

HUNTING WITH DOGS (SCOTLAND) BILL

FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.2 of the Parliament’s Standing Orders, this Financial Memorandum is 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:

- Explanatory Notes (SP Bill 12-EN);
- a Policy Memorandum (SP Bill 12-PM);
- a Delegated Powers Memorandum (SP Bill 12-DPM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 12-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

4. The Policy Memorandum explains in detail the background and the policy intention behind the Bill. The purpose of this Financial Memorandum is to explain any costs associated with the measures introduced by the Bill, and as such it should be read in conjunction with the Bill and the other accompanying documents.

THE BILL

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 is being introduced to address widespread concerns that foxes and other wild mammals are being hunted (and killed) by dogs in contravention of the intention of the 2002 Act. It therefore seeks to minimise the risk of wild mammals being caught and killed by dogs in the course of hunting by placing restrictions on their use.

7. The Bill will broadly replicate the core provisions of the 2002 Act but will address the inconsistencies and ambiguities in the language of the 2002 Act to make the law easier to understand and to enforce. The use of dogs to hunt wild mammals in Scotland will continue to be

banned except in limited, specified circumstances and for certain permitted activities. Those activities do not include using a dog to chase or kill a wild mammal. Therefore, as was the position under the 2002 Act, it will be an offence to chase and/or kill a wild mammal using a dog.

8. The Bill will introduce the following new measures to:

- Limit the number of dogs that can be used to search for, stalk or flush wild mammals from cover above ground to two.
- Provide a licensing scheme for the use of more than two dogs to search for, stalk or flush wild mammals above ground in certain limited circumstances.
- Limit the number of dogs that can be used to search for or flush foxes and mink from below ground to one.
- Prohibit trail hunting (the activity of directing a dog to find and follow a scent laid for that purpose) except in certain limited circumstances.

9. The provisions of the Bill will impact those who wish to lawfully use dogs within the terms of the permitted exceptions to hunt wild mammals, those who have committed an offence under the Bill, the authority responsible for licensing limited activities (Scottish Natural Heritage who now operate under the name NatureScot), and those who have a role in enforcing the legislation.

10. The revision of the existing legislation, including clarification of language around existing offences and the creation of new offences, may have the effect of increasing the number of incidents that go on to be prosecuted and subsequently convicted. Figures relating to existing offences from previous years have been used as the basis to estimate future costs, and provide example maximum costs.

11. The organisations involved in the enforcement of the Bill and the operation of the licensing scheme may need to make arrangements for staff training in order to familiarise all with the Bill provisions. However, given the Bill is introducing and developing enforcement and licensing tools similar to those currently in use, it is expected that these introductory costs will be minimal.

12. The licensing scheme will enable predator control clubs to carry out specified activities for those who currently engage their services, and will enable farmers and other occupiers of land to continue to conduct legitimate predator control activity themselves, in circumstances where more than two dogs are required, such as on rough and hilly ground and in extensive areas of dense cover such as conifer woodlands.

13. The principal costs flowing from the Bill will be those associated with the licensing of organised wild mammal control. Certain other costs and savings may also arise.

COSTS ON THE SCOTTISH ADMINISTRATION

Introductory one-off costs

14. Revising the 2002 Act, including the creation of new offences, is not thought to be associated with any meaningful introductory costs for the Scottish Administration given that the proposals

repeal and replace existing legislation and any staff training will be a relatively simple update of the guidance and procedures surrounding the enforcement of those offences and the operation of the licensing scheme.

15. Police Scotland will continue to report cases, and respond to complaints by the public in the same way as they do currently.

16. Persons prosecuted for offences under the Bill will be responsible for their own legal expenses in the usual way. Persons of limited means will be eligible to seek legal aid.

Cost of court procedures

17. The Bill provides that the offence of hunting a wild mammal using a dog can be tried either summarily or on indictment under solemn procedure. The Crown Office and Procurator Fiscal Service (“COPFS”) will decide the appropriate forum in each case taking into account, inter alia, the seriousness of the offending.

18. It is anticipated that changes to the legislation made by the Bill may initially result in a small increase in court cases relating to offences of hunting a wild mammal using a dog because the Bill removes some of the current barriers to enforcement of the existing prohibition. However, the broader expectation is of a longer-term reduction in the total number of cases as a result of clearer legislation, thereby removing any doubt as to what constitutes an offence or not.

19. Table 1 shows statistics from COPFS in Scotland where, in the last 10 years, 70 people have been submitted to the court for prosecution where the main charge was an offence under the 2002 Act, 41 of which resulted in a conviction.

