

Wildlife Management and Muirburn (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 Wildlife Management and Muirburn (Scotland) Bill, introduced in the Scottish Parliament on 21 March 2023.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 24–FM);
 - a Policy Memorandum (SP Bill 24–PM);
 - a Delegated Powers Memorandum (SP Bill 24–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 24–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 a part of a section, does not seem to require any explanation or comment, none is given.

The Bill

Overview

5. As discussed more fully in the Policy Memorandum, the Wildlife Management and Muirburn (Scotland) Bill (“the Bill”) is intended to address raptor persecution and ensure that the management of grouse moors and related activities are undertaken in an environmentally sustainable and welfare conscious manner. The provisions in the Bill

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implement many of the recommendations of the independent review of grouse moor management (which is sometimes referred to as the “Werrity Report”)¹.

6. The Bill has two distinct parts.

7. Part 1 makes a number of provisions in relation wildlife management. This includes:

- a ban on the use and purchase of glue traps.
- the establishment of a licensing system for the use of certain wildlife traps (set out in more detail below),
- creating a licensing system for land on which the killing or taking of certain birds is to take place.

8. Part 2 of the Bill regulates the making of muirburn by extending the licensing system for muirburn. It now requires a muirburn licence at all times of the year and on any land on which muirburn is to be made.

9. Note, the Bill and these Notes make reference to Scottish Natural Heritage. It is a statutory body established by [section 1 of the Natural Heritage \(Scotland\) Act 1991](#). Following a rebranding in 2020, Scottish Natural Heritage is now known as NatureScot. Its formal legal name remains unchanged however and so it is by that name that it is referred to in the Bill.

Part 1—Wildlife Management

Glue traps

Section 1—Offence of using glue trap

10. This section creates the offence of using a glue trap for the purpose of killing or taking any animal, or setting a glue trap in a manner that is likely to cause injury to any animal that comes into contact with it. It does not apply to invertebrates (such as insects). Glue trap is defined in subsection (5) to mean a trap that is designed or capable of catching any animal (excluding invertebrates) involving the use of an adhesive substance. This definition includes home-made glue traps and therefore offences relating to the purchase (see section 2) of glue traps would apply to home-made glue traps.

¹ [grouse-moor-management-review-group-report-scottish-government.pdf](https://www.gov.scot/publications/wildlife-management-review-group-report-scottish-government/pdf)
(www.gov.scot)

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11. The penalty for committing an offence under this section is the same as those in the Wildlife and Countryside Act 1981 (“the 1981 Act”) relating to the taking or killing of certain wild birds and wild animals via certain methods², being—

- on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both), or
- on conviction on indictment, imprisonment for a term not exceeding 5 years or a fine (or both).

12. The offences do not apply if the person has a reasonable excuse for using or setting a glue trap. For example, it is not the intention to criminalise circumstances where a person is compelled to use a glue trap by a workplace superior.

13. Subsection (4) amends the 1981 Act to remove glue traps from the operation of sections 5 and 11 of that Act. This means that all offences relating to the use of glue traps are in this Bill.

Section 2—Offence of purchasing glue trap

14. This section makes it an offence for a person to purchase (or otherwise acquire) a glue trap. The penalty is the same as for section 1. Examples of how a person can “otherwise acquire” a glue trap include receiving it without having to pay for it (including as a gift or for a prize) or exchanging it for something other than money.

15. A person does not commit an offence if they have a reasonable excuse for purchasing (or otherwise acquiring) the glue trap. For example, a person who finds a glue trap and takes it to a police station would have a reasonable excuse for acquiring it, and therefore the person does not commit the offence. A person who acquires a glue trap for the purposes of enforcing this Bill will also have a reasonable excuse for doing so. If a person inadvertently purchases a glue trap (for example) as part of buying something else, that may also constitute a reasonable excuse, depending on the precise circumstances.

16. Subsection (2) disapplies the offence in circumstances where the person purchases the glue trap for use and delivery outwith Scotland. For example, if a person in Scotland buys a glue trap online from an overseas retailer and has that glue trap delivered to an address outwith Scotland, to use outwith Scotland, then that person does not commit an offence under this section.

Section 3—Forfeiture and disposal of glue traps

17. This section enables the court to make an order for the forfeiture or disposal of a glue trap where a person is convicted of an offence under section 1 or 2. Where a matter has not resulted in court proceedings, subsection (4) allows the Chief Constable of the Police Service of Scotland to apply to a sheriff or summary sheriff for an order to

² See section 21 of the Wildlife and Country Act 1981 c. 69 for penalties relating to sections 5(1)(a) and 11.

dispose of any glue trap seized and detained under this Part. Orders under this section allow the chief constable to dispose of a glue trap in any manner as the chief constable considers appropriate; this includes directing another person to dispose of the glue trap.

Regulation of certain wildlife traps

Existing law relating to killing and taking of wild birds and wild animals

18. Section 1(1)(a) of the 1981 Act provides that it is an offence to intentionally kill, injure or take any wild bird³. Section 5(1) prohibits certain methods of killing and taking wild birds: this includes traps.

