

Wildlife Management and Muirburn (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 24-EN), a Financial Memorandum (SP Bill 24-FM), a Policy
Memorandum (SP Bill 24-PM), a Delegated Powers Memorandum (SP Bill 24-DPM) and
statements on legislative competence (SP Bill 24-LC).**

Wildlife Management and Muirburn (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the management of wildlife through the prohibition of glue traps and regulation of other wildlife traps and the licensing of land on which certain birds are to be killed or taken; and for the licensing of the making of muirburn; and for connected purposes.

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PART 1

WILDLIFE MANAGEMENT

Glue traps

1 Offence of using glue trap

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(1) It is an offence for a person, without reasonable excuse, to use a glue trap for the purpose of killing or taking any animal other than an invertebrate.

(2) It is an offence for a person, without reasonable excuse, to use a glue trap in a manner that is likely to cause bodily injury to any animal other than an invertebrate that comes into contact with it.

(3) A person who commits an offence under subsection (1) or (2) is liable—

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

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or both).

(4) The Wildlife and Countryside Act 1981 is amended as follows—

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(a) in section 5 (prohibition of certain methods of killing or taking wild birds), in subsection (1)(a), after “trap” insert “(other than a glue trap within the meaning of section 1 of the Wildlife Management and Muirburn (Scotland) Act 2023)”,

(b) in section 11 (prohibition of certain methods of killing or taking wild animals), after subsection (2) insert—

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“(2A) In subsection (2), “trap” does not include a glue trap within the meaning of section 1 of the Wildlife Management and Muirburn (Scotland) Act 2023.”.

- (5) In this section, “glue trap” means a trap that—
- (a) is designed, or is capable of being used, to catch an animal other than an invertebrate, and
 - (b) uses an adhesive substance as the means, or one of the means, of capture.

5 **2 Offence of purchasing glue trap**

- (1) It is an offence for a person, without reasonable excuse, to purchase (or otherwise acquire) a glue trap.
- (2) Subsection (1) does not apply where the glue trap—
 - (a) is purchased (or otherwise acquired) for use outwith Scotland, and
 - 10 (b) is to be delivered outwith Scotland.
- (3) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding £40,000 (or both),
 - 15 (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or both).
- (4) In this section, “glue trap” has the meaning given in section 1(5).

3 **3 Forfeiture and disposal of glue traps**

- (1) Where a person is convicted of an offence under section 1 or 2, the court may make an order for the forfeiture or disposal of a glue trap to which the offence relates.
- 20 (2) A constable may seize and retain a glue trap which may be the subject of an order for forfeiture under this section.
- (3) Where a court orders the disposal of a glue trap seized and retained under this Act by a constable, the glue trap may be disposed of in such manner as the chief constable considers appropriate.
- 25 (4) A sheriff or summary sheriff may, on an application of the chief constable, order the disposal (by any means the chief constable considers appropriate) of any glue trap seized and detained under section 1 or 2.
- (5) In this section—

“chief constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“glue trap” has the meaning given in section 1(5).

Regulation of certain wildlife traps

35 **4 Regulation of certain wildlife traps**

- (1) The Wildlife and Countryside Act 1981 is amended as follows.
- (2) After section 12 insert—

“Wildlife trap licensing

12A Requirements for use of traps

- 5 (1) A person who uses a trap to which this section applies, for the purpose of killing or taking a wild bird or wild animal that can otherwise be lawfully killed or taken by those means, must have a wildlife trap licence.
- (2) This section applies to the following traps—
- 10 (a) a trap for the purpose of taking wild birds,
- (b) a trap approved by an order made under section 50 of the Agriculture (Scotland) Act 1948 for the purposes of that section (other than a trap of a description specified in an order made under subsection (7) of that section).
- (3) A person who fails to comply with subsection (1) is guilty of an offence.
- (4) A person who uses a trap to which this section applies must ensure—
- 15 (a) that the wildlife trap licence number of the person is displayed (in a manner in which it will remain readable at all times) either—
- (i) directly on the trap, or
- (ii) on a tag that is fitted on the trap in such a manner that it is not capable of being easily removed from the trap, and
- 20 (b) that the trap is used and monitored appropriately in accordance with the approved training course for such a trap.
- (5) A person who—
- (a) has a wildlife trap licence and uses a trap to which this section applies, but
- (b) fails to comply with subsection (4) in any respect,
- 25 is guilty of an offence.
- (6) It is a defence for a person charged with an offence under this Part to show that—
- (a) the trap was used for the purpose of killing or taking a wild bird or wild animal which could be lawfully killed or taken by those means,
- 30 (b) the person had a wildlife trap licence and complied with subsection (4), and
- (c) the person took all reasonable steps to prevent the killing, taking or injury of any other animal (other than an invertebrate) not intended to be taken by the trap.
- 35 (7) The wildlife trap licence number which is displayed on a trap to which this section applies, or on a tag fitted to such a trap, is presumed in any proceedings to be the wildlife trap licence number of the person who used the trap.
- (8) The Scottish Ministers may by regulations amend subsection (2) to add, modify or remove traps (or descriptions of traps) to which this section applies.
- 40 (9) Before making regulations under subsection (8), the Scottish Ministers must consult Scottish Natural Heritage and such persons as they consider likely to be interested in or affected by wildlife trap licensing.

(10) In this section—

“approved training course” means a course approved under section 12E,

“wildlife trap licence” means a licence granted under section 12C(1) and

“wildlife trap licence number” is to be construed accordingly.

12B Application for wildlife trap licence

(1) An application for a wildlife trap licence must—

(a) be made to the relevant authority,

(b) be made in such manner and form as the relevant authority may require,

(c) contain or be accompanied by such information as the relevant authority may require,

(d) be accompanied by payment of such reasonable fee as the relevant authority may require.