Table 1: Prosecutions under the 2002 Act in the last 10 years

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 | Total |
|-------------------------|-----------|----------|----------|-----------|----------|----------|----------|----------|----------|----------|----------|--------------|
| Total prosecuted | 10 | 9 | 5 | 11 | 9 | 3 | 5 | 8 | 4 | 6 | - | 70 |
| Not guilty | 3 | 6 | 5 | 4 | 4 | 1 | 2 | - | - | 4 | - | 29 |
| Custody | - | - | - | - | 1 | - | 1 | 1 | 1 | - | - | 4 |
| Community sentence | 1 | - | - | 2 | - | - | 1 | 3 | - | - | - | 7 |
| Monetary | 6 | 3 | - | 2 | 4 | 2 | 1 | 4 | 3 | 2 | - | 27 |
| Other | - | - | - | 3 | - | - | - | - | - | - | - | 3 |

20. The 2002 Act was amended in November 2020 by the Animals and Wildlife (Penalties, Powers and Protections) (Scotland) Act 2020 to allow courts to prosecute offences under solemn procedure, as well as summary procedure as was previously the case. Therefore, the data in table 1 refers to cases where the offence could be prosecuted by summary procedure only.

21. In the last 10 years, of the 70 people prosecuted for an offence under the 2002 Act, four custodial sentences were issued, only one of which was of the severity to warrant a sentence of more than six months. For the purposes of assessing likely costs associated with the Bill, it is assumed that this case may have been suitable to be tried by solemn procedure, had that option been available to the prosecutor at the time, and so the upper estimate is that an average of 1 case in 10 years, or 0.1 of the seven cases prosecuted per annum, may be tried by solemn procedure.

22. Revision of the existing legislation, including clarification of language and the creation of new offences, is not expected to significantly change the procedure taken for the majority of cases, and the Scottish Government expects most cases to continue to be tried by summary procedure. Proceedings at solemn level are likely to be the exception for particularly extreme offending and possibly for persistent offenders. Table 2 details the costs associated with criminal proceedings.

Table 2: Estimates of the unit cost of criminal procedures, 2016-17

| Level of Jurisdiction | Procedure | Average prosecution costs per procedure (COPFS) | Average court costs per procedure (SCTS) | Average legal assistance costs per procedure (SLAB) | Total average costs | |
|--|--|---|---|--|----------------------------|---------------|
| Sheriff Court solemn | Section 76 pleas | | £154 | £1,294 | | |
| | Guilty plea at first diet | | £203 | £1,294 | | |
| | Guilty plea at trial diet | | £258 | £2,035 | | |
| | Trials - Evidence led | | £9,351 | £3,397 | | |
| | Average cost of procedure | | £4,363 | £2,190 | | £1,622 |
| Sheriff Court summary (includes stipendiary cases) | Guilty plea at pleading diet | £444 (this figure represents the average cost of procedure for the Sheriff Court Summary and Justice of the Peace court (excluding stipendiary cases)). | £105 | £565 | | |
| | Continued without plea then guilty plea tendered | | £154 | £565 | | |
| | Guilty plea at intermediate diet | | £203 | £584 | | |
| | Guilty plea at trial diet | | £308 | £584 | | |
| | Trials - Evidence led | | £1,679 | £764 | | |
| | Average cost of procedure | | £430 | £604 | | £1,034 |

23. Solemn prosecutions cost COPFS an average of £4,363 to prosecute, as opposed to the average cost of a summary procedure of £444.

24. The average court costs for solemn procedures for the Scottish Courts and Tribunals Service (“SCTS”) is £2,190, as opposed to the average cost of a summary procedure of £430. These figures

are the average cost of procedure and are a weighted average using the volume of procedures. The figures include depreciation.

25. The average costs relating to the Scottish Legal Aid Board (“SLAB”) have been calculated as £1,622 for solemn and £604 for summary proceedings. These figures are average cost per legal aid certificate (per individual). These figures are calculated by dividing total legal aid costs for cases which finish at each procedure by the corresponding number of legal aid certificates. Where a case progresses through several procedures, all legal assistance costs are included in the costs of the final procedure.

26. The proposed changes to the legislation are not expected to have a significant effect on the number of people applying for legal aid. It is considered reasonable that the same proportion of individuals will need to apply for legal aid in any case.

27. In order to estimate potential additional court costs arising from the changes to the existing legislation, and following on from the assumptions above, it is assumed that annually, there will be 6.9 cases submitted to the courts in relation to offences under the Bill subject to summary procedure, and 0.1 cases subject to solemn procedure. Estimates are also provided for other potential scenarios in table 3.

