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29 November 2023

Dear Convener,

SCOTTISH GOVERNMENT RESPONSE TO THE RURAL AFFAIRS AND ISLANDS COMMITTEE'S REPORT ON THE WILDLIFE MANAGEMENT AND MUIRBURN (SCOTLAND) BILL AT STAGE 1

I write in response to the Rural Affairs and Islands Committee's Stage 1 Report on the Wildlife Management and Muirburn (Scotland) Bill. I would like to thank the Committee for its careful and detailed consideration of the Bill.

Annexes A and B responds to each of the main recommendations in the Report, using the section headings and paragraph numbers in the report.

In addition to this, during the evidence session on the Bill with the Committee on 1 November, I stated that I would provide further clarification on several points in writing. This is set out in Annex C.

I hope that my response addresses the issues raised in the Committee's Stage 1 report and is helpful in your further consideration of the Bill. I look forward to debating the Stage 1 report on 30 November 2023.

However, I note that currently the committee is silent in its Stage 1 report on whether it supports the general principles of the Bill. Noting that it is unusual for a committee Stage 1 report to be silent on this, I do hope that the committee members will all be able to support the motion to agree the General principles at the Stage 1 debate.

I look forward to continuing to work with the Committee on this important Bill at Stage 2.

Yours Sincerely

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Gillian Martin

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Sections 1 – 3 Glue traps

49. It is clear to the Committee that glue traps do cause suffering to vertebrate animals. They are indiscriminate traps and can catch both the intended target, usually a rodent, but also unintended targets, such as small birds or other animals. The Committee has also heard about the inappropriate use of glue traps by some members of the general public and the additional suffering this can cause to these trapped animals. The Committee agrees, therefore, that members of the general public should be banned from using or purchasing glue traps. The Committee sets out its view on whether professional pest controllers should be banned from using or purchasing glue traps later in this section.

50. The Committee has heard that in settings where there is a high risk to public health, such as schools, hospitals and food preparation areas, quick and effective rodent control is essential. The Committee has also heard from industry representatives about the extent of the rodent problem, with “near pandemic levels of rodent infestations” in some parts of Scotland.

51. The Committee has received mixed evidence, however, regarding whether there are currently alternatives to glue traps that would provide as quick and effective a solution to a rodent problem in these high-risk settings. The Committee notes the policy memorandum and SAWC report emphasise that many Scottish local authorities already operate without glue traps. Although Scottish Government officials took a different view, the British Pest Control Association (BPCA) (and a number of individual pest control businesses in written evidence), however, told us there is not an alternative ‘last resort’ solution for these high-risk settings. The SAWC report states that “it is difficult to justify the use of glue traps, except possibly in the most significantly high-risk (to public health) settings, such as hospitals”. The SAWC told us it could not “recommend an alternative” but thought it feasible that “a couple more years should bring better solutions”.

52. The Committee shares the concerns expressed to it that a complete ban on the use of glue traps could, therefore, mean that any rodent problem in these high-risk settings might take longer to eradicate and that this may have health, social and economic consequences. As a result, the Committee believes it is less clear whether there is sufficient evidence to introduce a complete ban on glue traps, especially for these settings where there is a high-risk to public health.

53. The Committee notes the industry’s preference for a licensing scheme to permit its continued use of glue traps. Members also note the SAWC’s ‘fall-back’ recommendation for a fixed-term (maximum three year) “very strict” licensing scheme for pest controllers, while alternatives are investigated. Although the Scottish Government has said a licensing scheme would not be workable, the BPCA has challenged this conclusion, referring to BPCA members being licensed by NatureScot for gull management.

54. The Committee believes clarification on these points is required to inform the Parliament’s decision on the general principles. The Committee requests, therefore, that the Scottish Government provide further information about the alternative forms

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of rodent control appropriate for use in settings where there is an enhanced public health risk. The Committee also requests further information setting out why BPCA members could not be licensed for the use of glue traps when, according to the BPCA, its members are in receipt of existing NatureScot licences such as for gull management. The Committee asks for this clarification to be provided in advance of the Stage 1 debate.

I welcome the Committee's recommendation that the use of glue traps should be banned for members of the public.

In relation to the use of glue traps by professional pest controllers, there are a range of alternative rodent control methods available, including but not limited to, kill traps, such as snap traps or bolt traps and electric traps, live capture traps such as box traps, sonic repellent devices, rodent proofing devices, and toxins such as rodenticides.

In Scotland, some professional pest controllers have already decided not to use glue traps due to welfare concerns. And of the 14 local authorities who responded, 79% confirmed that they would never use glue traps.

It is worth noting that Scotland would join a growing number of nations and regions that are opting to ban glue traps, including the Republic of Ireland and the state of Victoria in Australia. Their use has also recently been banned in Wales.

In New Zealand, the use and sale of glue traps has been prohibited since January 2015, except under Ministerial approval. The table below on the New Zealand Ministry website shows the decline in the use and authorisations of glue traps since the restrictions were introduced.

Year	Approvals for use	Approvals for sale
2023	2	2
2022	2	2
2021	3	2
2020	2	2
2019	4	2
2018	6	2
2017	7	2
2016	9	2
2015	22	2

The [Pest Management Association of New Zealand](#) have said that since the restrictions have come in professional pest controllers have accepted it and "moved on".

I am therefore satisfied that based on all the available evidence that there are suitable alternative methods of rodent control available and that Scotland can follow the example of other countries and successfully introduce a full ban on the use of glue traps.

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However, I recognise that the industry here will need time to adapt to alternative measures, that is why we have been clear from the outset that the provisions will only be brought into effect following a suitable transition period.

In relation to the question “**why BPCA members could not be licensed for the use of glue traps when, according to the BPCA, its members are in receipt of existing NatureScot licences such as for gull management?**”.

As set out in the policy memorandum accompanying the Bill, there is no Standard Occupational Classification Code for pest controllers, no qualifications or licence are needed to work in the pest control industry and no regulatory authority currently oversees them. This would make it extremely difficult to determine who is suitable to be exempted from the ban on use or sale.

Without a regulatory framework in place, it would be very difficult for retailers to restrict sales only to professionals, thereby increasing the risk that members of the public would still be able to continue to purchase and use glue traps.

There are two major representative bodies for pest controllers in the UK, the British Pest Control Association (BPCA) and the National Pest Technicians Association (NPTA). However, there is no requirement for pest controllers to be members of either organisation or to adhere to any best practice guidance set out by these bodies.

While a large proportion of applications for gull licences for preserving public health or safety are made to NatureScot by pest controllers, they are not specifically issued only to pest controllers. This is because there is no legal requirement for the activities permitted within these licences to be carried out by specifically trained or accredited individuals. Any member of the public, provided they are the licence holder or have permission from the licence holder, can carry out the licensed activity.

While Gull Health and Safety Licences can be applied for by a pest controller on behalf of the licence holder, the pest controller cannot be the licence holder unless they are also the registered owner or manager of the premises in which the licensed activity is taking place. If a pest controller does apply on behalf of the licence holder, NatureScot cannot issue the licence until the licence holder has approved the application.