(2) The relevant authority must publicise any requirements which are for the time being set under subsection (1)(b), (c) or (d).

(3) In this section, “relevant authority” means—

(a) the Scottish Ministers, or

(b) where the Scottish Ministers have delegated (by virtue of section 16A) their functions under this section, Scottish Natural Heritage.

12C Grant and content of wildlife trap licence

(1) The relevant authority may, on receipt of an application under section 12B, grant or renew a wildlife trap licence if—

(a) the applicant has completed an approved training course in respect of the type of trap in question, and

(b) it is satisfied that it is appropriate to do so.

(2) A person may be issued with the same wildlife trap licence number—

(a) in respect of different types of traps (but must make an application and complete the approved training course in respect of each type), and

(b) in respect of the renewal of an existing wildlife trap licence.

(3) A wildlife trap licence granted or renewed under subsection (1)—

(a) must—

(i) specify the person to whom the licence is granted,

(ii) specify the wildlife trap licence number,

(iii) identify the type (or types) of wildlife traps to which the licence applies,

(iv) specify any conditions the relevant authority considers appropriate to attach to the licence,

(b) may be granted or renewed for a period not exceeding 10 years.

- (4) In this section—
- “approved training course” means a course approved under section 12E,
- “relevant authority” means—
- (a) the Scottish Ministers, or
 - (b) where the Scottish Ministers have delegated (by virtue of section 16A) their functions under this section, Scottish Natural Heritage.

12D Modification, suspension and revocation of licence

- (1) The relevant authority may—
- (a) modify a wildlife trap licence at any time,
 - (b) suspend or revoke a wildlife trap licence if—
 - (i) the licence holder fails to comply with any conditions attached to the licence,
 - (ii) the relevant authority is satisfied that the licence holder has committed a relevant offence,
 - (c) suspend a wildlife trap licence if, despite the relevant authority not being satisfied as mentioned in paragraph (b)(ii)—
 - (i) there is an official investigation or proceedings in relation to a suspected relevant offence, and
 - (ii) the relevant authority is satisfied that if the suspect in the investigation or (as the case may be) the accused in the proceedings were to be convicted of the relevant offence, the relevant authority would then be satisfied as mentioned in paragraph (b)(ii).
- (2) The relevant authority must—
- (a) notify the licence holder of the modification, suspension or revocation of the person’s wildlife trap licence, and
 - (b) specify in the notice the date from which the modification, suspension or revocation is to have effect (which may be immediate).
- (3) A licence holder whose wildlife trap licence is suspended is to be treated as not having a wildlife trap licence for the duration of the suspension.
- (4) A court which convicts a person of a relevant offence must notify the relevant authority of the conviction.
- (5) In this section—
- “relevant authority” means—
- (a) the Scottish Ministers, or
 - (b) where the Scottish Ministers have delegated (by virtue of section 16A) their functions under this section, Scottish Natural Heritage.
- “relevant offence” means an offence under—
- (a) section 11 to 11C, 11E, 12A, 12F or 17 of this Act,
 - (b) section 50 or 50A of the Agriculture (Scotland) Act 1948,

- (c) regulation 41 of The Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716),
- (d) the Wild Mammals Protection Act 1996,
- (e) section 1 or 2 of the Wildlife Management and Muirburn (Scotland) Act 2023.

12E Approved training courses

- (1) The relevant authority is to approve training courses in respect of the traps to which section 12A applies.
- (2) For the purposes of subsection (1) (and subject to any regulations made under section 12G), the relevant authority may—
 - (a) determine training requirements, such as—
 - (i) the form and content of courses for the appropriate use of different types of trap,
 - (ii) requiring a person providing training to meet certain criteria (such as having relevant experience or holding a particular qualification),
 - (b) accredit courses and the persons providing courses,
 - (c) determine the minimum criteria for successful completion of courses, and
 - (d) determine how successful completion of such courses is to be recorded.
- (3) In this section, “relevant authority” means—
 - (a) the Scottish Ministers, or
 - (b) where the Scottish Ministers have delegated (by virtue of section 16A) their functions under this section, Scottish Natural Heritage.

12F Authorisation from landowners etc. to use traps

- (1) Subject to the other provisions of this Part, a person who without reasonable excuse—
 - (a) while on any land has in the person’s possession a trap without the authorisation of the owner or occupier of the land, or
 - (b) uses a trap on any land without the authorisation of the owner or occupier of the land,
 is guilty of an offence.
- (2) In this section, a reference to a trap is a reference to a trap to which section 12A applies.

12G Further provision

- (1) The Scottish Ministers may by regulations make provision—
 - (a) about the use of a wildlife trap to which section 12A applies,
 - (b) about how the licence number of the person using such a trap is to be displayed directly on the trap or on a tag fitted on it, and