Table 3: Estimated costs associated with increased prosecutions

| | Procedure | Number of people prosecuted | Cost of scenario | Additional costs |
|----------------------------------|-----------|-----------------------------|------------------|------------------|
| current costs of prosecution | Summary | 6.9 | £7,135 | £0 |
| | Solemn | 0.1 | £817 | |
| 3 fold increase in prosecutions | Summary | 20.7 | £21,404 | £15,904 |
| | Solemn | 0.3 | £2,452 | |
| 5 fold increase in prosecutions | Summary | 34.5 | £35,673 | £31,808 |
| | Solemn | 0.5 | £4,087 | |
| 10 fold increase in prosecutions | Summary | 69 | £71,346 | £71,568 |
| | Solemn | 1 | £8,174 | |

28. There may be a limited number of additional cases that are referred to COPFS due to the clarification of the language of the legislation, making it easier for enforcement and prosecution authorities to assess whether an offence has been committed. It is difficult to make a reasonable estimate about the number of cases in this category, and whether these would result in prosecutions and, if so, at what level. The determining factors in the course of each investigation and any resultant case reported to COPFS largely depend on the individual facts and circumstances involved in each instance. Table 3 illustrates the potential additional costs associated with an increased number of prosecutions.

29. The Bill creates new offences related to trail hunting, the activity of directing a dog to find and follow an animal-based scent which has been laid for that purpose. In England and Wales, the Hunting Act 2004 imposed a two dog limit for exempt hunting activity, and it appears that trail

hunting has been used as a justification for taking out more than two dogs when the real purpose of the activity is to hunt wild mammals. The new offences aim to prevent this practice arising in Scotland when the two dog limit included in the Bill is introduced. At present, it appears that trail hunting does not take place in Scotland. Therefore, if the preventative aim of including these offences in the Bill is achieved, it is not anticipated that there will be any additional prosecutions arising from these new offences.

Scottish Prison Service (SPS)

30. Another identified cost associated with revising and adding to the offences relating to hunting wild mammals using dogs would be incurred by SPS if more individuals receive custodial sentences. As stated above, there may be a small increase in court cases resulting from the Bill, which could correspondingly increase the number of people receiving custodial sentences.

31. The provisions in the Bill do not provide for mandatory minimum sentencing. Rather, the provisions allow the courts to issue maximum penalties for the principal offence of up to five years. Maximum penalties for wildlife offences, including those under the 2002 Act, were reviewed and standardised through the Animals and Wildlife (Penalties, Powers and Protections) (Scotland) 2020 Act. The penalties for offences under the 2002 Act which are being replicated in the Bill will remain the same. Penalties for the new offences related to trail hunting and other minor offences are consistent with the penalties for other similar wildlife offences.

32. Sentencing in any given case is a matter for the courts. The court decides an appropriate sentence within the overall legal framework, subject to decisions about the appropriate procedure, summary or solemn.

33. As can be seen from Table 1, there have been 4 custodial sentences for offences under the 2002 Act in the past ten years (an average of 0.4 per year).

34. Within this context, it is challenging to make assumptions about the length of sentences in future cases. It is also not possible to predict what sentences may be appropriate without making assumptions about the type of cases that will come before the courts in terms of the type, range and severity of offending and also about the profile of the offender e.g. age, previous convictions (including similar offending), personal circumstances and means etc. All of these factors will inform the appropriate sentencing outcome in any court case.

35. It is considered that any extra costs to the SPS will arise from an increased number of prosecutions and their sentencing powers to impose custodial sentences for those offences. Such costs would relate to the additional people convicted of relevant offences who may be given custodial sentences in future years as compared to the number currently sentenced.

36. In order to estimate what those extra costs might amount to, sentencing data for the period 2009 to 2020 for relevant offences under the 2002 Act has been considered to inform reasonable estimates of potential future sentences after maximum penalties are increased.

37. The Scottish Government has developed potential scenarios and made assumptions about future sentences using the data held on previous offences under the 2002 Act. However, as discussed above, this data relates to offences committed before the increased penalties had been made available to the courts.

38. The scenarios in table 4 estimate the costs associated with increased custodial sentences and assume that the average cost of a year in prison is £38,213 per year (Costs of Criminal Justice System in Scotland, December 2020),¹ and an average sentence length of 147 days, based on the four custodial sentences issued for offences under the 2002 Act in the last 10 years.

Table 4: Estimated costs associated with increased custodial sentences

| | Cost of existing sentences | 3-fold increase | 5-fold increase | 10-fold increase |
|---------------------------------------|----------------------------|-----------------|-----------------|------------------|
| Average annual sentences issued | 0.4 | 1.2 | 2 | 4 |
| Average annual sentence length (days) | 147 | 147 | 147 | 147 |
| Annual cost of proposed sentence | £6,156 | £18,468 | £30,780 | £61,560 |
| Maximum additional cost (per year) | £0 | £12,312 | £24,624 | £55,404 |

39. As can be seen from Table 4, a 10-fold increase in custodial sentences issued, would result in a maximum additional cost to the SPS of around £55,000 per year. In reality, and as explained above, it is unlikely that there will be such an increase in the number of cases receiving a custodial sentence, and the actual costs are likely to be close to the current scenario. This example is, however, included for illustrative purposes.