19. In relation to wild animals⁴, section 9(1) of the 1981 Act provides that it is an offence to intentionally or recklessly kill, injure or take any wild animal included in Schedule 5. Section 11(2) prohibits certain methods of killing and taking certain wild animals included in schedule 6 or 6ZA. Among other things, section 11(2) makes it an offence to:

- use a trap or snare for the purpose of killing or restraining any wild animals included in Schedule 6 or 6ZA, or
- set in position any trap or snare of such a nature and so placed as to be likely to cause bodily injury to any such wild animal.

20. The 1981 Act provides exceptions to these offences when the killing or taking is done under the authority of a licence under section 16.

- In relation to wild birds, section 16(1) exempts from section 1 and 5 anything done in accordance with a licence granted under that section. The reasons for which a licence can be granted are listed in section 16(1)(a) to (k). Licences under section 16(1) can be issued for the live trapping of wild birds if they comply with sections 16(5A) and (6). Section 16(5A) provides that a licence under section 16(1) which authorises any action in respect of a wild bird must specify the species of bird and the circumstances and the conditions to which the action may be taken. It must also specify the methods, means or arrangements authorised or required. Section 16(6) provides that a licence under (2) or (3) which authorises a person to kill wild birds or animals must specify the areas within which and the methods by which the wild birds or wild animals may be killed.
- In relation to wild animals, section 16(3) of the 1981 Act exempts from sections 9, 10A, 11C, and 11G of that Act (provisions relating to the intentional killing, taking or injuring of a wild animal) when this is done in accordance with a licence granted under that section. The reasons for which a licence can be granted are listed in section 16(3)(a) to (i). This is subject to

³ Section 27 of the 1981 Act defines “wild bird” as any bird of a species which is ordinarily resident in or is a visitor to the United Kingdom or any member State or the European territory of any member State in a wild state but does not include poultry.

⁴ Section 27 of the 1981 Act defines “wild animal” as any animal (other than a bird) which is or (before it was killed or taken) was living wild.

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the other provisions of that section; for example subsections (3ZA) to (3ZI) make further provision in relation to animals listed in Schedule 6ZA in order to comply with Agreement on International Humane Trapping Standards (AIHTS).

21. In addition to the 1981 Act, sections 50 and 50A of the Agriculture (Scotland) Act 1948 contain further controls on the use of traps to kill or take animals. Section 50, among other things, prohibits the use of a spring trap other than an approved trap (which are provided for in the Spring Traps Approval Order 2011). Section 50A makes it an offence to use a spring trap elsewhere than in a rabbit hole.

Section 4—Wildlife traps

22. This section inserts sections 12A to 12G into the 1981 Act and creates a licensing regime intended to cover the use of certain traps used for the taking of wild birds and killing wild animals. This is in addition to the licensing requirements under section 16.

23. Section 16 of the 1981 Act enables the Scottish Ministers (or their delegate) to grant licences for certain purposes. It exempts the licence holder from certain provisions of the 1981 Act. For example, a licence granted under section 16(1) for the purpose of scientific, research or educational purposes, will protect the licence holder from liability to an offence under sections 1 (protection of wild birds, their nests and eggs), 5 (prohibition of certain methods of killing or taking wild birds), 6(3) (sale etc. of live or dead wild birds, eggs etc.), 7 (registration etc. of certain captive birds) and 8 (protection of captive birds) so long as the licence holder acts in accordance with the terms of the licence.

24. The net result of the inserted sections 12A to 12G is that if a section 16 licence holder wishes to use a trap to which new section 12A applies, they will also need a wildlife trap licence granted under new section 12C. Depending on the circumstances, a section 16 licence may not be required but a wildlife trap licence will be, for example a person can use a spring trap on a species that does not require a section 16 licence but they will require a wildlife trap licence.

25. Inserted section 12A makes it an offence for a person to use a trap to which the section applies without having a wildlife trap licence. These traps are listed in subsection (2), which is modifiable by regulations, as a trap for the live capture of birds and a trap approved under section 50 of the Agriculture (Scotland) Act 1984 for the purpose of that section. Traps approved under that section are currently listed in the Spring Traps Approval Order (STAO) 2011 (as amended) for use in Scotland in specific circumstances. Traps for stoats must also comply with AIHTS. Per section 50(7) of the 1984 Act, spring traps of any description specified by order as being adapted solely for the destruction of rats, mice or other similar small ground animals do not apply to that section. Under the Small Ground Vermin Traps Order 1958 there is such an exemption to the requirement to use traps under the STAO for traps which are used for rats, mice and moles. Therefore, a person using such a trap is not required to have a wildlife trap licence under section 12A.

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26. Inserted section 12A(4) also requires a person to display the person's wildlife trap licence number either directly on the trap or on a tag fitted to the trap. The person is also required to use and monitor the trap in accordance with an approved training course for such a trap. These requirements will depend on the type of trap in question, for example, in order to use one of the current General Licences for the live capture of certain wild birds, NatureScot requires that "all traps must be checked at least once every day at intervals of no more than 24 hours".