- (c) relating to approved training courses.
- (2) Regulations under subsection (1) may, in particular, include provision—
- 5 (a) relating to the training course (or courses) that a person must complete in relation to the correct and appropriate use of a trap of the type the person wishes to use,
- (b) about the manner in which a tag is to be fitted for the purposes of section 12A(4) and the material from which a tag is to be made,
- (c) about the manner in which a wildlife trap licence number (and any additional information required) is to appear on a trap or tag,
- 10 (d) amending the definition of “relevant offence” in section 12D(5).
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult Scottish Natural Heritage and such persons as they consider likely to be interested in or affected by wildlife trap licensing.”.
- (3) In section 16 (power to grant licences), in subsection (3), after “11G(1)” insert “, 12F”.
- 15 (4) In section 16A (delegation of licence-granting power: Scotland)—
- (a) after subsection (1) insert—
- “(1A) The Scottish Ministers may delegate their functions in sections 12B, 12C, 12D and 12E to Scottish Natural Heritage.”,
- (b) after subsection (5)(a) insert—
- 20 “(ab) Scottish Natural Heritage under subsection (1A) is to be made by written direction;”,
- (c) after subsection (5) insert—
- “(5B) A direction under subsection (5)(ab) may include provision allowing Scottish Natural Heritage to modify or revoke licences that were granted before the direction.”,
- 25 (d) in subsection (7), after “subsection (5)(a)” insert “or (ab)”.
- (5) In section 17 (false statements made for obtaining registration, identification number or licence etc.), in the opening words, before “16” insert “12C”.
- (6) In section 21 (penalties, forfeitures etc.), after subsection (1A)(g) insert—
- 30 “(ga) section 12A,
(gb) section 12F.”.
- (7) In section 26 (regulations, orders, notices etc.)—
- (a) in subsection (2)—
- (i) the “and” immediately following paragraph (a) is repealed,
- 35 (ii) at the end of paragraph (b) insert “; and
(c) regulations under section 12A(8) or 12G(1),”,
- (b) in subsection (3)—
- (i) the “or” immediately following paragraph (a) is repealed,
- (ii) at the end of paragraph (b) insert “; and

(c) regulations under section 12A(8) or 12G(1).”.

- (8) In section 27 (interpretation of Part 1), in subsection (1), after the definition of “wild plant” insert—

““wildlife trap licence” has the meaning given in section 12A(10),

“wildlife trap licence number” is to be construed in accordance with section 12A(10).”.

5 Penalties relating to use of spring traps

- (1) The Agriculture (Scotland) Act 1948 is amended as follows.

- (2) In section 50 (prohibition of night shooting, and use of spring traps)—

(a) in subsection (2), for “the foregoing subsection” substitute “subsection (1)(a)”,

(b) after subsection (2) insert—

“(2A) A person guilty of an offence under subsection (1)(b), (c) or (d) is liable—

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

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.

Licensing of land for killing and taking of certain birds

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

- (1) The Wildlife and Countryside Act 1981 is amended as follows.

- (2) In section 2 (exception to s. 1: acts by certain persons outside close season)—

(a) for subsection (1A) substitute—

“(1A) This subsection applies where—

(a) whatever the kind of bird in question—

(i) the person who killed or injured it had a legal right, or permission, to kill such a bird; or

(ii) the person who took it had a legal right, or permission, to take such a bird; and

(b) in the case of a bird included in Part 1B of Schedule 2—

(i) an owner or occupier of the land on which the bird was killed, injured or taken held an unsuspended section 16AA licence; or

(ii) the person who killed, injured or took the bird reasonably believed that an owner or occupier held an unsuspended section 16AA licence in relation to that land.

(1B) In subsection (1A), “permission” means permission from a person who has a right to give it.”.

(b) in subsection (3C)—

(i) in paragraph (a), the “and” immediately following sub-paragraph (ii) is repealed,

(ii) at the end of paragraph (b)(ii) insert “; and

(c) either—

(i) an owner or occupier of the land on which the bird was taken held an unsuspended section 16AA licence in relation to the land; or

(ii) the person reasonably believed that an owner or occupier held an unsuspended section 16AA licence in relation to that land.”.

(3) In section 26 (regulations, orders, notices etc.)—

(a) in subsection (2) at the end of paragraph (c) (as inserted by section 4(7)(a) of this Act) insert—

“(d) an order under section 22(1)(a) which adds any bird to, or removes any bird from, Part 1B of Schedule 2,”,

(b) in subsection (3), at the end of paragraph (c) insert—

“(d) an order under section 22(1)(a) which adds any bird to, or removes any bird from, Part 1B of Schedule 2,”.

(4) In section 27 (interpretation of Part 1), in subsection (1), after the definition of “sale” insert—

““section 16AA licence” has the meaning given by section 16AA(1).”.

(5) In schedule 2, after Part 1A insert—

“PART 1B

BIRDS INCLUDED IN PART 1 WHICH MAY ONLY BE KILLED OR TAKEN ON LAND WITH SECTION 16AA LICENCE

<i>Common name</i>	<i>Scientific name</i>
Grouse, red	Lagopus lagopus scoticus”.

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

(1) The Wildlife and Countryside Act 1981 is amended as follows.

(2) After section 16 insert—

“16AA Licensing: land on which certain birds may be killed or taken

(1) The relevant authority may, on the application of an owner or occupier of an area of land, grant a licence for the purposes of permitting the killing or taking of any type of bird included in Part 1B of Schedule 2 on the land (a “section 16AA licence”), if it is satisfied that it is appropriate to do so.

(2) In determining whether it is appropriate to grant a section 16AA licence the relevant authority must have regard in particular to the applicant’s compliance with a code of practice made in accordance with section 16AC.