Costs of licensing

40. NatureScot (the operating name for Scottish Natural Heritage) operates the licensing schemes for wildlife management across several pieces of legislation that enable people to carry out activities that are otherwise illegal in order to achieve a legitimate aim. The licensing scheme proposed by the Bill uses a similar framework to that of the existing wildlife licensing schemes. The Bill will contain a power to allow Scottish Ministers to delegate their licensing functions to NatureScot.

41. The NatureScot licensing team processes an estimated 2800 licences per year, and while it is not possible to estimate, at this stage, how many licences will be applied for following commencement of the Bill, NatureScot are confident that the additional resource can be met within the existing licensing team.

42. NatureScot will also establish guidance on the form and content of applications and will check whether each application satisfies the licence criteria. It is expected that applicants must comply with the conditions of the licence and the guidance provided by NatureScot, and submit returns of data as requested.

¹ Scottish Prison Service, Source SPS accounts 2019-20. The cost of a prisoner place is £38,213, calculated on a resource accounting basis (including depreciation and impairment charges).

43. The introduction of a licensing scheme for the use of more than two dogs will therefore place an additional cost on NatureScot as the licensing authority.

44. The Scottish Government has estimated potential additional costs arising from different levels of licence applications. The average cost to NatureScot for processing a licence is £113.

45. 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. Using these assumptions, Table 5 details the potential additional costs associated with increased licence applications resulting from the Bill.

Table 5: Costs arising from increased licence applications

| | Current situation | +250 licences | +500 licences | +1000 licences |
|--------------------------------------|-------------------|---------------|---------------|----------------|
| Number of licences | 2800 | 3050 | 3300 | 3800 |
| Annual cost of licences | £316,400 | £344,650 | £372,900 | £429,400 |
| Number appeals | 12 | 13 | 14 | 16 |
| Annual cost of appeals | £15,000 | £16,250 | £17,500 | £20,000 |
| Total cost | £331,400 | £360,900 | £390,400 | £449,400 |
| Additional annual cost to NatureScot | £0 | £29,500 | £59,000 | £118,000 |

COSTS ON LOCAL AUTHORITIES

46. The investigation of wildlife crime falls to Police Scotland; local authorities do not enforce any wildlife legislation. The Bill provisions will not introduce any new responsibilities for local authorities and as such will not result in any additional costs to local authorities.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

47. There are no costs on other bodies, individuals and businesses arising from the provisions of the Bill.

48. Individuals and businesses will continue to be able to use two dogs to search for, stalk or flush a wild mammal from cover for a range of purposes, as is the case in current legislation. Those who meet the specified criteria and for limited purposes, may apply for a licence to use more than two dogs to search for, stalk or flush a wild mammal from cover, without cost.

49. NatureScot do not charge the applicant for licences relating to wildlife management, as the vast majority of purposes for which licences can be issued reflect a need to act for a public interest, such as licences to survey for protected species, or control of one species to protect another. However, although NatureScot do not currently operate licences on a cost recoverable basis the Scottish Government/Scottish Green Party Shared Policy Programme contains the commitment to review the wider species licensing system and assess the potential to apply the principle of full

cost recovery to species licensing. The Bill will therefore include provisions to allow for the possible introduction of charges for licences issued under these provisions at a later date.

50. As set out in paragraph 43 to 45, the average cost to NatureScot for processing a licence is £113 and it is estimated that the total cost of administering this scheme will be between £29,500 to £118,000 per annum depending on the number of applications received. Should NatureScot move to a full cost recovery model in the future then it is anticipated that the cost of administering the licenses would be balanced out by the revenue received from the licence applicants and the scheme would therefore operate on a cost neutral basis.

SUMMARY

51. A summary of the upper limit of potential additional costs of the provisions of the Bill is set out in Table 6, below. These potential costs could occur from 2023 onwards and represent the maximum estimated annual cost, based on a 10-fold increase in number of offences committed, and the submission of an extra 1000 licence applications to NatureScot.

Table 6: Summary of potential additional costs

| | |
|-------------------------------|----------------------------------|
| Scottish Prison Service | £55,404 |
| SCTS | |
| COPFS | £71,568 |
| SLAB | |
| Police Scotland | £0 |
| Local Authorities | £0 |
| NatureScot | £118,000 |
| General Public | £0 |
| Total additional costs | £244,972 (upper estimate) |

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

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