

HUNTING WITH DOGS (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament’s Standing Orders, these Explanatory Notes are published to accompany the Hunting with Dogs (Scotland) Bill, introduced in the Scottish Parliament on 24 February 2022.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 12–FM);
 - a Policy Memorandum (SP Bill 12–PM);
 - a Delegated Powers Memorandum (SP Bill 12–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 12–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL’S PURPOSE

5. The Hunting with Dogs (Scotland) Bill will repeal and replace the Protection of Wild Mammals (Scotland) Act 2002 (the “2002 Act”) which makes it an offence to hunt a wild mammal using a dog in Scotland except in limited specified circumstances.
6. The Bill will broadly replicate the provisions of the 2002 Act, but will make certain modifications to further limit the circumstances in which it is permitted to hunt a wild mammal using a dog and to prohibit trail hunting (the practice of directing a dog to find and follow an animal-based scent laid for that purpose) except under limited circumstances. It also aims to address deficiencies of the 2002 Act, in particular with regard to inconsistencies and ambiguities in the wording of the 2002 Act.

DETAILED PROVISIONS

Part 1: Hunting a wild mammal using a dog

Section 1: Offence of hunting a wild mammal using a dog

7. Subsection (1) provides that a person commits an offence if the person hunts a wild mammal using a dog.

8. Subsection (3) provides further detail on what is included in the definition of hunting. It expressly includes searching for a wild mammal (so that hunting does not require that the wild mammal has been identified) and coursing (the practice of using a dog to hunt a wild mammal by sight). However this is an inclusive definition and other types of conduct which constitute hunting a wild mammal (such as chasing, pursuing, stalking or flushing it from cover) will also be caught by the offence. These are not specified in the definition because there may be circumstances in which they do not constitute hunting. For example, the situation where a dog runs off by itself in pursuit of a wild mammal whilst being walked would not be caught by the offence because in that instance the owner is not hunting a wild mammal using the dog. The word “hunting” carries with it a requirement of intentional conduct.

9. Subsection (3) also defines “wild mammal” for the purposes of the Bill. A wild mammal is one which is living in a wild state, is of a species recognised as living in a wild state in the British Islands, or which has been deliberately released from human control. The definition of British Islands in the Interpretation Act 1978 includes Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.

10. “Living in a wild state” requires that the animal has adapted to living in the wild. Therefore, a non-native mammal which escapes from captivity, for example a lion which has escaped from a zoo, will not be living in a wild state and so will not be a wild mammal and will not fall within the ambit of the Bill. Such animals will be protected animals under section 17(1)(c) of the Animal Health and Welfare (Scotland) Act 2006, which provides that an animal is a protected animal if it is not living in a wild state, and will therefore benefit from the provisions of that Act which set out offences relating to protected animals (for example, causing a protected animal unnecessary suffering is an offence under section 19 of that Act).

11. Mammals which are of a species commonly recognised as living in a wild state in the British Islands would include native animals such as foxes, deer, hares, rabbits, red squirrels, wildcats and pine marten, as well as non-native animals such as grey squirrels and mink. These animals will fall within the ambit of the Bill whether or not they are actually living in a wild state. However, some such species are commonly kept under human control, such as pet rabbits or farmed deer, and these would not normally be regarded as wild mammals. Paragraph (b)(iii) therefore excludes animals which are living under human control. Section 17(1)(b) of the Animal Health and Welfare (Scotland) Act 2006, which provides that an animal is a protected animal if it is living under the control of man on a permanent or temporary basis, will mean that these are protected animals under that Act and will therefore benefit from the provisions of that Act which set out offences relating to protected animals (for example, causing a protected animal unnecessary suffering is an offence under section 19 of that Act).

12. Mammals which have been deliberately released from human control are also to be treated as wild mammals, whatever their species. This is to prevent mammals being released in order to be hunted.

13. In some instances, an animal may be both a wild mammal under the Bill and a protected animal under section 17 of the Animal Health and Welfare (Scotland) Act 2006. For example, a guinea pig which was deliberately released from human control would be both a wild mammal under subsection (3)(a)(iii) and a protected animal under section 17(1)(a) (which provides that an animal is a protected animal if it is of a kind commonly domesticated in the British Islands).

14. Subsection (3)(b) excludes rats and mice from the definition of wild mammal. This means that it is lawful to hunt rats and mice using a dog.

15. The 2002 Act excluded rabbits and all rodents from the definition of wild mammal. Rabbits and rodents other than rats and mice will now fall within the definition of wild mammal, meaning it is an offence to hunt them using a dog unless one of the exceptions in the Bill applies.

16. Subsection (4) provides further detail as to when a person is to be treated as “using a dog” for the purposes of the Bill. For example, if a person participates in illegal fox hunting which involves the use of dogs which are being controlled by someone else who has responsibility for the dogs, that person will still be treated as using a dog and will therefore commit an offence under subsection (1).

17. Sections 3, 5, 6 and 7 provide for some limited circumstances in which conduct which would otherwise be caught by the offence is permitted: by virtue of section 1(1)(b), an offence will not be committed if any of those exceptions apply. If none of the exceptions apply, then searching for, stalking or flushing a wild mammal from cover or below ground using a dog will be an offence. Other conduct such as using a dog to chase and kill a wild mammal does not fall within any of the exceptions and can never be lawful.

