

T: 0300 244 4000
E: scottish.ministers@gov.scot

Finlay Carson MSP

Convener
Rural Affairs, Islands and Natural Environment
Committee
Rural.committee@parliament.scot

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Dear Finlay,

I am writing further to the evidence I gave on the Hunting with Dogs (Scotland) Bill (“the Bill”) to the Rural Affairs, Islands and Natural Environment Committee on 29 July. I stated at that meeting that I would provide further clarification on several points in writing. This is set out below.

The number of foxes killed by dogs

In my evidence session I made reference to a comment made by Lord Bonyon in section 6.19 of his Report on the Review of the Protection of Wild Mammals (Scotland) Act 2002 (“the report”) in which he states:

“The material before the Review suggests that more foxes are killed by hounds in the course of flushing or further to being wounded than are killed by terriers in the course of flushing from below ground. Purely on the basis of anecdotal evidence, it appears that in general 20% or more of foxes disturbed by hunts are killed in this way by hounds.”

There is currently no requirement for anyone undertaking wildlife control to report on the number or manner in which foxes are culled in Scotland. As such, it is very difficult to ascertain exactly how many are killed by hounds during a hunt.

The two dog limit

The aim of the Bill is to reduce the risk of dogs chasing and/or killing a wild mammal during a hunt, either intentionally or accidentally. One of the key issues in achieving this aim is to ensure that the person in charge of the dogs does not lose control of them. I think it is self-evident that it is easier to keep control of a smaller number of dogs than a larger pack of dogs. Two is also the maximum number of dogs permitted in England and Wales.

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The question therefore is what is the minimum number of dogs that can be used to carry out the flushing and searching activities permitted by the Bill. Discussions with stakeholders confirmed that many activities requiring the use of dogs to control wild mammals can continue to be carried out effectively using only two dogs, for example deer stalking or searching for invasive non-native species. I therefore believe that a two-dog limit is fair and reasonable as the default position.

I am aware however that there are likely to be circumstances where two dogs will not be effective, for example in flushing foxes in certain types of terrain or vegetation, and for this reason the Bill also provides for a licensing scheme to allow more than two dogs.

During the Committee evidence session on the 15 June, Lord Bonomy indicated he considered the two-dog limit would be workable when combined with the proposed licensing scheme:

“The licensing scheme is, I think, what makes it viable to have the two-dog limit. There must be circumstances in which people can justify that it is appropriate to have more dogs, and licensing will allow for that.”

This proposal found support from animal welfare stakeholders during the Committee evidence sessions, including from Kirsty Jenkins from OneKind and Mike Flynn from the Scottish Society for the Protection of Cruelty to Animals:

Kirsty Jenkins stated, *“the two-dog limit increases the likelihood that dogs will be under control, that there will be less disturbance of other wild animals and that there will be less chance of a wild mammal being killed by dogs. Therefore, we support the two-dog limit.”*

And Mike Flynn said *“I guarantee that reducing the number of hounds to two will reduce the chances of them catching and killing the fox, which is what the Bill intends.”*

The 14 day licence

It is proposed that a licence for the management of wild mammals above ground may be granted for a maximum of 14 days. NatureScot will have the ability to include in the licence the number of days that a licence may be valid for up to a maximum of 14 days, with those days not necessarily being consecutive e.g. 3 days between the 1st and 14th August. This is to allow some flexibility whereby someone might only require 1 or 2 days to undertake their permitted activity but due to the unpredictability of Scottish weather they might have to reschedule the planned activity at the last minute to another day or days within the 14 day period and the intention would not be for the applicant to have to apply for a fresh licence.

I believe that the 14 day limit strikes a balance between having a licensing system that is practical while preventing any undermining of the system, using it as a way of carrying on activities that have an elevated risk of wild mammals being killed by dogs, accidentally or otherwise.

I intend the licensing scheme to be practical and workable but do not want it to become a loophole. Limiting licences to a maximum of 14 days for the management of wild mammals above ground, for the specific purposes set out in the Bill, is one of the ways to ensure there are effective controls on the licensing regime.

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It is also important to note that this does not prevent someone from undertaking other forms of control outwith this Bill.