(3) An application for a section 16AA licence must—

(a) be made to the relevant authority,

- (b) be made in such manner and form as the relevant authority may require,
 - (c) specify the area of land to which the licence is to relate,
 - (d) contain or be accompanied by such information as the relevant authority may require, and
 - 5 (e) be accompanied by payment of such reasonable fee as the relevant authority may require.
- (4) The relevant authority must publicise any requirements which are for the time being set under subsection (3)(b) to (e).
- (5) A section 16AA licence—
- 10 (a) must—
 - (i) specify the person to whom the licence is granted (“the licence holder”),
 - (ii) identify the area of land, by reference to a map, to which the licence relates,
 - 15 (iii) specify any conditions the relevant authority considers appropriate to attach to the licence, and
 - (b) may be granted or renewed for a period not exceeding 1 year.
- (6) Every section 16AA licence is subject to the condition that the licence holder must have regard to a code of practice made in accordance with section 16AC.
- 20 (7) Conditions which may be specified under subsection (5)(a)(iii) include, in particular, conditions drawn from a code of practice made in accordance with section 16AC.
- (8) The relevant authority may—
- 25 (a) modify a section 16AA licence at any time,
 - (b) suspend or revoke a section 16AA licence if—
 - (i) the licence holder—
 - (A) fails to comply with any conditions attached to the licence, or
 - (B) ceases to be in a position to ensure compliance with the conditions,
 - 30 (ii) the relevant authority is satisfied that the licence holder or a person involved in managing the land to which the licence relates—
 - (A) has committed a relevant offence on the land, or
 - (B) has knowingly caused or permitted another person to do so,
 - 35 (c) suspend a section 16AA licence if, despite the relevant authority not being satisfied as mentioned in paragraph (b)(ii)—
 - (i) there is an official investigation or proceedings in relation to a suspected relevant offence on the land to which the licence relates, and
 - 40 (ii) the relevant authority is satisfied that if the suspect in the investigation or (as the case may be) the accused in the proceedings

were to be convicted of the relevant offence, the relevant authority would then be satisfied as mentioned in paragraph (b)(ii).

(9) Where the relevant authority has modified, suspended or revoked a person's section 16AA licence—

(a) the relevant authority must give written notice to the person of the modification, suspension or revocation, and

(b) the modification, suspension or revocation may not take effect until the end of—

(i) the period of 14 days beginning with the day on which the notice is given, or

(ii) such other period as the relevant authority considers appropriate and specifies in the notice.

(10) A court which convicts a person of a relevant offence must notify the Scottish Ministers (or Scottish Natural Heritage if the functions under this section have been delegated to that body) of the conviction.

(11) In this section—

“official investigation” means an investigation by the Police Service of Scotland or any other body that has as one of its functions reporting, for consideration of the question of prosecution, offences alleged to have been committed,

“relevant authority” means—

(a) the Scottish Ministers, or

(b) where the Scottish Ministers have delegated (by virtue of section 16A) their functions in relation to section 16AA licences, Scottish Natural Heritage,

“relevant offence” means an offence under—

(a) Part 1 of this Act,

(b) the Protection of Badgers Act 1992,

(c) Part 3 of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716),

(d) section 1 of the Wild Mammals (Protection) Act 1996,

(e) the Hunting with Dogs (Scotland) Act 2023.

(12) The Scottish Ministers may by regulations modify the definition of “relevant offence” in subsection (11).

16AB Appeals relating to section 16AA licences

(1) A person may appeal to the appropriate sheriff against a decision of the relevant authority to—

(a) refuse to grant to the person a section 16AA licence,

(b) attach a condition to the person's section 16AA licence,

(c) modify, suspend or revoke the person's section 16AA licence.

- (2) An appeal under this section must be made within the period of 21 days beginning with the day on which the decision appealed against was made.
- (3) An appeal under this section is to be determined on the merits rather than by way of review.
- 5 (4) The sheriff hearing the appeal may consider any evidence or other matter, whether or not it was available at the time the relevant authority made the decision being appealed against.
- (5) On determining the appeal, the sheriff may—
- (a) dismiss the appeal, or
- 10 (b) give the relevant authority such direction as the sheriff considers appropriate in respect of the decision that is the subject of the appeal.
- (6) The determination of the sheriff may be appealed against only on a point of law.
- (7) In this section—
- 15 “appropriate sheriff” means—
- (a) in a case where the appellant resides in Scotland, a sheriff or summary sheriff of the sheriffdom in which the appellant resides, or
- (b) in a case where the appellant resides outwith Scotland, a sheriff or summary sheriff of the sheriffdom of Lothian and Borders, sitting at Edinburgh,
- 20 “relevant authority” means—
- (a) the Scottish Ministers, or
- (b) where the Scottish Ministers have delegated (by virtue of section 16A) their functions in relation to licences, Scottish Natural Heritage,
- 25 “section 16AA licence” is to be construed in accordance with section 16AA(1).

16AC Section 16AA Licence: code of practice

- 30 (1) The Scottish Ministers must prepare a code of practice for the purpose of providing guidance about managing land to which a section 16AA licence relates.
- (2) A code of practice may, in particular, provide guidance on—
- 35 (a) how land should be managed to reduce disturbance of and harm to any wild animal, wild bird and wild plant,
- (b) how the taking or killing of any wild birds should be carried out,
- (c) how predators should be controlled.
- (3) The Scottish Ministers must review the current code of practice by the end of every review period.
- 40 (4) Following a review, the Scottish Ministers may revise the current code of practice.

(5) Before making, reviewing or revising a code of practice the Scottish Ministers must consult—

- (a) Scottish Natural Heritage,
- (b) any other person they consider appropriate.

5 (6) Subsection (5)(a) does not apply during any period for which the functions under this section are delegated to Scottish Natural Heritage under section 16AD.

(7) As soon as practicable after the latest version of the code of practice is made, it must be made publicly available.

10 (8) In this section, “review period” means—

- (a) in relation to the first review, the period of 5 years starting on the day on which subsection (1) is complied with, and
- (b) each subsequent period of 5 years.

16AD Section 16AA Licence: delegation of power in relation to code of practice

15 (1) The Scottish Ministers may delegate the preparation, publication, review and revision of the code of practice under section 16AC to Scottish Natural Heritage.

(2) Any delegation must be made by written direction.

(3) The Scottish Ministers may modify or revoke a direction.”.