18. Subsection (2) sets out the penalties for an offence under subsection (1).

Section 2: Offences of knowingly causing or permitting another person to hunt using a dog

19. This section creates ancillary offences to the offence of hunting a wild mammal using a dog.

20. Subsection (1) provides that an owner or occupier of land who knowingly causes or permits another person to hunt a wild mammal using a dog on that land commits an offence.

21. Subsection (5) provides that an owner of land includes a person who manages or controls that land or is authorised to give permission for the land to be used for hunting. For example, this could include a land manager (whether or not they are authorised to give permission for hunting) or a tenant whose lease allows them to give permission for others to hunt on the land. Hunting includes activities such as searching for, stalking or flushing from cover a wild mammal, even although in some circumstances those activities may be permitted under sections 3, 5, 6 and 7.

22. As for the offence under section 1, an offence will not be committed if any of the exceptions apply such that conduct which would otherwise constitute unlawful hunting is permitted.
23. Subsection (2) provides that a person who owns or is responsible for a dog who knowingly causes or permits another person to hunt a wild mammal using that dog commits an offence.
24. Subsection (6) defines what is meant by being responsible for a dog.
25. As for the offences under section 1 and subsection (1), an offence will not be committed under subsection (2) if any of the exceptions apply.
26. Subsection (3) sets out the penalties for offences under subsections (1) and (2).
27. Subsection (4) provides for a defence where the person charged with an offence under subsection (1) or (2) can show that the person reasonably believed that any of the exceptions applied. For example, a land manager might give permission for a fox to be flushed from cover and shot under the exception in section 3, on the basis of assurances from a reputable business that the conditions in section 3 would be met. If in fact the person hunting failed to meet the conditions, for example by not having dogs under control, then the exception would not apply. However, the land manager would have a defence to the offence under subsection (1), on the basis of their reasonable belief that the conditions in section 3 would be met. The person hunting would commit an offence under section 1 and this defence would not be available to them.

Section 3: Exception: management of wild mammals above ground

28. Sections 1(1)(b), 2(1)(b) and 2(2)(b) mean that a person will not commit an offence if any of sections 3, 5, 6, and 7 applies. Activities such as searching for, stalking or flushing from cover a wild mammal constitute hunting and therefore if none of the exceptions applies then an offence will be committed.
29. Section 3(1) sets out when section 3 applies. The person must be using a dog above ground to search for, stalk or flush from cover a wild mammal with the intention of killing it for one or more of the purposes set out in subsection (2), or to search for and retrieve a wild mammal which has been killed as a result of those activities. The conditions in subsection (3) must be met.
30. Section 22 includes a definition of cover. This is a place above ground in which a wild mammal may be concealed from sight. For example, this could include gorse or other thick vegetation or an enclosed space within rocks. However, cover does not include an enclosed place from which a wild mammal could not be flushed, such as a building with restricted entrance and exit routes.
31. Subsection (2) sets out the purposes for which the wild mammal may be killed, which include preventing serious damage to livestock, woodland or crops. Section 22 includes definitions of livestock and woodland.
32. Subsection (3) sets out the conditions which must be met.

33. Under paragraph (a), the activity must not involve the use of more than two dogs unless a licence has been granted for the use of more than two dogs under section 4.

34. Under paragraph (b), any dog used in the activity must be under control. Section 22 includes a definition of when a dog is under control. A person who is responsible for the dog (as defined in section 2(6)) must be able to direct the dog's activity by physical contact or verbal or audible command.

35. Under paragraph (c), reasonable steps must be taken to ensure that any dog used in the activity does not join with others to form a pack of more than two dogs. For example, the person could plan the activity to take place well away from another person carrying out similar activity, or at a different time. A dog could be recalled and put on a lead if other dogs (for example, dogs being walked by a member of the public) were in the vicinity.

36. The definition of "using a dog" in section 1(4) also means that the person undertaking an activity under subsection (1)(a) will be treated as using any other dogs which are involved in the activity, even if they are not under that person's control. Searching for, stalking or flushing from cover a wild mammal still constitute hunting a wild mammal so that section 1(4) applies, even although the activity will be permitted under the exception if the conditions are met. Therefore, if a person is undertaking an activity under subsection (1)(a) and allows other dogs to become involved in that activity, the person will be using more than two dogs and the exception will not apply.

37. However, paragraph (c) does not apply where a licence has been granted for the use of more than two dogs under section 4.

38. Under paragraph (d), permission for the activity must have been given by the owner of the land on which the activity takes place. As a result of section 2(5), permission may be given by a person who manages, controls or is authorised to give permission for that land to be used for the activity, such as a land manager.

39. Paragraph (e) requires that the wild mammal is shot dead, or killed by a bird of prey, as soon as reasonably possible. When it is reasonably possible to do this may depend on the circumstances of the activity. For example, if the wild mammal being flushed is a fox, it will usually be reasonably possible to shoot the fox as soon as it becomes visible, provided that it is safe to shoot. However, if the wild mammal is a deer, best practice guidance published from time to time by those concerned with deer management in Scotland provides guidance on how deer should be shot which means that the person might need to delay taking their shot until they can be sure of hitting the deer in a way which accords with that guidance.