There is no requirement for a pest controller to carry out licensed gull control and because pest controller businesses are not currently regulated in the UK, there is no mechanism in Scotland to ensure that when a licence is granted, the person undertaking the work is a “professional pest controller”.

55. In the event of a ban on the use and purchase of glue traps being introduced, the Committee notes the suggested two-year transition period is not provided for on the face of the Bill. Furthermore, as commencement of that provision would be achieved by regulations under the laid-only procedure, there would be no opportunity for parliamentary scrutiny if this provision was commenced earlier, or later, than the two years. For this reason, the Committee recommends the two-year transition period is set out on the face of the Bill.

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As set out above, I am committed to a two year transition period before the provisions to ban the use of glue traps come into effect.

However, I have not set this out on the face of the Bill as I want to ensure that there is some flexibility around the exact date that the ban comes into force to ensure that everyone impacted by the ban has sufficient time to prepare.

56. The Committee notes the Scottish Government is seeking an exemption from the UK Internal Market Act 2020 to ban the sale of glue traps in Scotland. The Committee requests an update on the Scottish Government's progress in its response to this Stage 1 report.

Following on from the last update I provided to the Committee on the 29 September, the issue of an exclusion from the Internal Market Act 2020 will be discussed again at the next Inter-Ministerial group for environment, food and rural affairs, which is scheduled for 4 December 2023. I will provide the Committee with a further update following that meeting.

95. The Committee notes the historic link between raptor persecution and grouse moor estates. Furthermore, the Committee notes a key purpose for this Bill is to address the on-going persecution of raptors on moorland in Scotland, and specifically, to legislate to implement the recommendations of the grouse moor management group (GMMG). The Committee welcomes, and wholly supports, the unanimous condemnation of the unlawful killing of birds of prey expressed by everyone who responded to the Committee's consultation or who gave evidence.

96. The question before the Committee, however, is the extent to which raptors remain at risk from persecution on moorland and, if so, whether the proposals set out in the Bill would effectively address this. Moorland estates and land management organisations told the Committee that the incidences of raptor persecution are very low and, therefore, the obligations placed by the Bill are disproportionately onerous. Members of the GMMG, Police Scotland and some environmental, conservation and animal welfare organisations, however, told the Committee that raptor persecution remains a real issue on moorland and, therefore, the Bill's provisions are necessary to protect these birds of prey.

97. The evidence for recent crimes against raptors is extremely difficult to quantify as there is uncertainty about the number of crimes committed. The National Wildlife Crime Unit (NWCU) statistics for crimes found to have been committed against birds of prey on or near a grouse shooting estate vary across the nine-year period for which they exist. The Committee has been told, however, that the NWCU figures represent only the "tip of the iceberg", with many more crimes committed in remote locations, without witnesses. The Committee agrees, therefore, it is not possible to take a definitive position on the current extent of raptor persecution on moorland in Scotland.

98. The Committee notes the importance of using data about the recovery of raptor populations as a key metric, as highlighted by the GMMG, RSPB Scotland and Scottish Government officials amongst others. The Committee finds the lack of any information relating to this in the Bill's accompanying documents, therefore, rather remiss. The Committee believes further information about the levels of recovery of raptor populations on or in the vicinity of grouse moors would inform MSPs ahead of

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their Stage 1 decision whether to agree to the general principles of the Bill. The Committee recommends the Scottish Government provide further information on this point as a matter of urgency.

Please see Annex B.

Sections 6 and 7 – Licensing of land for killing and taking of certain birds

136. The Committee notes the ability for NatureScot, as licensing authority, to modify, suspend or revoke a wildlife trap or section 16AA licence on the basis of “robust evidence” would be key to the licensing schemes’ success as a deterrent to raptor persecution and other relevant wildlife offences. For this reason, it is critical for the credibility of the licensing schemes that the processes around the modification, suspension and revocation of licences are proportionate, fair and transparent.

137. Those who would be required to apply for licences under the Bill have expressed some concerns about how the processes around the modification, suspension and revocation of licences would work in practice. The Committee notes NatureScot will consult with stakeholders on, and then issue, detailed guidance about the licensing schemes. The Committee further notes that this detailed guidance may provide some of the reassurances sought by the moorland estate and land management organisations relating to their concerns about how the licensing schemes would operate in practice.

I agree with the Committee’s comments that the processes around the modification, suspension and revocation of licences must be proportionate, fair and transparent and this will be clearly set out in the guidance that accompanies the licence. NatureScot will work closely with stakeholders when developing the guidance who will be given the opportunity to feed into and comment on the draft guidance before it is published.

138. The Committee asks the Scottish Government, in its response to the Stage 1 report, to confirm the anticipated time period between the publication of the licence guidance and commencement of the Bill’s provisions. The Committee expects this time period would allow all stakeholders sufficient time to prepare, and apply for, the relevant licences.

Should the Bill be passed, the Scottish Government will set out its plans for commencement of all of the Bill’s provisions after it gains Royal Assent.

However, I can assure the Committee that we will ensure this time period to be sufficient to allow stakeholders to prepare, and apply for, the relevant licences. When developing the guidance, officials will discuss with stakeholders what an appropriate time period would be.

139. In relation to the provision for licences to be modified “at any time”, the Committee asks for clarification around the extent to which the terms of a licence may be modified and how NatureScot would engage with licence holders as part of this process. The key concerns around these provisions have been in relation to the suspension of licences where NatureScot is not satisfied a relevant offence has taken place. The Committee is therefore content with provisions of the Bill which allow licences to be suspended or revoked where the relevant authority is satisfied that a relevant offence has taken place.

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This will be set out in the guidance that accompanies the licensing scheme which will be developed with stakeholders.

140. Strong concerns have been raised with the Committee, however, by moorland estates and land management organisations relating to the provisions which would allow NatureScot to suspend a licence, despite it not being satisfied a relevant offence has been committed, in certain circumstances. These concerns were particularly made in relation to the section 16AA licence, where some prospective licence holders have expressed concerns that this provision could leave them vulnerable to vexatious complaints or unfounded suspicions of illegal activity and that such a suspension could lead to a loss of income at best, a loss of business and livelihood at worst.

141. The Committee recognises that the licensing schemes must have the provision – for those, hopefully rare, circumstances when a serious crime is suspected but has not yet been found to have been committed – to suspend a licence. The Committee also notes Professor Reid’s comments that this provision should not be too prescriptive as it needs to be flexible to apply to the different circumstances in which it may be used.

142. Members of the GMMG, NatureScot and the Minister have all sought to assuage these concerns and have given their view that NatureScot would not suspend a licence, despite not being satisfied a relevant offence has been committed, except in extreme circumstances. The Minister told the Committee this provision would only be used where “something so egregious and severe has happened”. NatureScot assured the Committee that it would ensure that any decisions to suspend would be made in accordance with its policies and procedures. Some stakeholders have not been satisfied by these assurances, however, and members consider that reassurances on the face of the Bill might help clarify the circumstances when NatureScot may seek to suspend a licence despite it not being satisfied that a relevant offence has been committed. The Committee requests the Scottish Government explore how this may be achieved in advance of Stage 2. In particular, the Committee asks the Scottish Government to consider and respond to concerns that the Bill does not put any time limits on suspensions, and explain why that would not be an appropriate legal safeguard to have on the face of the Bill.