20 (3) In section 16A (delegation of licence-granting power: Scotland)—

(a) after subsection (1) insert—

“(1B) The Scottish Ministers may delegate their functions in relation to licences under section 16AA (other than the function in section 16AA(12)) to Scottish Natural Heritage.”,

25 (b) in subsection (3), in the opening words, after “delegation” insert “under subsection (1)”,

(c) in subsection (5), after paragraph (a) insert—

“(aa) Scottish Natural Heritage under subsection (1B) is to be made by written direction.”,

30 (d) after subsection (5) insert—

“(5A) A direction under subsection (5)(aa) may include provision allowing Scottish Natural Heritage to modify or revoke licences that were granted before the direction.”,

(e) in subsection (7), after “subsection (5)(a)” insert “or (5)(aa)”.

35 (4) In section 17 (false statements made for obtaining registration, identification number or licence etc.), in the opening words, after “section 16” insert “or 16AA”.

(5) In section 26 (regulations, orders, notices etc.)—

(a) in subsection (2), at the end of paragraph (d) (as inserted by section 6(3)(a) of this Act) insert “; and

- (e) regulations under section 16AA(12).”,
- (b) in subsection (3), at the end of paragraph (d) (as inserted by section 6(3)(b) of this Act) insert “; or
- (e) regulations under section 16AA(12).”.

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*Investigation of wildlife offences***8 Animal welfare inspectors’ powers**

- (1) The Scottish Ministers may by regulations modify the Animal Health and Welfare (Scotland) Act 2006 in order to add powers that a person may be appointed under section 49(2)(a) of that Act to exercise in connection with the investigation of offences under—
 - (a) Part 1 of this Act, and
 - (b) Part 1 of the Wildlife and Countryside Act 1981.
- (2) Regulations under this section are subject to the affirmative procedure.

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PART 2

MUIRBURN LICENSING

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*Requirement for muirburn licence***9 Requirement for muirburn licence**

- (1) A person must not, without reasonable excuse, make muirburn on any land except under and in accordance with a muirburn licence which has effect in relation to the land.
- (2) It is an offence for a person to—
 - (a) make muirburn in contravention of subsection (1), or
 - (b) cause or permit another person to make muirburn in contravention of subsection (1).
- (3) It is not an offence under subsection (2) for a person to make muirburn on peatland if the muirburn licence relating to that land specifies that the land is not peatland.
- (4) A person who commits an offence under subsection (2) 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).

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*Muirburn licences***10 Application for muirburn licence**

- (1) An owner or occupier of land may apply for a licence permitting muirburn to be made, for a purpose mentioned in subsection (2), on the land to which the application relates.
- (2) The purposes are—
 - (a) where the land to which the application relates is not peatland—
 - (i) managing the habitats of moorland game or wildlife,
 - (ii) improving the grazing potential of moorland for livestock,
 - (iii) conserving, restoring, enhancing or managing the natural environment,

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- (iv) preventing, or reducing the risk of, wildfires causing harm to people or damage to property,
 - (v) research,
 - (b) where the land to which the application relates is peatland—
 - (i) restoring the natural environment,
 - (ii) preventing, or reducing the risk of, wildfires causing damage to habitats,
 - (iii) preventing, or reducing the risk of, wildfires causing harm to people or damage to property,
 - (iv) research.
- 5
- 10 (3) An application under subsection (1)—
 - (a) must be made—
 - (i) to the Scottish Ministers, and
 - (ii) in such manner and form as the Scottish Ministers may require,
 - (b) must—
 - 15 (i) identify the land to which the application relates, specifying whether the land is or is not peatland,
 - (ii) specify for which of the purposes mentioned in subsection (2)(a) or, as the case may be, (b) muirburn is proposed to be made, and
 - 20 (iii) include or be accompanied by such other information as the Scottish Ministers may require, and
 - (c) must be accompanied by payment of such reasonable fee as the Scottish Ministers may require.
- (4) The Scottish Ministers must publicise any requirements which are for the time being set under subsection (3)(a)(ii), (b)(iii) or (c).
- 25 (5) The Scottish Ministers may, by regulations, modify the lists of purposes in paragraphs (a) and (b) of subsection (2) so as to amend, remove or add to the purposes for the time being mentioned in those lists.
- (6) Before making regulations under subsection (5), the Scottish Ministers must consult—
 - (a) Scottish Natural Heritage, and
 - 30 (b) such other persons as they consider likely to be interested in or affected by the licensing of muirburn.
- (7) Regulations under subsection (5) are subject to the affirmative procedure.
- (8) It is an offence for a person to knowingly or recklessly make any statement which is false in any material particular for the purpose of obtaining a muirburn licence.
- 35 (9) A person who commits an offence under subsection (8) 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).

11 Grant of muirburn licence

- (1) The Scottish Ministers may grant a licence permitting muirburn to be made on land to which an application under section 10 relates for a purpose specified in the application only if—
- 5 (a) they consider it appropriate to do so, having regard in particular to the applicant’s compliance with the Muirburn Code, and
- (b) where the land to which the application relates is peatland, they are satisfied that—
- (i) the making of muirburn is necessary for the specified purpose, and
- (ii) no other method of vegetation control is available.
- 10 (2) A licence granted under subsection (1) may permit muirburn to be made for the purposes mentioned in section 10(2)(a)(i) and (ii) only during the muirburn season.
- (3) The Scottish Ministers may, if they consider it appropriate to do so, grant a licence under subsection (1) in relation to only some of the—
- (a) land to which the application relates,
- 15 (b) purposes specified in the application.
- (4) In this Part, “muirburn licence” means a licence granted under subsection (1).