40. This condition will not be met (and an offence will be committed) if a dog is allowed to chase and kill the wild mammal.

41. If the wild mammal is shot or attacked by the bird of prey, but not immediately killed, paragraph (f) requires that reasonable steps must be undertaken to kill it in a way that causes it the minimum possible suffering. For example, the injured animal could be retrieved and shot.

Section 4: Licence for use of more than two dogs in connection with section 3

42. Subsection (1) allows a person to apply for a licence permitting the use of more than two dogs for the activity permitted by section 3(1)(a).

43. Subsection (2) sets out the requirements for a licence application and subsection (3) requires the relevant authority to publicise the requirements for licence applications. Under subsection (6), the relevant authority is defined as either the Scottish Ministers or, if they have delegated their functions in relation to licences under section 9, Scottish Natural Heritage. Following a rebranding in 2020, Scottish Natural Heritage is now known as NatureScot.

44. Subsection (4) sets out the features of licences under this section.

45. Paragraph (c) provides that a licence must not be granted unless the relevant authority is satisfied that there is no other solution which would be effective in achieving the purpose set out in section 3(2) in relation to which the licence application is made. This will include both lethal and non-lethal solutions. For example, if the purpose is to prevent serious damage to livestock, other solutions could include installing animal-proof fencing, translocation, shooting, lamping, snaring or using one or two dogs to flush the wild mammal to allow it to be shot or killed by a bird of prey.

46. Paragraph (d) provides that a licence may only be granted for the minimum number of dogs which the relevant authority is satisfied would be effective in achieving the purpose set out in section 3(2) in relation to which the licence application is being made. For example, if the relevant authority is satisfied that using 5 dogs would be effective in achieving the purpose, it cannot grant a licence for the use of 10 dogs.

47. Under paragraph (f) a licence may be granted for a maximum period of 14 days. Those days have to be within a period of 14 consecutive days but do not themselves have to be consecutive. For example, a licence could allow the use of more than two dogs for any three days between 1st and 14th August.

48. Subsection (5) sets out the matters which must be specified in a licence.

Section 5: Exception: management of foxes and mink below ground

49. Sections 1(1)(b), 2(1)(b) and 2(2)(b) mean that a person will not commit an offence if any of sections 3, 5, 6, and 7 applies. Activities such as searching for, stalking or flushing from cover a wild mammal constitute hunting and therefore if none of the exceptions applies then an offence will be committed.

50. Section 5(1) sets out when section 5 applies. The person must be using a dog to search for a fox or mink below ground or to flush it from below ground with the intention of killing it for one of the purposes set out in subsection (2), and all of the conditions set out in subsection (3) must be met.

51. Subsection (2) sets out the purposes for which the fox or mink may be killed. Subsection (4) defines dependent, being that the mother of the fox or mink is dead and it is too young to survive on its own.
52. Subsection (3) sets out the conditions which must be met.
53. Under paragraph (a), the activity must not involve the use of more than one dog. There is no provision for the use of more than one dog to be licensed.
54. Under paragraph (b), the dog must be under control. Section 22 includes a definition of when a dog is under control. A person who is responsible for the dog (as defined in section 2(6)) must be able to direct the dog's activity by physical contact or verbal or audible command.
55. Under paragraph (c), permission for the activity must have been given by the owner of the land on which the activity takes place. As a result of the meaning of an "owner" of land given in section 2(5), permission may be given by a person who manages, controls or is authorised to give permission for that land to be used for the activity, such as a land manager.
56. Paragraph (d) requires that if the fox or mink is found or emerges from below ground, it is shot dead, or killed by a bird of prey, as soon as reasonably possible. If it is shot or attacked by a bird of prey, but not immediately killed, paragraph (e) requires that reasonable steps must be undertaken to kill it in a way that causes it the minimum possible suffering. For example, the injured fox or mink could be retrieved and shot.
57. There is no requirement to take any action if the fox or mink does not emerge from below ground. It is possible that the fox or mink might be killed by the dog underground or might escape below ground. Neither of these scenarios will result in an offence being committed, provided the other conditions are met.

Section 6: Exception: falconry, game shooting and deer stalking

58. Sections 1(1)(b), 2(1)(b) and 2(2)(b) mean that a person will not commit an offence if any of sections 3, 5, 6, and 7 applies. Activities such as searching for, stalking or flushing from cover a wild mammal constitute hunting and therefore if none of the exceptions applies then an offence will be committed.
59. Section 6(1) sets out when section 6 applies. The person must be using a dog above ground to search for, stalk or flush from cover a wild mammal with the intention of providing quarry for falconry, game shooting or deer stalking, or to search for and retrieve a wild mammal which has been killed as a result of those activities.
60. Subsection (2) sets out the conditions which must be met.
61. Under paragraph (a), the activity must not involve the use of more than two dogs. There is no provision for the use of more than two dogs to be licensed.

62. Under paragraph (b), any dog used in the activity must be under control. Section 22 includes a definition of when a dog is under control. A person who is responsible for the dog (as defined in section 2(6)) must be able to direct the dog's activity by physical contact or verbal or audible command.