27. A person who uses a trap without a wildlife trap licence commits an offence under inserted section 12A(3). A person who fails to comply with inserted section 12A(4) also commits an offence (for example, they have a wildlife trap licence but do not use the trap in the correct manner). Section 4(6) provides that the penalty for these offences is, on summary conviction, imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). A judge may choose to impose a lesser sentence depending on the circumstances of the case. The standard scale for fines is set out in [section 225 of the Criminal Procedure \(Scotland\) Act 1995](#). At the time of the Bill's introduction, level 5 on the standard scale was £5,000.

28. There may be instances where a person has complied with the requirements of inserted section 12A, but catch an unintended animal (for example, they lawfully set a trap to catch a weasel but unintentionally catch a badger). Inserted section 12A(6) provides a defence for this. The person must have set the trap to catch an animal that may have been lawfully killed or taken by those means, complied with the rest of the section and taken all reasonable steps to prevent another animal (other than an invertebrate) from being killed, taken or injured by the trap.

29. Inserted section 12B makes provision for the application process for a wildlife trap licence. Section 16A of the 1981 Act, as amended by this Bill, allows the Scottish Ministers to delegate these functions to Scottish Natural Heritage. Among other things, when applying for a licence the person must provide any such information as the relevant authority may require and pay a fee if required (and the relevant authority is required to publicise such information and fees that they require in the application process).

30. Inserted section 12C makes provision for the granting of a wildlife trap licence and the content of such a licence. Section 16A of the 1981 Act, as amended by this Bill, allows these functions to be delegated to Scottish Natural Heritage. The relevant authority may grant the wildlife trap licence if the applicant has completed an approved training course in relation to the type of trap they wish to use, and if the relevant authority is satisfied that it is appropriate to grant the licence. Conditions may be attached to a wildlife trap licence, and breach of those conditions may lead to the modification, suspension or revocation of the licence. Such conditions could be specific to the type of trap being used, for example, any trap not in use must be immobilised and rendered incapable of use, or only one decoy bird may be used in the Larsen trap and it must be kept in a separate compartment. The conditions could also be more general for example, licence holders must submit an annual return of information relating to their trap use.

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31. Inserted section 12D provides for the grounds for the modification, suspension and revocation of a wildlife trap licence and section 16A (as amended) allows these functions to be delegated to Scottish Natural Heritage. The relevant authority may modify a licence at any time. A person's wildlife trap licence may be suspended or revoked if the person fails to comply with the licence conditions or if the relevant authority is satisfied that the licence holder has committed a relevant offence. The relevant authority can suspend a licence where it is not itself satisfied that the licence holder has committed a relevant offence, but it becomes aware that the person is officially suspected of committing such an offence and the circumstances are such that if the legal process concluded with the person's conviction for the offence the relevant authority could then be satisfied that the person committed a relevant offence. Relevant offences are listed in subsection (5) and broadly cover offences relating to the use of traps to take or kill wild animals. Other wildlife offences that are not related to the use of wildlife traps, such as those in the Protection of Wild Mammals (Scotland) Act 2002, or in the Deer (Scotland) Act 1996 are not included in the list of relevant offences. The Scottish Ministers may by regulations modify the list of relevant offences (see inserted section 12G).

32. The relevant authority must also tell a person that their licence has been modified, suspended or revoked. If a person's licence is suspended, then they are treated as not having that licence for the duration of the suspension (and therefore they may commit an offence if they continue to act as if they have a licence).

33. Inserted section 12E allows the relevant authority to approve training courses (see inserted sections 12A(4)(b) and 12C(1)(a)). The section allows the relevant authority to make provision such as determining training requirements, accrediting courses and trainers and the minimum criteria for the successful completion of courses. Section 16A of the 1981 Act (as amended) allows these functions to be delegated to Scottish Natural Heritage. However, the Scottish Ministers may, through regulations made under section 12G, make provision relating to approved training courses which Scottish Natural Heritage would need to comply with when exercising any delegated functions.

34. Inserted section 12F makes it an offence, without reasonable excuse, to possess or use a trap to which section 12A applies on land without the permission of the landowner or occupier. Section 4(6) provides that the penalty for those offences is on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). A judge may choose to impose a lesser sentence depending on the circumstances of the case. The standard scale for fines is set out in [section 225 of the Criminal Procedure \(Scotland\) Act 1995](#). At the time of the Bill's introduction, level 5 on the standard scale was £5,000.

35. Inserted section 12G gives the Scottish Ministers the powers to, by regulations subject to the affirmative procedure⁵, make further provision in relation to wildlife traps to which inserted section 12A applies, how a licence number is to be displayed on a

⁵ The affirmative procedure is defined by [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

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trap, the approved training courses, and the definition of “relevant offence”. The Scottish Ministers are required to, before making such regulations, consult Scottish Natural Heritage and such other persons who may be interested in or affected by wildlife trap licensing.

36. Section 4(3) amends section 16 of the 1981 Act to disapply the need for the landowner or occupier’s authorisation (per inserted section 12F) so long as the person has a licence granted under section 16 of the 1981 Act for the purposes listed in paragraphs (a) to (k) (for example, for scientific, research or education purposes).