The Bill, as currently drafted, does not provide a maximum time limit for suspending a licence because there is no need to provide this. This is because the maximum duration for a section 16AA licence for the taking of birds is one year. Therefore, it follows that the maximum suspension period for such a licence could not be greater than one year.

143. On a more minor point, the Committee believes the use of the term ‘official investigation’ suggests the possibility of an ‘unofficial investigation’. As Police Scotland confirmed that, “technically, there is no such thing as an unofficial investigation” the Committee believes the Scottish Government should liaise with Police Scotland to ensure the wording used in the Bill reflects police procedure.

I thank the Committee for its observation and will consider whether the term currently used in the Bill might need any further clarification, either on the face of the Bill or set out in the Explanatory Notes that accompany the Bill, ahead of Stage 2.

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Licensing schemes – relevant offences

156. The Committee notes the Scottish Government's intention for the range of relevant offences to relate to raptor persecution or other relevant wildlife crime related to grouse moor management. The Committee also notes NatureScot's view that the range of relevant offences is appropriate, given moorland is not managed in isolation but as part of a wider estate which encompasses a number of land uses. Other stakeholders representing moorland estates and land management organisations, however, have expressed concerns that the range of relevant offences is wider than raptor persecution.

157. The Committee agrees the range of relevant offences should reflect the purpose of the Bill. There is a diversity of views within the Committee about the proposed relevant offences set out in the Bill in relation to wildlife trap and section 16AA licences.

158. The Committee heard the suggestion put forward by RSPB Scotland that the Animal Health and Welfare (Scotland) Act 2006 be included as a relevant offence for the both licensing schemes. The Committee invites the Scottish Government to consider this in more detail and update the Committee on its thinking in advance of Stage 2.

I welcome the Committee's agreement that the range of relevant offences should reflect the purpose of the Bill. I acknowledge that there is a diversity of views on this, and that I have also listened carefully to all the suggestions made in this regard, including that of the RSPB, that offences under the Animal Health and Welfare (Scotland) Act 2006 should be included within the list of relevant offences for both the wildlife trap and section 16AA licences. I will consider this in more detail and update the Committee as it asks.

183. Moorland estates and land management organisations have expressed concerns about the requirement to display a licence number on traps and that this would personalise traps by linking them to an individual trap user. The Committee recognises this is the purpose of this provision. Trap users told members about their concerns that, in instances of trap vandalism or vexatious complaint, this requirement would place them at a greater risk of prosecution for trap misuse and, therefore, at a greater risk of having their licences suspended or revoked.

184. The Committee has heard directly from the Scottish SPCA, gamekeepers and other land managers about the animal welfare, moorland management and financial implications of trap vandalism and their call for a specific offence of trap vandalism to address this.

185. The Committee has heard from Scottish Government officials and the Minister that trap vandalism is already covered by existing offences. The Scottish Government asserts it is the difficulties of obtaining evidence, rather than the lack of a specific offence, which more often prevents securing a conviction.

186. The Committee considers, however, that the existing offences of vandalism or malicious mischief are framed primarily as crimes against property, rather than as animal cruelty. The Scottish SPCA supported a specific offence because of the animal

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welfare implications of trap vandalism. SLE supported a specific offence whereby the penalties for trap vandalism should equal those for mis-setting a trap.

187. Professor Reid told the Committee that the key question is whether it is “important to have a public signal of a specific named offence to justify something that is already criminal?” The Committee considers that, as part of a landmark Bill relating to wildlife management, there is a case for a specific offence of trap vandalism to protect animal welfare and asks the Scottish Government to reconsider its position on this point.

188. The Committee welcomes the Scottish Government’s discussions with Police Scotland and the COPFS seeking their view on whether a specific offence would be appropriate. Taking into account the above recommendation, the Committee looks forward to an update on these discussions in advance of Stage 2.

I welcome the Committee’s thoughtful approach to this issue. I note its conclusions at para 186 and 187 and can reassure them that following conclusion of our discussions with Police Scotland and the COPFS, we are actively considering this matter. I will of course update the Committee ahead of Stage 2.

189. The Committee takes the view that some people who vandalise traps will not understand the animal welfare implications of their actions. Other people may not understand that the traps they are vandalising have been legally set. The Committee recommends, therefore, that the Scottish Government explore with NatureScot what could be done to increase public awareness around the use of wildlife traps.

I accept this recommendation and will explore this further with NatureScot.

Sections 6 and 7 – Licensing of land for killing and taking of certain birds – specific issues

206. The Committee notes the general view expressed by most stakeholders, including potential licence applicants and NatureScot, that a longer licence period would be preferable to an annual licence. Grouse moor estate managers told the Committee that a longer-term licence would better suit the long-term investment and planning associated with grouse moor management. NatureScot told the Committee that a three to five year licence would correspond with similar licensing schemes and highlighted the flexibility it would have within the licence period to modify licences “at any time”. Accordingly, the Committee highlights the consensus around a longer licensing period and recommends the Bill is amended to reflect this.

I have listened carefully to the views expressed by stakeholders on this matter and I agree with the Committee’s recommendation, and note the consensus around a three to five year licence period. I will consider carefully which of these periods might be most appropriate and am happy to update the committee on my conclusions in this regard, before laying amendments at Stage 2 to extend the licensing period for the Section 16AA licences for the taking of red grouse.

Inserted section 16AB – appeals relating to section 16AA licences

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212. The Committee notes the uncertainty around the appeals process that would be in place for the licensing schemes, but especially section 16AA licences, and recommends this is clarified in the detailed guidance to be consulted upon, and then issued, by NatureScot.

I understand the concerns expressed by stakeholders and I accept this recommendation.

225. The Committee notes the concerns of moorland estates and land management organisations about the uncertainties created by this provision, given the code is not on the face of the Bill. The Committee also notes the NatureScot commitment to consultation and that a ‘one-size fits all’ approach is not expected.

226. The Committee also notes the opportunity provided by the code to increase understanding and knowledge sharing in relation to grouse moor management, noting the importance of good grouse moor management as a contribution to the climate and nature emergencies.

I note the Committee’s conclusions.

Sections 9 - 19 - muirburn licensing

262. The Committee recognises that muirburn has, to date, been subject to limited statutory oversight and notes the recommendations from the GMMG to increase the legal regulation of muirburn. The Committee also notes concerns expressed by some stakeholders about the weaknesses of the existing muirburn code and accordingly notes the GMMG’s recommendation to increase regulatory control of this.