12 Muirburn licences: content and conditions

- (1) A muirburn licence must—
- (a) specify the person to whom it is granted,
- 20 (b) identify, by reference to a map, the land to which the licence relates,
- (c) specify—
- (i) whether the land to which the licence relates is not peatland or is peatland, and
- (ii) for which of the purposes mentioned in section 10(2)(a) or, as the case may
- 25 be, (b) the licence permits muirburn to be made, and
- (d) specify the period for which the licence is to have effect.
- (2) Every muirburn licence is subject to the following conditions—
- (a) the person to whom the licence is issued must have regard to the Muirburn Code,
- (b) a person intending to make muirburn on land to which the licence relates must—
- 30 (i) have regard to the Muirburn Code, and
- (ii) comply with the requirements of section 15.
- (3) The Scottish Ministers may, if they consider it appropriate to do so, specify in a muirburn licence additional conditions to which the licence is subject.
- (4) Conditions which may be specified under subsection (3) include, in particular—
- 35 (a) provisions of the Muirburn Code,
- (b) conditions as to the persons, or types of person, who may make muirburn on the land to which the licence relates,
- (c) conditions as to the reporting of activities carried out under the licence,

- (d) further conditions as to the giving of notice prior to the making of muirburn on the land to which the licence relates.
- (5) Different conditions may be specified under subsection (3) for different purposes, including in particular—
 - (a) different conditions for different times of the year, and
 - (b) different conditions for different land.

13 Modification, suspension and revocation of muirburn licence

- (1) The Scottish Ministers may—
 - (a) modify a muirburn licence at any time,
 - (b) suspend or revoke a muirburn licence if they are satisfied that a relevant person has committed an offence under this Part,
 - (c) suspend a muirburn licence if, despite not being satisfied as mentioned in paragraph (b)—
 - (i) there is an official investigation or proceedings in relation to an offence under this Part, and
 - (ii) they are satisfied that if the suspect in the investigation or, as the case may be, the accused in the proceedings were convicted of the offence, they would then be satisfied as mentioned in paragraph (b).
- (2) The Scottish Ministers must give the person to whom the muirburn licence was issued written notice of the modification, suspension or revocation of the licence.
- (3) Notice under subsection (2) must give reasons for the modification, suspension or revocation of the muirburn licence.
- (4) The modification, suspension or revocation of the licence may not take effect until the end of—
 - (a) the period of 14 days beginning with the day on which notice under subsection (2) is given, or
 - (b) such other period as the Scottish Ministers consider appropriate and specify in the notice.
- (5) A muirburn licence is of no effect while suspended.
- (6) A court which convicts a person of an offence under this Part must notify the Scottish Ministers (or Scottish Natural Heritage if the functions under this section have been delegated to that body under section 17) of the conviction.
- (7) In this section—

“official investigation” means an investigation by the Police Service of Scotland or any other body that has as one of its functions reporting, for consideration of the question of prosecution, offences alleged to have been committed,

“relevant person” means—

- (a) the person to whom the muirburn licence was issued,
- (b) any other person involved in managing the land to which the muirburn licence relates.

*Making muirburn***14 Muirburn Code**

- (1) The Scottish Ministers must prepare a code (the “Muirburn Code”) in relation to how to make muirburn safely and appropriately.
- 5 (2) The Muirburn Code may, in particular, include provision as to—
- (a) how the thickness of a layer of peat is to be determined,
 - (b) the times of day muirburn may be made,
 - (c) safety requirements when making muirburn.
- 10 (3) The Scottish Ministers must review and, if they consider it appropriate, revise the Muirburn Code by the end of each review period.
- (4) The Scottish Ministers must publish the Muirburn Code prepared under subsection (1) and any revised code under subsection (3) as soon as practicable after it is prepared or, as the case may be, revised.
- (5) The Scottish Ministers must, in preparing or reviewing the Muirburn Code, consult—
- 15 (a) Scottish Natural Heritage, and
- (b) such other persons as they consider likely to be interested in or affected by the making of muirburn.
- (6) Subsection (5)(a) does not apply during any period for which the functions under this section are delegated to Scottish Natural Heritage under section 17.
- 20 (7) In this section, “review period” means—
- (a) the period of 5 years beginning with the day on which section 9 comes into force, and
 - (b) each subsequent period of 5 years.

15 Notice of muirburn activity

- 25 (1) A person who intends to make muirburn must give notice in writing under this section to—
- (a) the owner of the proposed muirburn site (if different from the person making the muirburn), and
 - (b) any occupier of land situated within 1 kilometre of the proposed muirburn site.
- 30 (2) Notice need not be given to a person (“A”) under this section if A has given notice in writing to the person intending to make muirburn that A wishes not to be notified of any intention to make muirburn.
- (3) Where there are 10 or more occupiers of land situated within 1 kilometre of the proposed muirburn site, the person intending to make muirburn may, instead of giving notice under subsection (1)(b) to each occupier separately, notify those occupiers collectively—
- 35 (a) by placing a notice in at least one newspaper circulating in the area which includes the proposed muirburn site, or
- (b) by such other method as the Scottish Ministers may specify (whether in the Muirburn Code or otherwise).