37. Section 4(4) amends section 16A of the 1981 Act to enable the Scottish Ministers to delegate their functions under inserted sections 12B (relating to wildlife trap licence applications), 12C (grant of wildlife trap licences), 12D (modifying, suspending and revoking wildlife trap licences) and 12E (relating to approved training courses) to Scottish Natural Heritage.

38. Section 4(5) amends section 17 of the 1981 Act to make it an offence to provide false statements when obtaining a wildlife trap licence. The penalty for this is, on summary conviction, imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). A judge may choose to impose a lesser sentence depending on the circumstances of the case. The standard scale for fines is set out in [section 225 of the Criminal Procedure \(Scotland\) Act 1995](#). At the time of the Bill’s introduction, level 5 on the standard scale was £5,000.

39. Section 4(6) amends section 21 of the 1981 Act to prescribe penalties for sections 12A and 12F, as discussed above.

40. Section 4(7) provides for the parliamentary procedure for regulation under inserted sections 12A(8) and 12G(1). These regulations are subject to the affirmative procedure.

41. Section 4(8) amends section 27 of the 1981 Act to include provide for the key terms used in inserted sections 12A to 12G, namely “wildlife trap licence” and “wildlife trap licence number” to be defined for the purposes of the Part. These expressions are defined by reference to inserted section 12A(10).

Section 5—Penalties relating to use of spring traps

42. This section amends section 50 of the Agriculture (Scotland) Act 1948 to uprate the penalties for using a spring trap to—

- on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
- on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

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43. The amendment brings those penalties into line with other wildlife crime penalties that were increased by the Animals and Wildlife (Penalties, Powers, and Protections) Scotland Act 2020.

Licensing of land for killing and taking of certain birds

Section 6—Killing and taking of certain birds permitted only on land with section 16AA licence

44. This section creates a licensing scheme for land on which the killing and taking of certain birds is to take place. This is achieved through the amendment of the 1981 Act.

45. Under section 1 of the 1981 Act, it is an offence to (among other things) kill, injure or take any wild bird⁶. Section 2 of the 1981 Act contains exceptions to this offence. At present, this allows the killing or taking of a bird (or the injuring of the bird in an attempt to kill it) if that bird is included in Part I of schedule 2 *and* if the killing, taking or injuring is done outside of the close season of that bird. Section 2(4) gives the periods of the year that constitutes the close season for certain types of birds.

46. Section 6(2) amends section 2 of the 1981 Act to make it clear that no offence is committed under that section if the bird that was killed, injured or taken was also included in Part 1B of Schedule 2 and a licence under section 16AA was held in respect of the land on which the bird was killed, injured or taken. The net effect of the amendment is that the bird must be included in both Part I and IB of schedule 2. It is a defence if the person who killed, injured or took such a bird had a reasonable belief that an unsuspended section 16AA licence was held in respect of the land. The existing penalty for an offence under section 1 applies:

- on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £40,000 (or both),
- on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

47. Section 6(5) inserts Part 1B into Schedule 2. This covers the birds which may be taken or killed on land with a section 16AA licence. At present, new Part 1B only includes red grouse, however section 6(3) amends section 26 of the 1981 Act to enable the Scottish Ministers to make regulations to add or remove birds from Part 1B of Schedule 2. Birds included in Part 1B must also be included in Part I.

Section 7—Licensing: land on which certain birds may be killed or taken

48. This section amends the 1981 Act to create a licensing scheme for land on which the killing or taking of grouse is to occur. Licensing under this section only applies

⁶ Section 27 of the 1981 Act defines “wild bird” as any bird of a species which is ordinarily resident in or is a visitor to the United Kingdom or any member State or the European territory of any member State in a wild state but does not include poultry.

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outside of the close season of the bird⁷. Within the close season, the licensing requirements under section 16 of the 1981 Act apply.⁸

49. A licence under the new section 16AA relates to a specified area (or areas) of land for the purposes of permitting the killing or taking of a bird included in Part IB of Schedule 2 (which is inserted by this Bill and currently includes only red grouse). As such, a person who kills, injures or takes such a bird on land that does not have a section 16AA licence in relation to it commits an offence under section 1 of the 1981 Act.

50. Applications must be made to the relevant authority (the Scottish Ministers or, if delegated under section 16A(1B) of the 1981 Act (as inserted by section 7(3)), Scottish Natural Heritage), who may issue the licence if satisfied that it is appropriate to do so having regard to the applicant's compliance with the code of practice required under section 16AC. Among other things, when applying for a licence the person must provide any such information as the licensing authority may require and pay a fee if required (and the licensing authority is required to publicise such information and fees that they require in the application process).