63. Under paragraph (c), reasonable steps must be taken to ensure that any dog used in the activity does not join with others to form a pack of more than two dogs. For example, the person could plan the activity to take place well away from another person carrying out similar activity, or at a different time. A dog could be recalled and put on a lead if other dogs (for example, dogs being walked by a member of the public) were in the vicinity.

64. The definition of "using a dog" in section 1(4) also means that the person undertaking an activity under subsection (1)(a) will be treated as using any other dogs which are involved in the activity, even if they are not under that person's control. Searching for, stalking or flushing from cover a wild mammal still constitute hunting a wild mammal so that section 1(4) applies, even although the activity will be permitted under the exception if the conditions are met. Therefore, if a person is undertaking an activity under subsection (1)(a) and allows other dogs to become involved in that activity, the person will be using more than two dogs and the exception will not apply.

65. Under paragraph (d), permission for the activity must have been given by the owner of the land on which the activity takes place. As a result of section 2(5), permission may be given by a person who manages, controls or is authorised to give permission for that land to be used for the activity, such as a land manager.

66. Paragraph (e) requires that the wild mammal is shot dead, or killed by a bird of prey, as soon as reasonably possible. When it is reasonably possible to do this may depend on the circumstances of the activity. For example, there is guidance on how deer should be shot which means that the person might need to delay taking their shot until they can be sure of hitting the deer in a way which accords with that guidance.

67. This condition will not be met (and an offence will be committed) if a dog is allowed to chase and kill the wild mammal.

68. If the wild mammal is shot or attacked by a bird of prey, but not immediately killed, paragraph (f) requires that reasonable steps must be undertaken to kill it in way that causes it the minimum possible suffering. For example, the injured animal could be retrieved and shot.

69. Subsection (3) defines deer stalking, falconry, game shooting and quarry.

70. Although game shooting as a sport may involve shooting birds as well as wild mammals, the use of dogs in that context will not fall within the ambit of the Bill. That is because dogs are being used to flush game birds, and not to hunt wild mammals.

Section 7: Exception: environmental benefit

71. Sections 1(1)(b), 2(1)(b) and 2(2)(b) mean that a person will not commit an offence if any of sections 3, 5, 6, and 7 applies. Activities such as searching for, stalking or flushing from cover a wild mammal constitute hunting and therefore if none of the exceptions applies then an offence will be committed.

72. Section 7(1) sets out when section 7 applies. The person must be using a dog above ground to search for, stalk or flush from cover a wild mammal, with the intention of killing, capturing or observing it as part of a scheme for one or more of the purposes set out in subsection (2). All of the conditions set out in subsection (3) must be met.

73. Whilst this exception can be used by any person, the requirement for a scheme means that the activity has to be planned and designed for one of the subsection (2) purposes.

74. Subsection (2) sets out the purposes, which include preserving, protecting or restoring particular species or the diversity of animal or plant life, and eradicating invasive non-native species of wild mammal. Subsection (4) includes a definition of invasive non-native species. This is a species which is either included on the Scottish list of species of special concern (such as grey squirrels) or which is not native to the area in which the activity takes place and which is having or likely to have a significant adverse impact. For example, killing or capturing stoats in Orkney or hedgehogs in Uist could fall within the purpose at paragraph (c).

75. Subsection (3) sets out the conditions which must be met.

76. Under paragraph (a), the activity must not involve the use of more than two dogs unless a licence has been granted for the use of more than two dogs under section 8.

77. Under paragraph (b), any dog used in the activity must be under control. Section 22 includes a definition of when a dog is under control. A person who is responsible for the dog (as defined in section 2(6)) must be able to direct the dog's activity by physical contact or verbal or audible command.

78. Under paragraph (c), reasonable steps must be taken to ensure that any dog used in the activity does not join with others to form a pack of more than two dogs. For example, the person could plan the activity to take place well away from another person carrying out similar activity, or at a different time. A dog could be recalled and put on a lead if other dogs (for example, dogs being walked by a member of the public) were in the vicinity.

79. The definition of "using a dog" in section 1(4) also means that the person undertaking an activity under subsection (1)(a) will be treated as using any other dogs which are involved in the activity, even if they are not under that person's control. Searching for, stalking or flushing from cover a wild mammal still constitute hunting a wild mammal so that section 1(4) applies, even although the activity will be permitted under the exception if the conditions are met. Therefore, if a person is undertaking an activity under subsection (1)(a) and allows other dogs to become involved in that activity, the person will be using more than two dogs and the exception will not apply.

80. However, paragraph (c) does not apply where a licence has been granted for the use of more than two dogs under section 8.

81. Under paragraph (d), either permission for the activity must have been given by the owner of the land on which the activity takes place, or the person must be exercising a power of entry under section 14M or 14N of the Wildlife and Countryside Act 1981 or section 15 of the Deer (Scotland) Act 1996.

82. As a result of section 2(5), permission may be given by a person who manages, controls or is authorised to give permission for the land to be used for the activity, such as a land manager.

83. Section 14M of the Wildlife and Countryside Act 1981 allows a person authorised in writing by the Scottish Ministers, Scottish Natural Heritage or the Scottish Environmental Protection Agency to enter land to carry out an operation or other work which is required to be carried out under a species control order made under section 14D of that Act. This might be used where an invasive species is causing significant adverse impact and the owner has not taken any action to deal with it. Section 14N provides for a warrant to be granted for entry to premises where there is a right of entry under section 14M but entry has not been possible for the reasons set out in section 14N, for example because admission has been refused or the premises are unoccupied.