263. The Committee also notes the complex, contested and inconclusive evidence around the impacts of muirburn and recognises the need to increase oversight over the practice to be able to take an adaptive approach as the evidence evolves. Strong views were expressed by stakeholders to the Committee both in favour and against the Bill’s proposals. The Committee agrees, therefore, with the principle of additional oversight but members have mixed views about whether this licensing scheme is appropriate.

264. The Committee acknowledges that muirburn is undertaken by a wide variety of practitioners in different contexts and urges the Scottish Government and the licensing authority to ensure that any proposed licensing scheme is workable and appropriate, including for crofters and other smaller actors.

The purpose of the muirburn licensing scheme is ‘to minimise risk of damaging effects and address potential benefits such as the reduction of fuel loads’ (Werritty Report). It will ensure that muirburn is being undertaken in an environmentally sustainable manner, with due consideration of all the possible consequences.

However, I agree that the proposed licensing scheme must be workable and proportionate for all practitioners of muirburn, including crofters and those who only undertake muirburn irregularly or on small scale. NatureScot will work closely with stakeholders to make sure that the licensing scheme takes into account the wide range of practitioners that carry out muirburn and the different contexts under which muirburn is undertaken.

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265. The Committee agrees with putting the muirburn code on a statutory footing to ensure muirburn is made safely and in line with best practice at all times. The Committee notes that muirburn practitioners would be required to have regard to the muirburn code as part of their muirburn licence conditions.

266. As the muirburn code would be central to the muirburn licensing scheme, the Committee believes that further information about the updated muirburn code would inform the Parliament's consideration of the Bill. Thus, the Committee asks the Scottish Government to provide further information about the detail, timeline and process for the next review of the muirburn code, noting the GMMG's recommendation that it be subject to expert peer review.

The process for developing the code of practice and associated licence guidance will involve consultation with stakeholders and the guidance will be part of an integrated package of supporting material including the Grouse Moor Code of Practice, an agreed framework on how a licence can be lost and a licensing application form. NatureScot has started work on these with input from a stakeholder Grouse Code Working Group, members of the Moorland Forum and an internal Grouse Moor Licensing Task Group, although it will not of course be possible to finalise these documents until after the Bill has passed and the final detail of all the provisions of the Bill is known.

I will keep the Committee updated on the development on this code.

267. The Committee notes the calls of some stakeholders, including the Scottish Fire and Rescue Service (SFRS), for muirburn practitioners to be trained to ensure compliance with the muirburn code. The Committee recommends training requirements be included in the code to ensure that practitioners have an appropriate level of knowledge and experience when making muirburn.

I agree with this recommendation and I can confirm that training requirements will be included in the revised muirburn code to ensure that practitioners have an appropriate level of knowledge and experience when making muirburn.

282. The Committee understands that the distinction made for burning on peatlands is intended to reflect the risks of undertaking any management activity which may damage this carbon store. The Committee notes the contested science around the effects of muirburn on peatland.

283. The Committee also understands that the legislation would continue to permit licences to be issued for muirburn on peatlands for environmental and wildfire purposes. The Committee urges the Scottish Government to ensure that it takes an adaptive approach to licensing muirburn on peatlands as the science evolves.

The Scottish Government is committed to ensuring that it takes an adaptive approach to licensing muirburn on peatlands.

That is why Section 10(5) of the Bill gives Scottish Ministers the power to via SSI to modify, add or remove the purposes for which a licence may be granted to undertake muirburn on both land which is not peatland, and peatland.

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As set out in the Delegated Powers Memorandum which accompanied the Bill, the purpose of that power is “*to enable the Scottish Ministers to adapt the approach to muirburn if new evidence emerges that a different approach is required. This power could be used to either relax or restrict further the purposes for which muirburn may lawfully be undertaken on peatland.*”

294. The Committee has heard that muirburn can be an important tool for managing wildfires and notes that a purpose for this on both peatland and non-peatland is retained. The Committee heard and agrees with, the broad support for muirburn being permitted, under licence, for the purposes of preventing or reducing the risk of wildfire. The Committee heard that muirburn itself does not often cause wildfires but is an important ‘tool in the box’ to reduce the fuel load which could cause a wildfire.

308. It is clear that there are a number of methods of vegetation control which are appropriate, or practicable, in different circumstances. The Committee notes, and welcomes, NatureScot’s commitment that applications to make muirburn on peatland, are a “joint consideration” of whether muirburn, rather than an alternative, is the most appropriate or practicable method. The Committee agrees with the IUCN Peatland Programme’s recommendation that the muirburn code should set out what methods of vegetation control should be considered as part of the application assessment.

I agree that it would be helpful for practitioners if the muirburn code were to set out what other methods of vegetation control should be considered as part of the application assessment and I will ask NatureScot and relevant stakeholders to take the Committee’s recommendations into account when developing the revised code.

309. The Committee asks the Scottish Government to reflect on the wording in Section 11(b)(ii) to ensure that it permits the licensing authority to respond flexibly to licensing applications.

I note this recommendation and I will reflect further on the wording in this section ahead of Stage 2.

326. The Committee understands that there are multiple definitions of peatlands and notes that the Scottish Government’s choice of 40cm is aiming to balance the views of a number of stakeholders with the intention of bringing a greater area of peatland under additional scrutiny.

327. The Committee understands that the Bill needs to include a definition of peat. The Committee also notes the regulation-making powers the Scottish Ministers would have to amend the definition and the higher level of parliamentary scrutiny any regulations would have under the affirmative procedure. On this basis, the Committee notes the Scottish Government’s reasons for deciding on a 40cm depth definition at this point but urges the Scottish Government to take a proactive approach in response to new evidence and data to ensure the definition keeps pace with scientific research.

328. The Committee notes concerns both from stakeholders about the practical implications of the definition for peatland, as well as concerns about the vulnerability of shallower peat areas which would be excluded from the 40cm depth definition. Muirburn practitioners unanimously raised concerns about the practical difficulties

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involved in measuring peat depth and the inadequacy of the available measuring tools and about using the available measuring tools. Practitioners also raised concerns that any errors when measuring peat depth might result in a loss of a muirburn licence and the Committee welcomes, therefore, Scottish Government officials' reassurances that genuine errors would not result in the loss of any licences.

329. Noting that existing peat depth maps are not sufficiently detailed for the purpose of a licensing scheme, and taking into account land managers' concerns around the methodology to be used to measure peatland, the Committee recommends that the Scottish Government and NatureScot provide further information in advance of Stage 2 about how they will work closely with stakeholders to ensure the practicality of the methodology. The Committee also calls for early guidance on the methodology to be published ahead of the licensing system coming into force, to ensure that stakeholders have sufficient time to undertake surveys and become confident with the approach.

I agree with the Committee's recommendations and can provide assurance that guidance on the methodology for measuring peat depths in relation to applications for muirburn licences will be published before the relevant provisions in the Bill are commenced. We will also ensure that stakeholders and muirburn practitioners will have sufficient time to become familiar with the methodology and to undertake any required surveys, ahead of the licensing scheme coming into force.

337. The Committee refers the Parliament to the conclusions and recommendations set out earlier in its report on this aspect of the proposed licensing schemes.