51. The licence itself must set out the matters such as the area (or areas) of land it applies to. The licence is subject to any conditions that the relevant authority attaches to it, such as a requirement to report on activities, or if there is more than one type of bird listed in Part 1B, the requirement to kill or take only the type or types of bird to which the licence relates. The licence may be modified, suspended or revoked by the authority. The relevant authority may modify the licence at any time. Grounds for suspension or revocation include a failure to comply with conditions of the licence, where the relevant authority is satisfied that a relevant offence has been committed. Where the relevant authority has not satisfied itself that a relevant offence has been committed but the licence holder or a person involved in managing the land is the subject of an investigation of a relevant offence, the licence may be suspended. Relevant offences are listed in inserted section 16AA(11) and broadly cover related wildlife offences (such as offences under Part 1 of the 1981 Act 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. The review also discussed the practice of wider predator control undertaken on grouse moors. This list can be amended by regulations under inserted section 16AA(12). The relevant authority is required to give 14 days' notice of a suspension or revocation, but may specify an alternate notice period in the notice. If a person's licence is suspended, then they are treated as not having that licence for the duration of the suspension (and therefore they may commit an offence if they continue to act as if they have a licence).

52. New section 16AB enables a person to appeal to a sheriff against a decision of the relevant authority to refuse to grant a section 16AA licence, to attach a condition to such a licence and to modify, suspend or revoke such a licence. Where the person

⁷ "Close season" is defined in section 2(4) of the 1981 Act.

⁸ See paragraph 23 above.

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resides in Scotland, the appeal must be made to a sheriff or summary sheriff of the sheriffdom in which the person resides. In all other cases, the appeal must be made to a sheriff or summary sheriff at Edinburgh sheriff court (see subsection (7)).

53. New sections 16AC provides that the Scottish Ministers must prepare a code of practice relating to managing land to which a section 16AA licence relates. Section 16AC(2) sets out the particular types of guidance that may be included in the code of practice. The code must be reviewed within 5 years and thereafter every 5 years after that and revisions can be made on the back of such a review. Section 16AD allows for the functions of the Scottish Ministers in relation to the code to be delegated to Scottish Natural Heritage.

54. Section 7(3) amends section 16A of the 1981 Act to allow the Scottish Ministers to delegate, by written direction, their functions under section 16AA (other than the regulation-making power) to Scottish Natural Heritage.

55. Section 7(4) makes it an offence under the 1981 Act to make a false statement to obtain a section 16AA licence. The offence is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). A judge may choose to impose a lesser sentence depending on the circumstances of the case. The standard scale for fines is set out in [section 225 of the Criminal Procedure \(Scotland\) Act 1995](#). At the time of the Bill's introduction, level 5 on the standard scale was £5,000.

56. Section 7(5) provides that regulations under section 16AA(12) are subject to the affirmative procedure.

Investigation of wildlife offences

Section 8—Animal welfare inspectors' powers

57. The Animal Health and Welfare (Scotland) Act 2006 contains powers for inspectors appointed under section 49(2)(a) of that Act. Such powers relate to the investigation of animal welfare offences (with which that Act is principally concerned). This section enables the Scottish Ministers to make regulations to modify the 2006 Act to give to such appointed person powers to investigate offences under Part 1 of this Act and Part 1 of the 1981 Act which, for example, includes offences relating to the use of wildlife traps as well as offences relating to the protection of wild birds, their nests and eggs and the protection of wild animals.

Those regulations will be subject to the affirmative procedure (defined by [section 29 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#)). ("the ILRA 2010")

Part 2—Muirburn licensing

Requirement for muirburn licence

Overview of muirburn provisions

58. Part 2 of the Bill deals with the regulation of muirburn. Muirburn is a Scottish word for the intentional and controlled burning of moorland vegetation (heather or grassland) in order to encourage new growth. It is typically undertaken in order to produce a habitat conducive to livestock grazing and supporting populations of ground nesting game birds such as grouse. The practice of setting fire to moorland vegetation for this purpose is known as making muirburn, which is given its legal definition for the purposes of Part 2 in section 18.

59. In summary, the Part is arranged as follows:

- Section 9 criminalises the making of muirburn unless it is done in accordance with a muirburn licence.
- Sections 10 to 13 are about how licences are obtained, their contents and how, once granted, a licence can be suspended, revoked or modified.
- A condition of every muirburn licence is that the person to whom it is granted must have regard to the Muirburn Code (see section 12(2)(a)). Section 14 deals with the making and revising of that Code.
- A further condition of every muirburn licence is that notice has to be given to site owners and neighbours before muirburn is made (see section 12(2)(b)). Section 15 sets out the notice requirements.
- A stipulation of every muirburn licence that allows muirburn to be made for the purpose of managing the habitats of moorland game or wildlife or improving the grazing potential of moorland for livestock is that it only allows muirburn to be made for those purposes during the muirburn season (see section 11(2)). Section 16 defines the muirburn season.
- On their face, the preceding sections say that the Scottish Ministers will be the public body that deals with regulating muirburn by, amongst other things, granting muirburn licences and producing the Muirburn Code. Section 17 allows the Scottish Ministers to delegate some of their functions under Part 2 so that they can instead be carried out in practice by Scottish Natural Heritage.
- Section 18 defines terms used elsewhere in Part 2.
- The Bill, if passed, will largely replace the current legal regime for regulating the making of muirburn. That regime is set out in the [Hill Farming Act 1946](#). Section 19 repeals (i.e. removes from the statute book) those provisions of the Hill Farming Act 1946 that Part 2 of the Bill supersedes and modifies remaining provisions of that Act so that they interface correctly with Part 2.