- (4) The Scottish Ministers must publicise any method for the time being specified (otherwise than in the Muirburn Code) for the purposes of subsection (3)(b).
- (5) Notice under subsection (1) must—
- (a) be given not less than 7 days before the muirburn is made,
 - (b) identify the proposed muirburn site (or sites),
 - (c) inform the person to whom notice is given (“A”) that A may require the person intending to make muirburn to provide further information in relation to—
 - (i) the dates on or between which the muirburn is intended to be made,
 - (ii) the proposed muirburn site (or sites), and
 - (iii) the approximate extent of the proposed muirburn.
- (6) Where the owner of the proposed muirburn site or an occupier of land situated within 1 kilometre of the proposed muirburn site requests any of the further information mentioned in subsection (5)(c), the person intending to make the muirburn must make reasonable efforts to comply with the request no later than the end of the day before the muirburn is made.
- (7) Any notice required to be given to an owner of land under this section may be given to any person purporting to be authorised by the owner to receive the notice.
- (8) Any notice required to be given under this section may, as an alternative to being given by a method specified in section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010, be given—
- (a) by leaving it at an address to which it may be sent by virtue of subsection (2)(b) of that section, or
 - (b) where the identity of an occupier cannot, after reasonable inquiry, be ascertained by—
 - (i) addressing the notice to “Any occupiers of the land” (describing it), and
 - (ii) affixing it to some conspicuous object on the land.

16 Muirburn season

- (1) For the purposes of this Part, the muirburn season is the period of time from 1 October in any year to 15 April in the following year.
- (2) The Scottish Ministers may, by regulations, amend the dates in subsection (1) to extend or reduce the muirburn season.
- (3) The Scottish Ministers may make regulations under subsection (2) only if they consider it necessary or expedient to do so—
- (a) in relation to climate change, or
 - (b) for the purpose of—
 - (i) conserving, restoring, enhancing or managing the natural environment,
 - (ii) preventing, or reducing the risk of, wildfires causing harm to people or damage to property.

- (4) The power under subsection (2) (by virtue of section 25) to make different provision for different purposes includes in particular power to make different provision for—
- (a) different land (for example, land at different altitudes),
 - (b) different years.
- 5 (5) Before making regulations under subsection (2), the Scottish Ministers must consult—
- (a) Scottish Natural Heritage, and
 - (b) such other persons as they consider likely to be interested in or affected by the making of muirburn.
- (6) Regulations under subsection (2) are subject to the affirmative procedure.

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*Miscellaneous***17 Delegation**

- (1) The Scottish Ministers may delegate the following functions to Scottish Natural Heritage—
- (a) the application and granting of muirburn licences under sections 10, 11 and 12,
 - 15 (b) the modification, suspension and revocation of muirburn licences under section 13,
 - (c) the preparation, publication, review and revision of the Muirburn Code under section 14,
 - (d) the functions in relation to the methods by which notice of the making of muirburn may be given conferred by section 15(3)(b) and (4).
- 20 (2) Any delegation must be made by written direction.
- (3) Unless it specifies otherwise, a delegation under this section includes power to modify, suspend or revoke licences granted before the direction is made.
- (4) The Scottish Ministers may modify or revoke a direction.
- 25 (5) Any licence which is in effect at the time a direction is revoked continues in effect following the revocation of the direction (unless the revocation specifies otherwise).

18 Interpretation of Part

- (1) In this Part—
- 30 “making muirburn” includes the setting of fire to or burning of heather or other vegetation,
 - “Muirburn Code” is to be construed in accordance with section 14(1) and includes any supplementary material,
 - “muirburn licence” has the meaning given in section 11(4),
 - “muirburn season” is to be construed in accordance with section 16(1),
 - 35 “peat” means soil which has an organic content (that is, content consisting of living and dead plant and animal material) of more than 60%,
 - “peatland” means land where the soil has a layer of peat with a thickness of more than 40 centimetres.

- (2) The Scottish Ministers may, by regulations, amend the definition of “peat” and “peatland” in subsection (1).
- (3) Before making regulations under subsection (2), the Scottish Ministers must consult—
- 5 (a) Scottish Natural Heritage, and
- (b) such other persons as they consider likely to be interested in or affected by the making of muirburn.
- (4) Regulations under subsection (2) are subject to the affirmative procedure.

19 Repeals and consequential amendments

- (1) The Hill Farming Act 1946 is amended as follows.
- 10 (2) Sections 23 to 23C are repealed.
- (3) In section 24 (right of tenant to make muirburn notwithstanding terms of lease)—
- (a) in subsection (1), after “Act” insert “and Part 2 of the Wildlife Management and Muirburn (Scotland) Act 2023”,
- 15 (b) in subsection (4), after “Act” insert “and Part 2 of the Wildlife Management and Muirburn (Scotland) Act 2023”.
- (4) Sections 25 and 26 are repealed.
- (5) In section 26A—
- (a) in subsection (1), the words “or 26” are repealed,
- (b) subsection (2) is repealed,
- 20 (c) the title to the section becomes “**Giving of muirburn notices under section 24(2)**”.
- (6) Section 27 is repealed.
- (7) In section 27A—
- (a) in subsection (1), for “23 to 27 (including orders made under section 23B)” substitute “24 and 26A”,
- 25 (b) in subsection (2), for “23 to 27” substitute “24 and 26A”,
- (c) in subsection (3), for “23 to 27 (including orders made under section 23B)” substitute “24 and 26A”,
- (d) the title to the section becomes “**Crown application: sections 24 and 26A**”.