338. Specifically, the Committee recognises that the licensing schemes must have the provision – for those, hopefully rare, circumstances when a serious crime is suspected but has not yet been found to have been committed – to suspend a licence. The Committee also notes Professor Reid's comments that this provision should not be too prescriptive as it needs to be flexible to apply to the different circumstances in which it may be used.

339. The Committee acknowledges NatureScot's and the Minister's assurances to the Committee that a licence would not be suspended on the basis of a vexatious complaint and that NatureScot would ensure that any decisions to suspend would be made in accordance with its policies and procedures. The Committee asks the Scottish Government for further information about how it will in practice ensure licences would not be suspended on the basis of a vexatious complaint. The Committee also asks the Scottish Government to consider and respond to concerns that the Bill does not put any time limits on suspensions, and explain why that would not be an appropriate legal safeguard to have on the face of the Bill.

While I am not aware of any vexatious complaints being made to date against grouse moor estates, I recognise the genuine concern raised by land managers about the potential that this could happen in the future.

I can assure the Committee that decisions to suspend licences will be made in accordance with published policies and procedures, including human rights legislation, and that NatureScot will carefully consider all available evidence including evidence from Police Scotland before making a decision on whether to suspend a licence.

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The Bill, as currently drafted, does not provide for a maximum time limit on how long a muirburn licence can be suspended for, but I will reflect further on the Committees comments in this regard ahead of Stage 2.

However, there is already a framework in place setting out how NatureScot considers and applies restrictions, modifications and suspensions of general licences, [General licences for birds - restrictions | NatureScot](#).

Similar guidance will be produced for the new licences created by this Bill.

Muirburn season

344. The Committee notes RSPB Scotland’s comments relating to a possible overlap between the end of muirburn season on 15 April and the start of bird breeding season. The Committee also notes the Minister’s request for advice from Scottish Government officials and NatureScot on this issue and asks the Scottish Government for its response to these comments in advance of Stage 1.

Section 16(2) and (3) of the Bill contains provisions to enable Scottish Ministers to change the dates of the muirburn seasons by SSI in relation to:

- climate change
- for the purpose of conserving, restoring, enhancing or managing the natural environment; or
- for the purpose of preventing, or reducing risk of, wildfires causing harm to people or damage to property.

This power would enable Scottish Ministers to respond to any urgent need to amend the dates of the muirburn season, in order to mitigate the impact of such changes, ensuring that dates for the open season align with emerging weather patterns and wildlife breeding cycles. In particular, I note the concerns of stakeholders around overlap with the start of the breeding season for key ground nesting bird species.

As set out in my letter of [8 November](#) I have asked my government officials and NatureScot to provide further advice on this issue and I will update the Committee on this matter ahead of Stage 2.

391. The Committee notes the animal welfare concerns identified in relation to the use of snares – both those legally and illegally set – which the Scottish Government believes have not been wholly alleviated by the additional requirements and conditions attached to their use, including 2011 legal reforms and practice modifications in snare design. The Committee notes that it received no evidence or support for the continued use of ‘traditional’ snares over the course of its inquiry. Accordingly, the Committee agrees with the ban on the use of ‘traditional’ snares.

392. Land management and some conservation organisations have, however, highlighted the technical adjustments which have been made to traditional snare design and argue that these modified cable restraints do not cause significant harm to animals and pose a reduced risk to non-target species, and that their continued use is essential for predation control. The Scottish Government, animal welfare organisations and some conservation bodies, however, argue modified cable

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restraints continue to cause unacceptable levels of harm and risk of harm to target and non-target species and that there are more humane, alternative methods of predator control available. Animal welfare organisations, including SAWC, expressed serious doubts that the welfare impacts on animals caught by any cable snare and left for example exposed, injured and vulnerable could be mitigated. Some animal welfare organisations have described the promotion of modified snares as a ‘rebranding’ exercise.

393. Furthermore, land management and some conservation organisations highlight the extent to which they use snares – either traditional or modified cable restraints – for predation control over alternative methods, principally shooting. These organisations challenge the Scottish Government’s position that alternative methods could make up the shortfall created by a ban on the use of snares, particularly when shooting is not practical such as the times of year when there is dense cover, in bad weather or depending on topography.

394. Land management organisations and the GWCT told the Committee that limiting the options available to them to control predators would damage rural and farming businesses, for example sheep farming, as well as biodiversity and, in particular, ground-nesting birds. Animal welfare organisations stressed the need for a more fundamental shift towards a different approach to land management, although the GWCT highlighted this is a long-term goal and recommended the continued use of modified cable restraints in the short-term. NatureScot emphasised the complexity of understanding the relationship between predator control and ground-nesting birds and said the risk of removing snaring in relation to conservation had not been quantified. NatureScot also referred to alternative methods being available.

395. The Committee does not endorse the use of any method of predation control which causes unnecessary suffering to sentient animals or unacceptable risks to non-target species. The Committee is not able, however, on the evidence it has taken, to take a view on the use of modified snares (licensed or otherwise) in order to support rural livelihoods in the farming and grouse moor sectors.

396. The Committee considered the proposals put forward by land management organisations for a licensing scheme for modified cable restraints and notes the Scottish Government’s decision not to proceed with this proposal. The Committee appreciates the Minister confirming this decision, at the Committee’s request, in advance of members agreeing this Stage 1 report but would welcome more detail about the reasons for its decision in the Scottish Government’s Stage 1 response to this report.

In making the decision on whether to allow the use of HCRs under a licensing regime for the purpose of killing or taking a wild animal I have carefully considered both the welfare impacts of such a scheme on both target and non-target species alongside the potential impacts of such a ban on effective predator control.

As I set out in my evidence session to the Committee, snaring is already banned in most EU countries and has recently been banned in Wales. While the removal of snaring as a predator control option will reduce options for some land managers, few land managers rely heavily on it, and most land managers instead use shooting as their only or main method of

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fox or rabbit control. I am therefore satisfied that alternative methods of predator control are and will continue to be available.

While limiting the use of snare to humane cable restraints under a licence would have a beneficial effect on welfare outcomes, it would be an incremental improvement and it would not lead to a significant reduction in the adverse welfare outcomes experienced by animals caught in these devices. Importantly, it would not eliminate the issues around the capture of non-target species, including protected species such as badgers and mountain hares.

Having carefully considered all the available evidence, it is clear that snares, including humane cable restraints, cause unnecessary suffering to sentient animals and pose an unacceptable risk to non-target species. Continuing to permit their use under licence for the purpose of catching foxes, as set out in the proposal put to me by land managers, would not satisfactorily address these issues. Accordingly, I have made the decision to introduce a ban on the use of all snares, including humane cable restraints – as previously intimated to the committee in the time frame it requested.

I note what has been suggested around this being a precipitate decision, though I was keen to ensure that I complied with the Committee's request to provide it with my decision promptly.

That appears to ignore that the use of snares has been debated by parliament for many years, including during the passage of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020.