The Bill also allows the licensing authority to grant licences for one of the purposes contained within the environmental benefit exception for a period of up to two years. The two year licence is necessary because some of the activities for which this licence can be granted, such as the eradication of invasive non-native species, are undertaken as part of established long-term projects.

NatureScot has the discretion to limit the number of days licences will be valid for and will only issue licences for the period of time necessary to achieve the purpose, for example, an environmental benefit licence might only be granted for a total of six months in two consecutive years.

NatureScot will continue to consult with stakeholders as they develop the licensing scheme. However, I would expect NatureScot to be flexible and to consider extending or renewing a licence if they were told that work that had previously been licensed could not occur during the time period originally agreed due to poor weather or other circumstances outwith the control of the applicant.

There were some further areas where I consider the Committee might find further clarification to be helpful and I discuss these in the sections below.

Controlling rabbits

During the evidence session on 29 June, there was discussion about the use of dogs to chase, catch or kill rabbits that have been flushed from their burrows by ferrets or any other means. To clarify, the use of dogs for this purpose is not permitted by the Bill. If dogs are being used to flush rabbits, then the rabbits must be shot or killed by a bird of prey. Further, as set out in section 5 of the Bill (management of foxes and mink below ground) dogs can be only be used underground to flush fox and mink, they cannot be used to flush rabbits.

The use of ferrets in rabbit control is not covered by this Bill as the Bill only addresses the use of dogs in such activities.

Licence fees

The impact of the introduction of the licensing scheme on NatureScot's resources was also discussed. As set out in the Financial Memorandum the average cost to NatureScot for processing a licence is £113. Requests by the applicant for the review of licensing decisions cost on average £1000-1500. NatureScot estimate there are less than 12 appeals annually across the whole program, or 1 appeal for every 233 licences issued.

My officials have consulted closely with NatureScot on the licensing scheme and they will continue to work with them to ensure that they have all of the necessary resources in place to administer and monitor the scheme.

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Sections 4(2)(d) and 8(2)(d) of the Bill allow the relevant authority to require payment of a reasonable fee. Therefore, there is provision on the face of the Bill for NatureScot to charge a fee for licences without any need for regulations to allow them to do that. This aligns with the position in other wildlife legislation, for example section 16(5) of the Wildlife and Countryside Act 1981 provides that "...the appropriate authority may charge therfor such reasonable sum (if any) as they may determine." Presently no wildlife licensing regimes are carried out on a cost recoverable basis. However, whether to introduce cost recovery will form part of the wider review currently being undertaken into wildlife licensing. This review was specified on page 49 of the "[Scottish Government and Scottish Green Party Draft Shared Policy Programme](#)" (the Bute House Agreement):

"We will review the wider species licensing system with a view to ensuring that the law is being applied correctly and that lethal control is only licensed where the conditions required for such a licence are demonstrably being met.

This review will also assess the potential to apply the principle of full cost recovery to species licensing and the introduction of a public register of licences to improve transparency, bearing in mind the data protection and safety of licence holders."

Police Scotland

In the evidence session on the 22 June, Detective Sergeant Telford from Police Scotland noted his concern that the trail-hunting ban would affect the training of police dogs. He stated:

"Police Scotland has a bit of concern about the implications for the training of dogs. There is an exemption that allows dogs to be trained using animal-based scents provided that no more than two dogs are trained at once. Cadaver dogs in Police Scotland and, I presume, other emergency services are trained using animal-based scents, and often up to six dogs are trained at once. The provisions could therefore create logistical issues for us. We are keen that some sort of exemption is built in for emergency dogs."

Since the Committee evidence session, my officials have met with Police Scotland dog handlers and following this discussion Police Scotland are confident that the restrictions on trial hunting present in the Bill will not impact on the training of police dogs.

This is because while Police Scotland have confirmed that while there may be more than 2 dogs present at a training session, the dog handlers only direct one or two to follow a trail at any one time. Therefore, the activity would fall within the parameters set out in section 11 and 12 of the Bill.

I hope you find this information helpful. My officials and I would be happy to provide further information if requested and I will of course carefully consider any recommendations for amendments put forward by the Committee in their Stage 1 Report.



MÀIRI MCALLAN

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