PART 3

MISCELLANEOUS AND GENERAL PROVISIONS

*Enforcement provisions***20 Powers of entry, search and seizure with warrant**

- 5 (1) A sheriff or justice of the peace may grant a warrant under this section if the sheriff or justice of the peace is satisfied—
- (a) by evidence on oath, that there are reasonable grounds for suspecting—
 - 10 (i) that an offence under section 1, 2 or 9 has been, or is being, committed at the premises, or
 - (ii) that there is evidence at the premises of the commission of an offence under section 1, 2 or 9, and
 - (b) condition A or condition B has been satisfied in relation to the premises.
- (2) Condition A is—
- 15 (a) admission to the premises has been refused or a refusal may be reasonably expected, and
 - (b) notice of the intention to seek a warrant has been given to the occupier of the premises, or the giving of such notice would frustrate the purpose for which the warrant is sought.
- (3) Condition B is—
- 20 (a) that the premises are unoccupied, or
 - (b) that the occupier is temporarily absent.
- (4) A warrant granted under this section remains in force until—
- (a) it is no longer required for the purpose for which it is granted, or
 - 25 (b) otherwise, the expiry of the period of 28 days beginning with the day on which it was granted.
- (5) A warrant granted under this section may authorise a constable to—
- (a) enter the premises by force if necessary,
 - (b) search the premises and any person found in the premises,
 - 30 (c) seize and retain any item or material found on the premises, or on any person in the premises, if the constable has reasonable grounds for suspecting that it may provide evidence of the commission of an offence under section 1, 2 or 9.
- (6) A constable may take to a place entered by virtue of this section any other person, or any equipment, as may be necessary for the purposes of assisting the constable (and such a person is to act under the constable's direction at all times).
- 35 (7) A constable who is authorised by a warrant granted under this section to seize and detain material may, if the material is only capable of being looked at, read, watched or listened to (as the case may be) after conversion from data stored in another form, require that the material—
- (a) be converted into such a form in a way which enables it to be taken away, or

(b) be produced in a form which is capable of being taken away and from which it can be readily converted.

(8) In this section, “premises” includes any—

- (a) land or building,
- (b) vehicle, vessel, trailer, aircraft or hovercraft,
- (c) tent or moveable structure,

(whether or not the premises are used wholly or mainly as a private dwelling).

(9) In this section and in section 21, “constable” has the same meaning as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012.

21 Further restrictions on power of entry

- (1) The power of entry under section 20 may be exercised only at a reasonable time of day.
- (2) On leaving any premises which a constable is authorised to enter under a warrant, the constable must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against entry as the constable found them.

22 Individual culpability where organisation commits offence

- (1) This section applies where—
 - (a) an offence under section 1 or 2 or Part 2 is committed by a relevant organisation, and
 - (b) the commission of the offence involves consent or connivance on the part of a responsible individual.
- (2) The responsible individual (as well as the relevant organisation) commits the offence.
- (3) For the purposes of this section—
 - (a) “relevant organisation” means an organisation listed in the first column of the table in subsection (4),
 - (b) “responsible individual” means, in relation to a relevant organisation—
 - (i) an individual falling within the corresponding entry in the second column of the table in subsection (4), or
 - (ii) an individual purporting to act in the capacity of an individual falling within the corresponding entry.
- (4) The table is as follows—

Relevant organisation	Responsible individual
company as mentioned in section 1 of the Companies Act 2006	director, manager, secretary or other similar officer
	member, where the company's affairs are managed by its members
limited liability partnership	member
other partnership	partner

Relevant organisation	Responsible individual
any other body or association	individual who is concerned in the management or control of its affairs

23 Crown application: criminal offences

- 5 (1) Nothing in this Act makes the Crown criminally liable.
- (2) The Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- 10 (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.

24 Crown application: powers of entry

- (1) A warrant granted under section 20 is exercisable in relation to Crown land specified in column 1 of the following table only with the consent of the person specified in the corresponding entry in column 2 of the table (the “appropriate authority”).

Crown land	Appropriate authority
Land an interest in which belongs to His Majesty in right of the Crown and which forms part of the Crown Estate (that is, the property, rights and interests under the management of the Crown Estate Commissioners)	The Crown Estate Commissioners
Land an interest in which belongs to His Majesty in right of the Crown and which forms part of the Scottish Crown Estate	The person managing the land
Land an interest in which belongs to His Majesty in right of the Crown other than land forming part of the Crown Estate or the Scottish Crown Estate	The office-holder in the Scottish Administration or, as the case may be, the Government department managing the land
Land an interest in which belongs to His Majesty in right of His private estates	The person appointed by His Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers
Land an interest in which belongs to an office-holder in the Scottish Administration	The office-holder in the Scottish Administration
Land an interest in which belongs to a Government department	The Government department
Land an interest in which is held in trust for His Majesty by an office-holder in the Scottish	The office-holder in the Scottish Administration

Crown land	Appropriate authority
Administration for the purposes of the Scottish Administration	
Land an interest in which is held in trust for His Majesty for the purposes of a Government department	The Government department

- (2) In subsection (1)—
- (a) the reference to His Majesty's private estates is to be construed in accordance with section 1 of the Crown Private Estates Act 1862,
 - (b) “Government department” means a department of the Government of the United Kingdom,
 - (c) “Scottish Crown Estate” means the property, rights and interests to which section 90B(5) of the Scotland Act 1998 applies.
- (3) It is for the Scottish Ministers to determine any question that arises as to who in accordance with subsection (1) is the appropriate authority in relation to any land, and their decision is final.

General provisions

25 Regulations

- (1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—
- (a) different provision for different purposes,
 - (b) incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) This section does not apply to section 27(2).

26 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may modify any enactment (including this Act).
- (3) Regulations under subsection (1)—
- (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act (including this Act), but
 - (b) otherwise, are subject to the negative procedure.

27 Commencement

- (1) This section and section 28 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

- (3) Regulations under subsection (2) may—
- (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

28 Short title

5 The short title of this Act is the Wildlife Management and Muirburn (Scotland) Act 2023.

Wildlife Management and Muirburn (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the management of wildlife through the prohibition of glue traps and regulation of other wildlife traps and the licensing of land on which certain birds are to be killed or taken; and for the licensing of the making of muirburn; and for connected purposes.

Introduced by: Michael Matheson
Supported by: Màiri McAllan
On: 21 March 2023
Bill type: Government Bill

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