The decision to ban the use of snares is therefore not one that has been taken quickly or lightly and my decision takes into account the wealth of evidence and opinion that has been presented to Parliament over the years on this matter.

397. The Committee welcomes the Minister's commitment to the on-going monitoring of the effectiveness of a ban on the use of snares. The Committee expects, therefore, that, should an amendment to the Bill to ban the use of all snares be passed at Stage 2, a rigorous monitoring scheme would be put in place to evaluate the impact of the ban. The Committee recommends this monitoring scheme should cover both the impact to rural and farming businesses and the conservation impacts, including on ground-nesting birds. Noting in particular the concerns of stakeholders about localised impacts on vulnerable ground-nesting birds, the Committee asks the Scottish Government to consider, in advance of Stage 2, how land managers might be supported, in transitioning land management practices, to adapt practices and minimise any risks to biodiversity.

As I set out in my evidence session to the Committee I am committed to on-going monitoring of the impact of all of the provisions in the Bill, including the impact of the ban on the use of snares on both land managers and wildlife.

I agree with the Committee that, should Parliament agree to ban the use of snares, it will be important that land managers are supported to transition to other methods of predator control and to adapt their practices to minimise the risks to biodiversity. I have asked government officials and NatureScot to take this forward directly with stakeholders.

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398. In relation to vicarious liability, the Committee notes the Minister's comments that she is still considering "her final position" and asks for an update in her response to this report.

During Stage 3 of the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020, the Scottish Parliament decided to introduce vicarious liability for several offences relating to trapping and snaring. Given how recently Parliament introduced these offences my intention would be to retain vicarious liability in relation to snaring. However, I will of course listen carefully to anything further that is discussed and debated on this during the Bill process.

449. The Committee notes that the Scottish Government's proposals to extend Scottish SPCA inspectors' powers in relation to wildlife crime go beyond the recommendations of the independent taskforce which supported greater partnership working between the Scottish SPCA and Police Scotland and other bodies through PAW Scotland. The Committee notes however that the chair of the taskforce, Susan Davies, told the Committee this decision is a "sensible" approach.

450. The Committee welcomes the Scottish Government's clear statement that Police Scotland will retain primacy over wildlife crime investigations and notes the importance of any future protocol under which the proposed additional powers are used. It is essential that this protocol clearly sets out how new functions should work, including what reporting mechanisms will be in place and how the agencies – including the Scottish SPCA, NWCU, Police Scotland and COPFS will work together effectively. The Committee notes concerns about the new powers coming into effect before the protocol has been agreed and asks for the Scottish Government's views on how this situation will be avoided.

I understand these concerns and I can assure the Committee that the protocols, under which the Scottish SPCA will operate when using these new powers, will clearly set out how the new functions will work, including the limits of these functions, and what reporting mechanisms will be in place. The protocols will pay particular attention to how the Scottish SPCA, NWCU, Police Scotland and COPFS will work together – I share the Committee's view that this must be done effectively – and what the individual roles and responsibilities of each party are.

The Committee may be further assured to know that the relevant provisions in the Bill will not be commenced until the protocols have been agreed by all relevant parties, including Scottish Ministers.

451. The Committee notes there is potentially a lack of clarity around the scope and interpretation of the proposed new powers of Scottish SPCA inspectors, in relation to where they would be acting under existing powers under the Animal Health and Welfare (Scotland) Act 2006. The Committee asks for clarity about whether the proposed expansion of powers would cover the scenario raised by Susan Davies of where an animal has died in advance of Scottish SPCA inspectors attending and entering land or premises.

Under the Animal Health and Welfare (Scotland) Act 2006 the Scottish SPCA are only able to utilise their powers in relation to the investigation of cases involving live animals. This will remain the case with these new powers.

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If a situation were to arise whereby a Scottish SPCA inspector responded to a call relating to a live animal trapped in an illegally set trap, and by the time the Inspector arrived the animal had died, I would expect the Scottish SPCA inspector to then be able to utilise their new powers in line with the protocols agreed with Police Scotland, given they had already entered a property with good reason to believe that they were responding to an offence under their existing Animal Health and Welfare (Scotland) Act 2006 powers.

As stated, I expect that situations such as this will be clearly covered by the protocols which will set out how the Scottish SPCA will operate using these new powers.

452. The Committee notes a continued lack of clarity about whether a Scottish SPCA investigation would meet the definition of an official investigation under the Bill and, if so, at what point an investigation would be commenced. This is linked to a broader question of where an official investigation is triggered including by Police Scotland, discussed in other sections of this report. The Committee notes the Minister's comments that the Scottish Government is considering this matter further and asks for an update in advance of the Stage 1 debate.

As the Bill is currently drafted, an investigation by the Scottish SPCA would meet the definition of an official investigation under the Bill for the purposes of section 16AA(11).

I am still giving consideration to the wider operation of this provision and will update the Committee ahead of Stage 2.

453. The Committee notes that additional training will be required for those Scottish SPCA inspectors authorised to use the additional powers. The Committee recommends that the training requirements are included in the protocol and that the resource implications for the Scottish SPCA in the implementation of the additional powers are monitored.

I agree with the recommendation to include training requirements in the protocol and will ensure that is taken forward. I will of course monitor the resource implications for the Scottish SPCA in the implementation of the additional powers.

454. The Committee notes that further points for discussion may arise when the relevant amendments are lodged and that it might return to consider this issue further at Stage 2.

I will be happy to discuss any further points that may arise with the Committee.

Levels of recovery of raptor populations on or in the vicinity of grouse moors

The information on raptor populations is predominantly split in to NatureScot's Natural Heritage Zones (NHZs) which are biogeographical regions of Scotland that have been used for conservation frameworks for both golden eagle and hen harrier. Using NHZs allows any pressures to be assessed at a meaningful regional level and can provide a good basis to develop up to date assessments.

Data is collected predominantly through two means:

Annual survey data

Survey data collated is currently only available up to 2020. The Scottish Raptor Monitoring Scheme (SRMS) will be publishing a combined 2021 & 2022 report in December 2023 or January 2024 . The analyses in these reports are not by habitat or land use and so require further assessment to understand any impacts of persecution.

National survey data

These are geographically more comprehensive breeding surveys than the annual survey data but are only carried out periodically for each species.

Populations assessments of golden eagle and hen harrier

Golden eagle

Annual survey data

The SRMS annual reports for 2020 & 2019 indicated that in the main areas of the eastern & central Highlands and Southern Uplands, there is often low occupancy of checked territories and/or low numbers of pairs of golden eagle.