Requirement for muirburn licence

Section 9—Requirement for muirburn licence

60. Section 9 criminalises the making of muirburn where it is not done in accordance with the terms of a muirburn licence that has effect at the time. As the offence may also be committed by a person who causes or permits the making of muirburn, it applies not only to the person who starts the fires but also, for example, the estate manager who orders the making of muirburn.

61. A muirburn licence is a licence granted under section 11. A muirburn licence only has effect for the period it says it has effect (see section 12(1)(d)), and does not have effect within that period if and for so long as it has been suspended under section 13 (see subsection (5) of that section).

62. Subsection (4) of section 9 sets the maximum penalty for committing the offence as 6 months' imprisonment and a level 5 fine on the standard scale. A judge may choose to impose a lesser sentence depending on the circumstances of the case. The standard scale for fines is set out in [section 225 of the Criminal Procedure \(Scotland\) Act 1995](#). At the time of the Bill's introduction, level 5 on the standard scale was £5,000.

63. Section 9(1) provides that a reasonable excuse may be available to a person who has made muirburn in contravention of a muirburn licence. Examples of what may constitute a reasonable excuse are:

- an employee who is ordered to make muirburn in contravention of a muirburn licence by an estate manager,
- a person who has had to make a firebreak to prevent the spread of an active wildfire, and thus did not have the time to apply for a muirburn licence.

64. Section 9(3) clarifies a specific circumstance where an offence is not committed. This is where a person has a muirburn licence in relation to land, and the licence is for land that is not peatland. If the person makes muirburn in accordance with that licence and later find out that the land is peatland, the person has not committed an offence.

Muirburn licences

Section 10—Application for muirburn licence

65. Section 10 sets out the requirements for applying for a muirburn licence. An application that does not fulfil the requirements would not be valid and therefore could not provide a basis for granting a licence under section 11.

66. Amongst other things, an application has to specify the purpose for which the applicant wishes to make muirburn, which must be one of the purposes listed in subsection (2). Subsection (2) sets out different lists of permissible purposes depending on whether or not the land in question is peatland (as defined in section 18). Subsection (5) gives the Scottish Ministers a power to modify by regulations the lists of permissible

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purposes for which muirburn can be made. Regulations under that power would be subject to the affirmative procedure (which is defined in [section 29 of the ILRA 2010](#)).

67. Subsection (8) of section 10 makes it a crime to knowingly or recklessly make a false statement about anything material in order to obtain a muirburn licence. The maximum penalty for anyone committing the offence is the same as for anyone committing the offence under section 9 (see paragraph 65 above).

Section 11—Grant of muirburn licence

68. Section 11 empowers the Scottish Ministers, on receiving an application that meets the requirements in section 10, to grant a muirburn licence. Subsection (1) sets out the considerations relevant to a decision on whether to grant a licence.

69. While section 11 says it is for the Scottish Ministers to grant licences, it is a function which they can delegate to Scottish Natural Heritage under section 17.

70. Subsection (2) of section 11 prevents a muirburn licence from permitting muirburn to be made outwith the muirburn season (which is defined by section 16) for either of the following purposes:

- managing the habitats of moorland game or wildlife
- improving the grazing potential of moorland for livestock

Section 12—Muirburn licences: content and conditions

71. Section 12(1) sets out the basic information that every muirburn licence must contain.

72. Subsection (2) states the conditions attached to all muirburn licences, which are:

- the person to whom the licence is issued must have regard to the Muirburn Code (see section 14)
- a person intending to make muirburn must also have regard to the Muirburn Code and must also comply with section 15 (which relates to notice requirements)

73. Subsection (3) allows the Scottish Ministers to attach further conditions to a muirburn licence. Subsection (4) provides an illustrative list of what further conditions might be attached. The list includes conditions about complying with certain provisions of the Muirburn Code, which would create a stronger requirement to abide by those provisions than the general condition attached to all licences to have regard to the Code.

74. Failure to comply with the conditions of a muirburn licence may be a criminal offence under section 9(1) if it results in muirburn being made otherwise than in accordance with the licence's terms.

Section 13—Modification, suspension and revocation of muirburn licence

75. Section 13 allows the Scottish Ministers to modify, suspend and revoke muirburn licences. This is a function which they can delegate under section 17. For brevity, in the following explanation of section 13, “the licensing body” is used to mean the Scottish Ministers or Scottish National Heritage if they have delegated the relevant functions.

76. The licensing authority can modify a muirburn licence at any time. But notice (in accordance with subsection (2) and (3)) has to be given before the modification can take effect, and the notice has to give reasons for the change.