84. Section 15 of the Deer (Scotland) Act 1996 allows a person authorised in writing by Scottish Natural Heritage to enter land in exercise of its functions in relation to the control of deer under sections 7, 8 and 10 of that Act. This might be used where numbers of deer need to be controlled in order to be sustainable.

85. Paragraph (e) requires that the wild mammal is either captured as soon as reasonably possible, shot dead (or killed by a bird of prey) as soon as reasonably possible or observed and allowed to escape (that is, to leave the area) without being pursued, injured or killed. When it is reasonably possible to do things may depend on the circumstances of the activity and the species of animal involved. However this condition will not be met (and an offence will be committed) if a dog is allowed to chase and kill the wild mammal.

86. If an attempt is made to kill the wild mammal but it is not immediately killed, paragraph (f) requires that reasonable steps must be undertaken to kill it in way that causes it the minimum possible suffering.

87. Paragraph (e) does not necessarily require the killing of the wild mammal because in some instances the purposes in subsection (2) may be fulfilled by relocating the animal (for example, hedgehogs captured in Uist are currently rehomed in mainland Scotland) or by observing animals (for example, to count them or to check their appearance or behaviour).

Section 8: Licence for use of more than two dogs in connection with section 7

88. Subsection (1) allows a person to apply for a licence permitting the use of more than two dogs for the activity permitted by section 7(1)(a).

89. Subsection (2) sets out the requirements for a licence application and subsection (3) requires the relevant authority to publicise the requirements for licence applications. Under subsection (6), the relevant authority is defined as either the Scottish Ministers or, if they have delegated their functions in relation to licences under section 9, Scottish Natural Heritage. Following a rebranding in 2020, Scottish Natural Heritage is now known as NatureScot.

90. Subsection (4) sets out the features of licences under this section.

91. Paragraph (c) provides that a licence must not be granted unless the relevant authority is satisfied both that killing, capturing or observing the wild mammal will contribute towards a significant or long-term environmental benefit, and that there is no other solution which would be effective in achieving the purpose set out in section 7(2) in relation to which the licence application is made. This will include lethal and non-lethal solutions. For example, where the purpose is controlling the number of a species for its welfare, other solutions could include translocation, trapping, snaring or using one or two dogs to flush the wild mammal to allow it to be shot or killed by a bird of prey.

92. Paragraph (d) provides that a licence may only be granted for the minimum number of dogs which the relevant authority is satisfied would be effective in achieving the purpose set out in section 7(2) in relation to which the licence application is being made.

93. Under paragraph (f) a licence may be granted for a maximum period of two years. This period must fall within two consecutive years but does not have to be a single period. For example, a licence could not be granted for six months at a time over a period of four years, but could be granted for June, July and August in two consecutive years.

94. Subsection (5) sets out the matters which must be specified in a licence.

Section 9: Delegation of functions in relation to licences

95. This section allows the Scottish Ministers to delegate their functions in relation to licences to Scottish Natural Heritage. Following a rebrand in 2020, Scottish Natural Heritage is now known as NatureScot.

Section 10: Offence of providing false information to obtain a licence

96. Subsection (1) makes it an offence for a person to knowingly or recklessly make a false or misleading statement for the purposes of obtaining a licence under section 4 or 8 for themselves or another person.

97. Subsection (2) sets out the penalties for the offence under subsection (1).

Part 2: Trail hunting

Section 11: Offences relating to trail hunting

98. Subsection (1) makes it an offence to engage or participate in trail hunting. Trail hunting is defined in subsection (2) as the activity in which a dog is directed to find and follow an animal-based scent which has been laid for that purpose.

99. Animal-based scent is also defined in subsection (2) and includes a scent which is either derived from a wild mammal (for example, animal urine or a scent created by dragging the carcass of a wild mammal along the ground) or which mimics, replicates or resembles the scent of a wild mammal (or is designed to do so) whether or not it is derived wholly or in part from artificial ingredients. For example, an artificial scent designed to mimic the smell of fox urine would be included in this definition. However, a trail of beef sausages would not fall within the definition because this would not mimic, replicate or resemble the scent of a wild mammal.

100. Section 12 provides for limited circumstances in which conduct which would otherwise be caught by the offence is permitted: by virtue of section 11(1)(b), an offence will not be committed if that exception applies.

101. Subsection (3) provides that an owner or occupier of land who knowingly causes or permits another person to engage or participate in trail hunting on that land commits an offence.

102. Subsection (7) provides that an owner of land includes a person who manages or controls that land or is authorised to give permission for the land to be used for trail hunting. For example, this could include a land manager (whether or not they are authorised to give permission for trail hunting) or a tenant whose lease allows them to give permission for others to trail hunt on the land.

103. As for the offence under subsection (1), an offence will not be committed under subsection (3) if the exception under section 12 applies such that conduct which would otherwise constitute unlawful trail hunting is permitted.

104. Subsection (4) provides that a person who owns or is responsible for a dog who knowingly causes or permits another person to use the dog for trail hunting commits an offence. The definition in section 2(6) as to what is meant by being responsible for a dog applies.