National survey data

Golden Eagles have been assessed as favourable at national level following the last survey in 2015. The entire breeding population is currently in Scotland. Since 2015, there has been some further recovery and the population is considered to have increased since, but no definitive figure is available. Previously, within the Framework Report 8, biogeographical regions covering parts of north, central and eastern Highland and the Southern Uplands had persecution listed as a significant constraint. These areas covered all main grouse moor areas and were considered in unfavourable status in the report. Whilst there has been positive change in some of these areas using the 2015 data, not all are favourable. In the Highlands, the Monadhliaths (NHZ10), with a regional eagle recovery plan there has been a further increase, but other parts of the central and eastern Highlands (mainly in NHZ11 Cairngorms Massif & NHZ12 North East Glens) despite some improvement still have a high proportion of vacant territories. The South Scotland Golden Eagle Project is on the cusp of having several pairs settle from their translocation work and the Southern Uplands could see significant improvement in status in the next few years. In the 2015 national survey the Eastern Highlands was the area showing least signs of recovery.

Hen Harrier

Annual survey data

The SRMS annual reports for 2020 & 2019 indicated that in the main areas of the eastern & central Highlands and Southern Uplands there is often low occupancy of checked territories and/or low numbers of pairs of hen harrier.

National survey data

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The Scottish population has shown a decline between last two national surveys, last in 2016 and under the previous hen harrier conservation framework criteria. UK status under Birds of conservation concern/GB IUCN paper from 2021 is unfavourable. Scotland holds 80% (estimated 460 pairs) of the UK population based on 2016 survey. A national survey has been carried out in 2023 but the results are not yet available. Once they are they will be used to provide an up to date assessment of the population. The JNCC hen harrier framework from 2011 indicated most mainland regions were unfavourable with persecution highlighted as a significant factor in 7 of these. Based on the 2016 national survey results, favourable status is unlikely to have improved in most areas.

The exception being NHZ3 (Outer Hebrides) where the species has extended its breeding range to Lewis & Harris (no breeding previously and not a significant grouse moor area) since circa 2015. The majority of hen harriers in Scotland breed in Orkney, the Outer & Inner Hebrides, parts of Sutherland and Argyll (circa 75% in 2016 national survey), all of which are not significant grouse moor areas. The 2016 survey paper showed a statistically significant decline of circa 57% in use of grouse moor since 2010 (previous national survey) by breeding harriers in Scotland.

The recent papers on the fates of satellite hen harriers ([Murgatroyd et al 2019](#) & [Ewing et al 2023](#)) show high losses either killed or disappearing (tag stopped no malfunction category) resulting in very low survival rates. These papers showed correlations with grouse moor areas in both southern and north eastern Scotland, however, the Murgatroyd paper also highlighted the grouse moor areas in northern England. The latter is important to Scotland as the hen harrier population is partly migratory with many Scottish birds heading south to winter in England and the near continent, these birds pass through northern England in autumn and early spring and are at risk of persecution there, thereby impacting the Scottish breeding population. As it is expected that the low survival rates of satellite tagged birds are similar for non-tagged birds, this has the potential to have a population limiting impact.

Peregrine:

General status

No criteria is set for favourable status at a Scottish level but the population is still large, though declining between last two national surveys (most recent in 2014 estimating 523 pairs in Scotland). The UK status under Birds of conservation concern/GB IUCN paper from 2021 is favourable largely due to big increases in lowland England. Much of the decline in Scottish peregrines is in the north and west and not considered related in those areas to persecution.

Information on status/persecution in relation to grouse moors

The 2014 national survey paper discusses several key aspects including higher rates of occupancy and productivity in many coastal and lowland areas compared to inland upland areas on mainland Scotland. Illegal persecution is considered a factor for this and a paper by Northeast Raptor Study Group in 2015 is cited in the 2014 survey paper as it evidences significantly lower occupancy and success in upland grouse moor areas compared to lowland/coastal birds for an area that covers parts of NHZs11 & 12. Overall, though the Highland population may be stable. The level of impact of persecution elsewhere is more difficult to determine due to other factors, however, the 2014 paper highlighted generally low occupancy across many of the NHZs with grouse moor areas in them.

Note the species is also subject to some persecution from other sources pigeon fanciers and theft for falconry.

Other Raptors

Red Kite: Slow growth of the North Scotland red kite population has been well documented in papers, with expansion away from its core area around the Black Isle hampered by persecution of dispersing birds especially south towards grouse moor areas. Though it should be noted that not all persecution of this population has been grouse moor related. There has been spread in recent years (as per Scottish Raptor Monitoring Scheme annual reports) showing birds are now settling more

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widely including southwards down the Great Glen and east into some of the other major river valleys, the population is still relatively small and given it has a relatively high breeding success it would be expected to expand faster.

Goshawk: Primarily a forest/woodland species though it will hunt in the open and where suitable breeding woods are present close to grouse moors. The population in Scotland is still small and growing relatively slowly. Note the species is also subject to some persecution from other sources including lowland game management.

White-tailed eagle: There has been very little persecution in West Scotland where the core population has re-established. Several birds (most satellite or radio tagged) have been recorded persecuted or stopped no malfunction in the central and eastern Highlands. Satellite tag data suggests some birds are drawn to grouse moor areas due to the abundance of prey. No analysis has been done but it is possible that persecution could be slowing re-establishment of the species in the eastern and central Highlands.

Other raptor and owl species do get recorded as persecution victims on grouse moor estates (e.g. recent conviction regarding shooting of a sparrowhawk on Moy estate) but there is either no or very limited evidence for any systematic (i.e. some of these species are not considered a significant threat to grouse and not targeted in the same way other species are but still get killed as part of illegal activities) or population level limiting persecution (e.g. buzzards do get persecuted but the large population size of the species means risk of an effect on the population is very low).

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The welfare concerns caused by legally set snares

There is significant evidence to show that even when snares are set in accordance with current legislation/best practice they can lead to unacceptable levels of suffering. This is due partly to the fact that they are, by their nature, indiscriminate, and as such they pose an unacceptable risk to non-target species, including wildlife and domestic species such as cats.

In 2021, the then Minister for Environment and Land Reform asked the Scottish Animal Welfare Commission to undertake a review of the welfare implications of legal snaring. The report found that the welfare harms associated with legally set snares include:

- Preventing the animal eating and drinking normally, leading to dehydration and starvation
- Exposure to the elements
- External and internal injuries
- Struggling to escape the snare may result in exertional or capture myopathy
- Self-mutilation and, in rabbits, tonic immobility
- Oral and dental injuries from trying to chew free from the snare
- Predation or injury of the trapped animal
- Death from exhaustion or asphyxiation as a result of strangulation
- Psychological impacts including fear, distress, anxiety, breathlessness and stress associated with trying to escape from the snare.

In addition to the SAWC report, the Defra/GWCT study '*Determining the Extent and Use of Humaneness of Snares in England and Wales*¹ highlighted a number of adverse welfare conditions caused by legally set snares and what are now called 'humane cable restraints'.

Defra/GWCT report: Scottish legal snares plus an additional swivel

For the first study in this report, an experienced technician used a snare which met the criteria for a fox snare under current Scottish legislation plus an additional swivel.