77. The same notice requirements apply to decisions to revoke (i.e. withdraw) or suspend a person’s muirburn licence. In addition, section 13 restricts the circumstances in which the licensing body can decide to revoke or suspend a licence

78. Revoking a muirburn licence is only allowed if the licensing authority is satisfied that the licence holder, or another person involved in managing the land that the licence relates to, has committed an offence under Part 2. The licensing authority has only to be satisfied to the civil standard of proof, which is that it is more likely than not that one of those persons committed such an offence, and can therefore be satisfied of that even if the person in question is never found guilty in a criminal court (where the higher evidential standard of proof beyond reasonable doubt applies). Of course if a person were found guilty by a criminal court that would be a sensible basis for the licensing authority to be satisfied that the person committed the offence.

79. Suspending a muirburn licence is an alternative option for the licensing authority in the same circumstances as those in which it could revoke. Additionally, the licensing authority can suspend a licence where it is not itself satisfied that the licence holder or another person involved in managing the land has committed an offence under Part 2, but it becomes aware that one of those persons is officially suspected of committing such an offence and the circumstances are such that if the legal process concluded with the person’s conviction for the offence the licensing authority could then be satisfied that the person committed an offence under Part 2. For example, the licensing authority may know that an estate owner is being prosecuted for making muirburn in a way that breaches a condition of her muirburn licence. The licensing authority may not be aware of the evidence in the case, and so cannot be satisfied for itself that she has committed an offence under section 9. Nevertheless, it can be satisfied that if the prosecution results in her conviction for the offence then it would be entitled to be satisfied that she committed an offence under Part 2 and therefore, pending the outcome of the proceedings, the licensing authority can suspend her licence.

80. Section 13(5) states that a muirburn licence is of no effect while suspended. As mentioned in the explanation of section 9, this means that for the duration of the suspension it would be an offence under that section to cause or permit anything to be done for which a muirburn licence is required.

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81. Subsection (6) of section 13 requires a court that convicts a person of an offence under Part 2 to notify the licensing authority of that fact. This is so the licensing authority can decide whether to suspend or revoke a muirburn licence in light of the conviction, and can take it into account in considering future licence applications.

Making muirburn

Section 14—Muirburn Code

82. Section 14 requires the Scottish Ministers (or if they delegate the function, Scottish Natural Heritage) to prepare and publish a code of practice on making muirburn safely and appropriately and thereafter to review it on a 5 yearly cycle. The legal purpose of the code is to act as a set of norms to which muirburn licence holders are required to have regard as a condition of their licence (see section 12(2)(a)). Moreover, when a new licence is applied for, the extent of the applicant's past compliance with the code will fall to be considered in deciding whether it is appropriate to grant the new licence (see section 11(1)(a)).

Section 15—Notice of muirburn activity

83. It is a condition of every muirburn licence that a person intending to make muirburn must comply with this section (see section 12(2)(b)(ii)). This section sets out the detail about to whom, and how, notice is to be given.

84. The persons to whom notice are to be given are:

- the owner of the proposed muirburn site
- an occupier of any land situated within 1 kilometre of the proposed muirburn site (however, there is different provision (see subsection (3)) where there are 10 or more such occupiers and, instead of giving each owner individual notice, the person intending to make muirburn may instead notify those occupiers by placing a notice in a newspaper)

85. Notice has to be given at least 7 days before muirburn is made and contain information such as the proposed muirburn site and approximate extent of the proposed muirburn. Notice under this section may either be given in accordance with [section 26 of the ILRA 2010](#) (which has to do with the service of documents), or by leaving it at the address of the person being notified or, where the identity of the occupier is unknown, by affixing a notice (addressed generally to "Any occupiers of the land" to a conspicuous object such as a gate.)

Section 16—Muirburn season

86. As explained above in paragraph 73, a muirburn licence only allows muirburn to be made for certain purposes during the muirburn season. Section 16 defines the muirburn season.

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87. It further empowers the Scottish Ministers to modify what constitutes the muirburn season by regulations. Any regulations changing what constitutes the muirburn season will be subject to the affirmative procedure. The affirmative procedure is defined by [section 29 of the ILRA 2010](#).

Miscellaneous

Section 17—Delegation

88. Section 17 allows the Scottish Ministers to delegate, by written direction, several of the functions Part 2 confers on them to Scottish Natural Heritage. This includes functions in relation to licensing of land on which certain birds can be killed or taken and the code of practice for such licensing; muirburn licencing, the muirburn code and wildlife trap licensing.

Section 18—Interpretation of Part

89. Section 18 defines terms used elsewhere in Part 2.

90. It also empowers the Scottish Ministers to change the definition of “peat” and “peatland” for the purposes of the Part by regulations. Any regulations doing that will be subject to the affirmative procedure. The affirmative procedure is defined by [section 29 of the ILRA 2010](#).