105. As for the offences under subsection (1) and (3), an offence will not be committed under subsection (4) if the exception in section 12 applies.

106. Subsection (5) sets out the penalties for offences under subsections (1), (3) and (4).

107. Subsection (6) provides for a defence where the person charged with an offence under subsection (3) or (4) can show that the person reasonably believed that one of the exceptions applied. For example, a land manager might give permission for dog training to take place on the land under section 12, on the basis of assurances from a reputable person that the conditions in section 12 would be met. If in fact the person failed to meet the conditions, for example by not having dogs under control, then the exception would not apply. However, the land manager would

have a defence to the offence under subsection (3), on the basis of their reasonable belief that the conditions in section 12 would be met. The person trail hunting would commit an offence under subsection (1) and this defence would not be available to them.

Section 12: Exception: training dogs to follow an animal-based scent

108. Section 11(1)(b), (3)(b) and (4)(b) mean that a person will not commit an offence if section 12 applies.

109. Section 12(1) sets out when section 12 applies. The person must be directing a dog to find and follow an animal-based scent, or laying an animal-based scent for a dog to find and follow, in order to train a dog for a lawful purpose, and all of the conditions set out in subsection (2) must be met.

110. There are a wide variety of contexts in which dogs require to be trained to follow an animal-based scent. For example, dogs which are used to find invasive non-native species of wild mammal in order that they can be eradicated (such as the eradication of stoats from Orkney) need to be trained to do this.

111. Subsection (2) sets out the conditions which must be met.

112. Under paragraph (a), the activity mentioned in subsection (1)(a) must not involve more than two dogs. There is no provision for the use of more than two dogs to be licensed.

113. Under paragraph (b), any dog involved in the activity must be under control. Section 22 includes a definition of when a dog is under control. A person who is responsible for the dog (as defined in section 2(6)) must be able to direct the dog's activity by physical contact or verbal or audible command.

114. Under paragraph (c), reasonable steps must be taken to ensure that any dog involved in the activity does not join with others to form a pack of more than two dogs. For example, the person could plan the activity to take place well away from another person carrying out similar activity, or at a different time. A dog could be recalled and put on a lead if other dogs (for example, dogs being walked by a member of the public) were in the vicinity.

115. Under paragraph (d), permission for the activity must have been given by the owner of the land on which the trail hunting takes place. As a result of section 11(7), permission may be given by a person who manages, controls or is authorised to give permission to use that land for trail hunting, such as a land manager.

116. Paragraph (e) requires that reasonable steps are taken to ensure that no wild mammal is pursued, injured or killed. For example, this might include laying the trail in an area where it is unlikely that a wild mammal will be hiding.

Part 3: Further provision relating to offences

Section 13: Powers of enforcement

117. Section 13 introduces the schedule, which makes provision about the powers of constables. A constable is defined by section 22 as having the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012.

Section 14: Time limit for summary proceedings

118. Section 136 of the Criminal Procedure (Scotland) Act 1995 sets out the time limit which applies to bringing proceedings for a statutory offence which may only be tried summarily, unless otherwise provided for. Section 14 extends this time limit for offences under section 2(1) and (2) and section 11(1), (3) and (4). The time limit is 6 months from the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings came to the prosecutor's knowledge, up to a maximum period of 3 years after the commission of the offence (or the last date on which the offence was committed).

Section 15: Individual culpability where organisation commits an offence

119. Section 15 provides that where an organisation commits an offence, and the commission of the offence involves consent or connivance by a responsible individual or is attributable to neglect by a responsible individual, the individual as well as the organisation commits the offence.

120. Subsection (3) and the table in subsection (4) set out who will be a responsible individual with respect to different types of organisation.

Section 16: Deprivation orders

121. Section 16 provides that a deprivation order may be made where a person is convicted of an offence under section 1(1) (hunting a wild mammal using a dog), 2(2) (knowingly causing or permitting another person to hunt a wild mammal using a dog for which the person is responsible), 11(1) (engaging or participating in trail hunting), 11(4) (knowingly causing or permitting another person to use a dog for which the person is responsible for trail hunting) or 17 (owning or keeping a dog in breach of a disqualification order). The deprivation order may be made in respect of any dog or horse used in or present at the commission of the offence.

122. Subsection (2) provides that a deprivation order is an order which deprives a person of possession or ownership of a dog or horse and orders the destruction, sale or other disposal of the animal.

123. Under subsection (8) the destruction of a dog or a horse may only be ordered if the court is satisfied on evidence by a veterinary surgeon that it would be in the interests of the animal. For example, this might be the case where the animal was in a very poor state of health. A veterinary surgeon does not necessarily require to attend the court in person but can provide evidence via alternative methods (such as video link, teleconferencing or in writing).

124. Under subsection (3), if the court decides not to make a deprivation order, it must state its reasons unless it makes a disqualification order under section 17.

125. Subsection (4) provides that a deprivation order may be made in addition to or instead of any other penalty for the offence.