Over a period of ten days, eighteen animals were captured, 10 of which were still held in the snares at the time of inspection. The table below provides a summary of the capture events from this study:

Species	Fox	Hare	Badger
Captures	3	13	2
Escapes (snare intact)	0	5	0
Escapes (component failure)	1	0	2
Captured and held	2	8	0
Alive, uninjured	2	3	0
Severe Injury/Dead	0	3	0
Predated	0	2	0

¹ <https://sciencesearch.defra.gov.uk/ProjectDetails?ProjectId=14689>

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The injuries on the two foxes that were held were haemorrhages in the area of the neck where the snare was positioned. These haemorrhages extended from the surface muscle into the deeper muscle. They were assessed as moderate in one case and mild in the second by the veterinary pathologist.

Three hares were found dead during inspections, two by predation. Of the five hares that were found alive when the snares were inspected, two were euthanised due to their condition/injuries. The first had a severe injury to its eye and the second was lying immobile but still conscious. Three hares that were captured and held were released. Before release, a thorough examination was undertaken. No injuries or swellings were found on any of these hares. The snare was positioned round the neck of two hares and the abdomen of the third. The extent of any injuries to the escaped animals could not be determined.

Defra/GWCT report: humane cable restraints

The report also considered a study on the welfare impact of what has been called a 'humane cable restraint', i.e. a snare with:

- A larger loop of 27.5 cm
- A breakaway device
- Two swivels

1,704 snare-nights were completed using these snares from 2 November 2009 to 18 May 2010 with forty-four capture events recorded during this time. The following species were captured: fox, badger, brown hare, pheasant, domestic dog, and deer of an unknown species.

Species	Fox	Hare	Badger	Other
Captures	14	7	14	9
Escapes (snare intact)	0	5	9	7
Escapes (component failure)	0	0	0	0
Captured and held	14	2	5	2
Alive, uninjured	14	2	5	2
Severe Injury/Dead	0	0	0	0
Predated	0	0	0	0

Whole body necropsy was carried out on 14 foxes and two hares. Injuries attributed to the snare ranged from subcutaneous oedema to muscle haemorrhage. Ten out of 14 foxes had oedema associated with the location of the snare on the body; this was classified as moderate in two cases and mild in eight cases. One fox had a moderate haemorrhage in a muscle attributed to the snare and two had mild lung oedema. Only four foxes had no injuries attributed to the snare. The most severe injury attributable to the snare was found on the one cub that was caught. A haemorrhage extended deep (pathologist's description) into the right temporal muscle (a small muscle on the head) and was associated with moderate oedema in the surrounding area.

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The snare was positioned around the abdomen of one captured hare and around the neck and shoulder of the second captured hare. The second hare had five areas of fur loss with skin reddening. The areas of skin loss were positioned in the vicinity of the snare wire on the hare's shoulder and on the upper hind leg. The largest area affected was on the hind leg and measured 5 x 3.5 cm. This hare had two teeth like perforations in the skin of one shoulder. Extensive mild to moderate haemorrhagic oedema was also found around the neck and shoulder.

The study makes the following comment regarding psychological distress:

“The current trials and previous trials indicate that escape activity does occupy a proportion of a captured animal's time, and it can be suggested that all restrained animals are experiencing some level of fear and distress. However, although it is generally accepted that trapping per se does cause some fear and distress, especially for prey animals in the vicinity of their predators, as yet, there is no robust method using behavioural indicators to objectively determine what level this is and whether or not it is acceptable (Talling & van Driel 2009).”

The prevalence of homemade snares

The Scottish Government does not hold information on the percentage of snares used in Scotland which are homemade rather than purchased. However, the Defra report referenced above also included a survey of 130 snare operators on snaring practices in England and Wales. This survey found that:

- For fox snares: 20% of gamekeepers and 9% of farmers used homemade snares. Where snares were purchased from commercial outlets, 3% of them modified their snares before use.
- For rabbit snares, 20% of gamekeepers and 17% of farmers made their own snares. Where snares were purchased from commercial outlets, 7% of users modified them before use.

The quantitative information I have considered

My officials and I have considered a wide range of information concerning the use of snares in Scotland. This includes, but is not limited to:

- [Determining the extent of use and humaneness of snares in England and Wales a report submitted to Defra](#)
- A survey from the National Farmer's Union (summarised below)
- [A report by the Rural Environment Land Management Group](#)
- [Scottish Animal Welfare Commission – trapping of terrestrial wild mammals using snares: position paper](#)
- [Snaring review – February 2022](#)
- [Wildlife Management and Muirburn \(Scotland\) Bill - use of snares and powers of Scottish SPCA inspectors: consultation analysis](#)
- The consequences of a snaring ban for rural Scotland - joint industry briefing

I have included a summary of some the key pieces of information in the above list. Please note that, due to the fact that land managers are not required to provide any returns on the

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quantity and method of predator control that they use, there are some gaps in the quantitative data that the Scottish Government holds on snaring.

Determining the extent of use and humaneness of snares in England and Wales a report submitted to Defra

The survey referenced above also found concerning levels of non-target species were routinely being captured by snares. The survey found that, among fox snare users, 60% stated that they had caught non-targets when using fox snares. The non-target species most commonly caught in fox snares were badger (25% of operators had caught a badger in a snare), brown hare (21%), and deer (16%). For rabbit snares, 29% of rabbit snare users cited cat as a non-target species caught in their rabbit snares and one respondent cited polecat.

GWCT research

The GWCT currently estimates the current British fox population as 240,000 adults in spring, to which 425,000 cubs are added annually. To keep the population stable, 425,000 foxes must die each year. In both rural and urban areas, mortality caused by man predominates. Gamekeepers probably kill 70,000-80,000 annually. Additional culling by other interested groups is difficult to quantify. In urban areas, where 14% of foxes live, road traffic is the chief cause of death.²

The National Farmers Union Scotland (NFUS) Survey

The NFUS conducted a survey of members to inform the current position on snaring, a summary of this is below:

- The survey was completed by 61 members. 28 members responding to the survey stated that snaring is absolutely necessary to their business with a further 13 members stating they frequently rely on snaring, another 13 sometimes relying on snaring, 3 rarely using it and 4 saying they did not use snaring at all.
- The survey stated there are a significant number of farms that do not undertake snaring themselves, but knowingly or unknowingly benefit from snaring taking place on neighbouring farms or estates.

Taking all the evidence into account, I have concluded that:

- Snaring can be more efficient than shooting in some circumstances, however shooting remains the predominant method of predator control.
- Even when best practice is followed, snaring is indiscriminate and a high number of non-target species are captured regardless of the type of snare used.
- The risks of adverse welfare impacts are unacceptable.

The proportion of foxes that are snared rather than shot

There is currently no requirement for land managers to report on the number of foxes that they kill each year, nor on the method used, so the Scottish Government does not hold exact information on this.

However, the Bonomy Report reported that:

² <https://www.gwct.org.uk/wildlife/research/mammals/fox/>
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“Over the country as a whole a large majority of foxes killed are shot, e.g. by lamping, by individual landowners, estate managers, farmers and gamekeepers without the assistance of a pack of hounds, and far fewer are snared.”

This evidence is supported through our discussions with stakeholders, where it has been made clear that shooting remains the predominant method of fox control.

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