty review

- The Werritty review group was comprised of representatives from academia, grouse moor management and conservation.
- The group met with a number of organisations and businesses, including grouse moor estates and conducted a targeted questionnaire, receiving responses from 31 organisations and

MINISTER FOR ENERGY AND ENVIRONMENT BRIEFING FOR RAI COMMITTEE EVIDENCE SESSION

individuals including individual estates, land-owners and land managers, gamekeepers, sport shooting, groups of estates, and trade organisations.

- That consultation formed the basis of the recommendations in the Werritty report, and subsequently the provisions in the Bill.

Socio-Economic research

- In addition to this in 2020, the Scottish Government commissioned research to assess the socioeconomic and biodiversity impacts of driven grouse moors which included collated financial information from **24 estate-based enterprises**.

Muirburn licence estimates

Background

[REDACTED 10 (4)(e) – Internal Communications]

To estimate the potential number of muirburn licences, the Scottish Government used information collated by NatureScot, deducted from satellite imagery on the geographical spread of burning activity (muirburn and wildfire). This data can then be overlain with data on Business Reference Numbers (BRNs), which is required to apply for funding from the Rural Payments and Inspections Division and/or to keep livestock, and details of areas which have received funding through the Agri-Environment Climate Scheme (AECS) muirburn option and which haven't been picked up by the satellite imagery of burns:

Data	Date	Applicants/BRNs
AECS muirburn scheme	2015-2022	173
Satellite muirburn/wildfire data overlapped with SIACS	2018-2022	878
Number of BRNs in AECS with burns mapped	N/A	99
Total number of potential BRNs that have recorded burning or are in an AECS scheme	N/A	952

Lines to take

- Muirburn is not currently licensed during the muirburn season, so it is difficult to accurately evaluate the extent to which it is undertaken across Scotland.
- Our best estimate is that the number of muirburn licence applications could be between 200 per year up to a maximum of 1000 per year.
- In order to produce an estimate, we were able to look at satellite imaging maps, to see where muirburn was currently carried out.
- Then we cross referenced that data against the known Business Reference Numbers allocated to those receiving funding from our Rural Payments and Inspections Division or those keeping livestock.
- Lastly, we looked at areas which have received funding through the Agri-Environment Climate Scheme (AECS) muirburn option that wasn't picked up by the satellite imagery of burns.

EMERGENCY AUTHORISATION OF ASULOX FOR BRACKEN CONTROL

- 21 June:** SG issues a press release announcing decision and support available to land managers in implementing and developing bracken control measures.
- 21 June:** The Cabinet Secretary for Rural Affairs, Land Reform and Islands confirms Scottish Ministers' agreement to HSE refusing the 2023 emergency authorisation application for Asulox. HSE and the applicant informed.
- 20 June:** Cabinet considered the evidence and options available in response to the Asulox emergency authorisation application.
- 19 June:** SG gives further consideration to its response to HSE's recommendation.
- 15 June:** Defra endorse the application and instruct HSE to authorise Asulox use in England. Applicant informed.
- 15 June:** NFUS, Scottish Land & Estates, the Game and Wildlife Conservation Trust and the Bracken Control Group (the emergency authorisation applicant) call for the Scottish Government to urgently approve Asulox.
- 13 June:** Prof Mathew Williams, Scottish Government, Chief Scientific Adviser for Environment, Natural Resources and Agriculture produces a position paper recommending that the emergency authorisation should be refused.
- January:** SG announces chemical and mechanical bracken control will not be supported by the Agri Environment Climate Scheme in 2023. This was received critically by stakeholders, including the Bracken Control Group (applicant for Asulox application) and the Game and Wildlife Conservation Trust.

TOP LINES

Scottish Ministers have agreed to HSE refusing the 2023 emergency authorisation application for the use of Asulox, to control bracken

- This is because of the risks it poses to the environment and human health. **The same decision has been taken in Wales.**
- The Scottish Government is acutely aware of the risks associated with uncontrolled bracken and did not take this decision lightly, basing our position on scientific evidence.
- This follows existing precedent for decisions over pesticide approvals being exercised on behalf of Scottish Ministers by HSE.
- On the evidence set out, Scottish Ministers did not consider there was any basis not to follow the HSE recommendation and process.
- Independent advice from the Chief Scientific Adviser for Environment, Natural Resources and Agriculture and the Expert Committee on Pesticides supported the Health and Safety Executive's recommendation to not give Asulox an emergency authorisation.
- Asulox is not authorised for use across the EU because of the environmental risks.

For the past 10 years Asulox has been approved annually as part of an emergency authorisation process on behalf of the UK administrations by HSE.

- This year HSE considers that, for the first time, the use of the herbicide does not meet the legislative requirements for emergency authorisation.
- HSE advice to all four nations of the UK was not to authorise the use of Asulox because of the risks it poses human, animal and environmental health.
- A number of safety concerns and risks were identified which, when taken together, outweigh the benefits of the proposed use.

REGULATORY POSITION

Having taken into account all the evidence presented, HSE has concluded that the emergency application does not meet the legislative requirements for emergency authorisation.

- HSE assesses each application against these requirements. This includes balancing the potential risks and benefits of using the requested product using available data.
- The safety concerns and risks identified by HSE on the Asulox application are principally in relation to
 - a lack of progress on addressing concerns about potential endocrine disrupting properties of the chemical
 - no progress on reducing previously identified risk areas
 - no progress towards alternative control measures.
- **[REDACTED 10 (4)(e) – Internal Communications]**
- It also highlights that there continues to be data gaps in the evidence presented to support the application, which, despite there being a number of years where this data could have been generated this has not been done.
- HSE considers that, since the previous application, there has not been any significant progress made towards removing the need for future emergency authorisations and the longer a repeat goes on, the more difficult it becomes to characterise it as an emergency situation.

The Scottish Government is committed to science-led decision making, and we have followed the same, well established and evidence based process we always follow for the authorisation of chemicals

- Scottish Ministers have always followed Health and Safety Executive advice when it comes to the authorisation of chemicals.
- This ensures high standards for public health and our environment.
- On this occasion, the UK Government have rejected Health and Safety Executive advice. It's for them to justify why they have ignored this independent advice and overruled the experts.

SCOTTISH GOVERNMENT POSITION ON BRACKEN CONTROL

The Scottish Government considered a range of evidence before consenting to HSE taking this decision. We acknowledge the need to develop a sustainable, long term plan to manage bracken.

- The Expert Committee on Pesticides does not support the emergency authorisation due to risks that cannot be mitigated.
- SG's Chief Scientific Adviser for Environment, Natural Resources and Agriculture supports HSE advice.
- A rapid evidence review, by the James Hutton Institute, on the implications of not controlling bracken with Asulox has been published.
- The report highlights a number of knowledge gaps in this area which are being considered by officials and the Scottish Government's Chief Scientific Advisor for Environment, Natural Resources and Agriculture.
- We will continue to work closely with stakeholders and NatureScot to consider options for sustainable bracken management.
- The Cabinet Secretary for Rural Affairs will be writing to stakeholders to invite them to meet and discuss how we can support bracken control this summer.

SUPPORT FOR BRACKEN CONTROL

- **We are taking forward further research on bracken control options and its impacts.**
- **[REDACTED 10 (4)(e) – Internal Communications]**
- Support for bracken control through the Agri-Environment Climate Scheme (AECS) has not been suspended for 2023
- In 2023 the chemical and mechanised treatment of bracken was not offered to new applicants, but was retained within existing contracts.
- Where contract holders had intended to undertake chemical control, we will offer flexibility to allow mechanical or manual activity.