126. Subsection (5) allows the court to make provision in respect of any dependent offspring of the dog or horse.

127. Subsections (6) and (7) make further provision as to what can be included in a deprivation order. This includes provision for appointing someone to carry out the deprivation order, requiring delivery of relevant animals, conferring powers of entry on the person appointed to carry out the order and such other provision as the court considers appropriate, including reimbursement of expenses incurred in carrying out the order or for the care of the animal if it was seized by a constable under the powers included in the schedule.

Section 17: Disqualification orders

128. Section 17 provides that a disqualification order may be made where a person is convicted of an offence under section 1(1) (hunting a wild mammal using a dog), 2(2) (knowingly causing or permitting another person to hunt a wild mammal using a dog for which the person is responsible), 11(1) (engaging or participating in trail hunting), 11(4) (knowingly causing or permitting another person to use a dog for which the person is responsible for trail hunting) or subsection (10) (breaching a disqualification order).

129. Subsections (2) and (3) set out the nature of the disqualifications which may be imposed, and subsection (4) provides that a person may nevertheless take charge of a dog if it is necessary to alleviate the suffering of the dog.

130. Subsection (5) provides that if the court decides not to make a disqualification order, it must state its reasons.

131. Subsection (6) provides that a disqualification order may be made in addition to any other penalty.

132. Subsection (7) allows the court to disqualify a person from keeping more than a certain number of dogs, or dogs of a specified kind, rather than disqualifying them from keeping dogs altogether. For example, the court could disqualify a person from owning or keeping foxhounds but allow them to keep a poodle as a family pet.

133. Subsection (8)(b) allows the court to specify the length of time which must pass before the person who is the subject of a disqualification order may apply to have it terminated or varied.

134. Subsection (9) allows the court to suspend the operation of the disqualification order to enable practical arrangements to be made for the dogs affected or for the period while an appeal may take place.

135. Subsection (10) makes it an offence to breach a disqualification order, and subsection (11) sets out the penalties for such breach.

136. Subsection (12) provides that where a disqualification order restricting the number of dogs that a person may own or keep is breached, all of the dogs that the person owns or keeps are to be treated for certain purposes as being owned/kept in breach of the order. This provision is necessary for the proper operation of any subsequent seizure orders under section 18. Without such a provision, disputes could arise as to which particular dogs are kept in breach of the order.

Section 18: Seizure orders where disqualification breached

137. Section 18(1) allows the court to order that a dog kept in breach of a disqualification order is seized on the application of a constable or prosecutor, even if proceedings have not been brought for an offence under section 17(10).

138. Subsection (2) provides that a seizure order is an order which deprives a person of possession or ownership of a dog and orders the destruction, sale or other disposal of the dog.

139. Under subsection (6) the destruction of a dog may only be ordered if the court is satisfied on evidence by a veterinary surgeon that it would be in the interests of the dog. For example, this might be the case where the dog was in a very poor state of health. A veterinary surgeon does not necessarily require to attend the court in person but can provide evidence via alternative methods (such as video link, teleconferencing or in writing).

140. Subsections (4) and (5) make further provision as to what can be included in a seizure order. This includes provision for appointing someone to carry out the seizure order, requiring delivery of relevant dogs, conferring powers of entry on the person appointed to carry out the order and such other provision as the court considers appropriate, including reimbursement of expenses incurred in carrying out the order or for the care of the dog if it was seized by a constable under the powers included in the schedule.

141. Subsection (7) gives the owner of the dog the opportunity to make representations, unless this is not practicable.

142. Subsection (8) requires the court to consider the desirability of protecting the value of any dog to which the order applies, and avoiding increasing expenses which a person may be required to reimburse.

143. Subsection (9) provides for the making of an interim order pending the final determination of a seizure order. The court may make an interim order in relation to the keeping of a dog before the application for a seizure order is determined and which has effect until such time as the application and any appeal is determined. Subsection (10) provides that subsections (4), (5)(a) and (8), which relate to seizure orders, also apply to interim orders.

Section 19: Termination or variation of disqualification

144. Subsection (1) allows a person who is subject to a disqualification order to ask the court to terminate or vary the order. However, under subsection (2) such an application may not be made within the period of one year from the date the order was made or the date a previous application under this section was determined, or within a period specified by the court when making the order or (under subsection (5)) when determining an application under this section.

145. Subsection (3) allows the court to refuse the application, terminate the disqualification order or vary the disqualification order by relaxing the disqualification. The court cannot impose a more extensive disqualification in response to an application under this section.

146. Subsection (4) sets out factors to which the court must have particular regard.

Section 20: Appeals against orders

147. This section makes provision for appeals against orders made under sections 16, 17 and 18.

148. Subsection (1) provides that when a deprivation or disqualification order is imposed it is to be treated for the purposes of any appeal as part of the convicted person's sentence. Any appeal will follow the appeal procedure set out in the Criminal Procedure (Scotland) Act 1995 for appeals against sentence.

149. Subsection (2) allows any other person with an interest in a dog or horse to which a deprivation order applies to appeal to the Sheriff Appeal Court on the same basis.

150. In relation to a seizure order, the disqualified person or any person who entered the process prior to the making of the order may appeal to the Sheriff Appeal Court by virtue of subsection (3).

151. Subsection (4) suspends the operation of any deprivation or seizure order until the periods for appeal against the order and conviction have expired and any appeal has been withdrawn or determined.