Section 19—Repeals and consequential amendments

91. Section 19 modifies the Hill Farming Act 1946 in consequence of what the rest of Part 2 does.

92. The rest of Part 2 largely supersedes the Hill Farming Act’s regulation of muirburn. Accordingly, section 19 modifies that Act in the following ways:

- Sections 23 to 23C are repealed. They banned making muirburn outwith its muirburn season except with a licence.
- Section 24 is modified so that a tenant’s making muirburn in contravention of the terms of a lease is made lawful by it only if, in addition to fulfilling the other conditions specified in that section, the muirburn is made in accordance with the new rules of Part 2.
- Sections 25 and 26 are repealed. They were part of the legislative scheme criminalising the making of muirburn in certain circumstances, and criminalising a failure to give proper notice of an intention to do so, which is superseded by the new licensing regime of Part 2.
- Section 26A, which sets out how notice is to be given, is modified to remove its references to notices under provisions that are being repealed. The whole section is not repealed though, because it will continue to govern the giving of notice for the purpose of section 24.

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- Section 27 is repealed because it set out the penalties for the offences in the repealed sections 25 and 26.
- Section 27A, which deals with the application to the Crown of the muirburn provisions, is modified to remove the references to the sections that are being repealed.

Part 3—Enforcement and general provisions

Enforcement provisions

Section 20—Powers of entry, search and seizure with warrant

93. This section confers power on a sheriff (and summary sheriff (see below)) or justice of the peace to grant a warrant authorising a constable to enter and search premises (including houses, vehicles, and moveable structures like a tent) where there are reasonable grounds for believing that an offence has been, or is being, committed under section 1, 2 or 9 at the premises, or there is evidence at the premises of such an offence having been committed. A warrant may be granted if the premises are unoccupied (including temporarily unoccupied). A warrant may also be granted if access to the premises has been refused or is reasonably expected to be refused, and, unless it would frustrate the purpose of the warrant, notice has been given to the occupier.

94. By virtue of subsection (5), the warrant may authorise the constable to break into premises and search anything in, or anyone on, the premises. The constable can take away anything that the constable thinks is evidence that an offence under the Act is being or has been committed. Subsection (7) allows a constable to require material which is in, for example, digital format to be printed or saved onto a device that the police can take away.

95. “Sheriff” is defined in schedule 1 of the ILRA 2010 by reference to section 134 of the Courts Reform (Scotland) Act 2014 (which states that references to sheriff include references to any other member of judiciary of the sheriffdom, so far as that member has the jurisdiction and competence that attaches to the office of sheriff). Under section 45(1) of the Courts Reform (Scotland) Act 2014 a summary sheriff may, in relation to criminal investigations and proceedings, exercise the jurisdiction and powers that attach to the office of sheriff.

Section 21—Further restrictions on powers of entry and seizure

96. This section restricts the powers granted by a warrant under section 20. The power of entry may only be exercised at a reasonable time of day. For example, in the case of domestic premises, outside normal sleeping hours and in the case of business premises, during normal business hours, unless this might frustrate the purpose of the search. And where the premises was unoccupied or the occupier was temporarily absent, the constable must leave the premises as effectively secured against entry as the constable found them.

Section 22— Individual culpability where organisation commits offence

97. This section makes provision where offences under section 1 or 2 or Part 2 are committed by legal entities such as companies, partnerships, and associations. Where an offence under the Act is committed by a “relevant organisation”, this section provides that the relevant organisation and, in some cases, a “responsible individual” in that organisation are both to be held responsible. This section ensures that those running legal entities who are responsible for the decisions leading to an offence under the Part can also be prosecuted for it.

Section 23—Crown application: criminal offences

98. The Act will apply to the Crown by virtue of section 20 of the ILRA 2010. In line with usual practice for Acts of the Scottish Parliament, section 23 has the effect that the Crown cannot be found criminally liable in terms of the offences created by the Act. However, through the mechanism in subsection (2), any unlawful conduct on the part of Crown bodies can be declared unlawful by the Court of Session. Subsection (3) has the effect that this section does not exempt civil servants etc. from criminal prosecution.

Section 24—Crown application: powers of entry

99. This section deals with the possibility that the police may need to search Crown land (the different types of which are set out in the left-hand column). As there can be security and other considerations in relation to searching Crown land, there is an additional step of seeking permission from the appropriate authority before entry may be taken and the search carried out.

General provisions

Section 25—Regulations

100. This section allows regulations under the Act to include the ancillary provision listed, and to make different provision for different purposes. This section does not apply to regulations under section 27(2) (relating to the commencement of provisions of this Act).

Section 26—Ancillary provision

101. This section allows the Scottish Ministers, by regulations, to make standalone ancillary provision in relation to the Act, once enacted, or any provision made under it. Any regulations making ancillary provision which textually amends primary legislation will be subject to the affirmative procedure; otherwise, any regulations making ancillary provision under this power will be subject to the negative procedure⁹ (see subsections (2) and (3)).

⁹ The negative procedure is defined by [section 28 of the Interpretation and Legislative Reform \(Scotland\) Act 2010](#).

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Section 27—Commencement

102. This section makes provision in relation to the commencement of the Act. The sections on interpretation, regulations, ancillary provision, commencement, and the short title come into force automatically on the day after the Act receives Royal Assent. The other provisions will come into force in accordance with regulations made by the Scottish Ministers.

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Wildlife Management and Muirburn (Scotland) Bill

Explanatory Notes

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