152. Subsection (5) allows the court to make an interim order where a deprivation or seizure order is suspended under subsection (4), or where it cannot be carried out because decree has not been extracted, and subsection (6) gives examples of what may be included in an interim order.

153. Subsection (7) requires the court to consider the desirability of protecting the value of any dog or horse to which the interim order applies, and avoiding increasing expenses which a person may be required to reimburse.

154. Subsection (8) provides if the operation of a deprivation order is suspended, a person commits an offence if they sell or otherwise part with a dog or horse to which the deprivation order applies.

155. Subsection (9) sets out the penalties for an offence under subsection (8).

Part 4: General provisions

Section 21: Ancillary provision

156. This section sets out that the Scottish Ministers can make ancillary provision, by regulations, where appropriate. Regulations made under this section may modify any legislation, including the Bill.

Section 22: Interpretation

157. This section sets out definitions of terms commonly used in the Bill.

Section 23: Repeal of the Protection of Wild Mammals (Scotland) Act 2002 and consequential modifications

158. This section repeals the Protection of Wild Mammals (Scotland) Act 2002 and makes consequential modifications to other enactments so that references to an offence under the 2002 Act are replaced by references to an offence under the Bill.

Section 24: Crown application: criminal offences

159. The Bill applies to the Crown under section 20(1) of the Interpretation and Legislative Reform (Scotland) Act 2010.

160. Subsection (1) makes clear that nothing in the Bill makes the Crown criminally liable, but subsection (3) provides that this does not affect the criminal liability of persons in the service of the Crown.

161. Subsection (2) allows the Court of Session to declare unlawful acts or omissions for which the Crown would be criminally liable if it were not for subsection (1).

Section 25: Crown application: powers of entry

162. This section provides that the powers of entry contained in the Bill (and which are set out in the schedule) are exercisable in relation to Crown land only with the consent of the appropriate authority.

163. The appropriate authority for each type of Crown land is set out in the table.

164. Subsection (2) sets out definitions of terms used in subsection (1).

Section 26: Commencement

165. This section sets out when the provisions of the Bill will come into force (i.e. have legal effect). Most provisions will be brought into force by regulations as determined by the Scottish Ministers. These regulations will be laid before the Scottish Parliament but will not otherwise be

subject to any parliamentary procedure. However, this section, section 21 (ancillary provision) and section 27 (short title) come into force automatically on the day after Royal Assent is granted.

166. Subsection (2) provides that commencement regulations may include transitional, transitory or saving provision and may make different provision for different purposes.

Section 27: Short title

167. This section provides for the short title.

Schedule: Enforcement powers

168. The schedule contains the detail of the enforcement powers referred to in section 13.

169. The definition of relevant offence in paragraph 1 means that these powers can be used in relation to any offence under the Bill, other than the offence contained in paragraph 16 of the schedule itself.

170. Paragraph 2 allows a constable to enter any premises other than domestic premises if there are reasonable grounds for believing that an offence has been or is being committed. The definition of constable is set out in section 22. Definitions of premises and domestic premises are set out in paragraph 1. The definition of premises includes land. By virtue of schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010, land includes buildings and other structures.

171. Paragraph 3 provides that a sheriff or justice of the peace may grant a warrant if satisfied that the requirements set out in that paragraph are met. By virtue of section 45 of the Courts Reform (Scotland) Act 2014, the power to grant a warrant will extend to a summary sheriff.

172. Paragraph 4 sets out what that warrant would allow a constable to do.

173. Under paragraph 5, a constable may enter premise and search for, examine and seize items without a warrant if it appears that a delay would frustrate the purpose for which the powers to be exercised (for example, if items of evidence might be destroyed). This power cannot be exercised in relation to domestic premises.

174. Paragraph 6 sets out the circumstances in which an animal or vehicle can be seized.

175. Paragraph 7 provides that a thing seized must be returned when it is no longer required to be used in proceedings or to be forfeited under Part 2 of the Proceeds of Crime (Scotland) Act 1995. This does not apply to perishable things which no longer have any commercial value.

176. Paragraph 8 provides that a constable in uniform may stop and detain a vehicle or vessel.

177. Paragraphs 9 to 13 and 15 make supplementary provision in relation to powers of entry and associated powers. In particular, paragraph 13(2) allows the carrying out of tests on and taking of samples from an animal including the carcass of an animal (both of which are defined in section

22). This might be used, for example, to ascertain whether an animal had been involved in the commission of an offence under section 1 of the Bill by comparing samples taken from the animal with samples taken from a dead wild mammal.

178. Paragraph 14 requires the persons specified in sub-paragraph (2) to comply with any reasonable direction made by a constable and in particular to give such information and assistance as the constable may reasonably require. Contravening this requirement is an offence under paragraph 16. Paragraph 16 also makes it an offence to intentionally obstruct a constable exercising a power under the schedule, and sets out penalties for these offences.

179. Paragraph 17 provides that the powers conferred by the schedule do not affect any powers conferred on constables apart from the schedule (for example, in another Act).

This document relates to the Hunting with Dogs (Scotland) Bill (SP Bill 12) as introduced in the Scottish Parliament on 24 February 2022

HUNTING WITH DOGS (SCOTLAND) BILL

EXPLANATORY NOTES

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