

Stage 1 report on the Wildlife Management and Muirburn (Scotland) Bill

This report sets out the Rural Affairs and Islands Committee's consideration of the Wildlife Management and Muirburn (Scotland) Bill at Stage 1.

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Introduction

The Bill

1. The [Wildlife Management and Muirburn \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 21 March 2023 by Michael Matheson, Cabinet Secretary for Net Zero, Energy and Transport.
2. The policy memorandum states—
 - ” The Wildlife Management and Muirburn (Scotland) Bill (“the Bill”) is being introduced to address raptor persecution and ensure that the management of grouse moors and related activities are undertaken in an environmentally sustainable and welfare conscious manner. The Bill will do this by implementing the recommendations of the independent review of grouse moor management.

The Bill will introduce measures to:
3. The policy memorandum also states that the Scottish Government intends to bring amendments forward at Stage 2 relating to a ban on snaring and section 8 (additional powers for Scottish SPCA inspectors).
4. Information about the Bill is set out in the [policy memorandum](#). Further and more detailed information about the Bill's provisions is set out in the [SPICe Bill briefing](#).

Overview of scrutiny at Stage 1

5. The Parliamentary Bureau referred the Bill to the Committee for Stage 1 scrutiny on 28 March 2023. The Committee considered and agreed its scrutiny approach on 29 March 2023 and a Stage 1 deadline of Friday 6 October was agreed by the Parliament on 19 April 2023.
6. The Committee ran a call for views on the Bill between 31 March and 5 May 2023 and received 5,696 submissions in total, 100 from organisations and 5,596 from individuals. A [summary document of all responses](#) was published, with the [responses from organisations](#) published in full.
7. The Committee took evidence from the Scottish Government bill team and Professor Werritty and two other members of the Grouse Moor Management Group. The Committee then held three roundtable discussions with stakeholders, each focusing on different sections of the Bill and concluded its evidence taking with the Minister for Energy and the Environment. Further information about the Committee's evidence taking can be found on the [Committee's bill webpage](#).
8. In addition, the Committee visited Roxburghe estate in the Scottish Borders to visit moorland which is managed for grouse moor shooting and which uses

wildlife traps and muirburn as part of its moorland management. The visit was co-ordinated by Scottish Land and Estates.

9. The Committee thanks all respondents for their written evidence and the witnesses for giving evidence.
10. When the Bill was introduced, with the Scottish Government's intention to bring amendments forward at Stage 2 relating to a ban on snaring and section 8 (additional powers for Scottish SPCA inspectors), the Committee agreed it would take evidence on these provisions at Stage 2. In the event, however, the Scottish Government announced its proposals before the end of Stage 1 and the Committee agreed that it wanted to take evidence on these proposals before taking a view on the general principles of the Bill.
11. As a result, the Committee sought an extension to the Stage 1 deadline from the Parliamentary Bureau. The Parliament agreed a revised deadline of Friday 1 December on 27 September 2023.
12. The Committee took evidence on the proposal to ban snaring and to give Scottish SPCA inspectors additional investigatory powers from the Minister on 1 November and stakeholders on 8 November.

Consideration by the Finance and Public Administration Committee

13. A [financial memorandum](#) (FM), setting out the costs expected to be associated with implementing the Bill, was published to accompany the Bill.
14. As with all bills, the Finance and Public Administration Committee invited written evidence on the FM and 14 responses were received. The [responses to the Finance and Public Administration Committee's call for views on the FM can be found on that Committee's webpages](#).
15. The Committee agreed to forward the submissions received to the Rural Affairs and Islands Committee and to take no further action.

Consideration by the Delegated Powers and Law Reform Committee

16. The Bill confers ten powers to make subordinate legislation on the Scottish Ministers and a [delegated powers memorandum](#) (DPM) was published to accompany the Bill.
17. The DPM was considered by the [Delegated Powers and Law Reform Committee \(DPLRC\), which reported on the Bill on 15 June 2023](#). The DPLRC's conclusions and recommendations are reflected in the main body of this report.

Sections 1 to 3 – Glue traps

18. Sections 1 to 3 relate to the use and purchase of glue traps. The policy memorandum describes glue traps as—
 - ” ... devices used for a variety of purposes, primarily to control ground rodents. The glue traps work by placing them along areas where rats and mice are likely to frequent. Once the animal steps onto the board it is then firmly stuck to it and is unable to free itself. Once an animal is captured, the intention is that the glue trap can be retrieved and the animal dispatched.
19. Section 1 would make it an offence to use a glue trap to kill or take, or cause bodily injury to, any animal other than an invertebrate. Section 2 would make it an offence to purchase a glue trap in Scotland. Section 3 would make provision for the forfeiture and disposal of any glue traps relating to any section 1 or 2 offences.
20. Sections 1 to 3 would be brought into force by regulations which would be made under the laid-only procedure. The policy memorandum states the Scottish Government intends to delay the commencement of these provisions to allow a transition period “in recognition that individuals and professional pest controllers who currently use glue traps will need time to adapt to and develop alternative methods of rodent control”. The policy memorandum does not set out the proposed length of this transition period, but the consultation on the bill proposed two years.
21. The policy memorandum refers to the Scottish Government’s intention to ban the sale of glue traps, as well as their use and possession. The policy memorandum highlights the UK Internal Market Act 2020 which provides that any goods that are lawfully sold in one part of the UK can also be sold in other parts of the UK and states that the Scottish Government must seek an exemption from the internal market to ban the sale of glue traps in Scotland. If an exemption is granted, the Scottish Government would introduce amendments at either stage 2 or 3 of the legislative process to ban the sale of glue traps in Scotland.

Animal welfare concerns regarding the use of glue traps

22. The policy memorandum details there has been “significant and ongoing concern” regarding the welfare implications of the use of glue traps, as they can “result in prolonged suffering and are indiscriminate in nature”, and can unintentionally trap non-target species.
23. In response to concerns raised by animal welfare groups and a [petition PE1671 to the Scottish Parliament calling for a ban on the sale and use of glue traps](#), the Scottish Government sought advice from the Scottish Animal Welfare Commission (SAWC).

24. On 23 March 2021, the [SAWC published a report on the use of rodent glue traps in Scotland](#). The report acknowledged there are “certain high-risk situations that clearly require effective and rapid pest control” but was “not convinced that evidence exists supporting the view that glue traps are genuinely the only method of last resort”. The report considered the efficacy of alternative methods of control and cites a number of examples.
25. The SAWC report acknowledged the animal welfare impacts of the use of glue traps. It concluded that “there is no way that glue traps can be used without causing animal suffering” and that they pose “an undeniable risk of capture of non-target species”.
26. The SAWC stated its “preferred recommendation” was “that the animal welfare issues connected with the use of glue traps would justify an immediate outright ban on their sale and use”. It also set out an alternative, ‘fall-back’ recommendation of a ban on individuals’ use and purchase of glue traps and the introduction of a licensing scheme for professional pest controllers’ use, to be reviewed after three years. This alternative recommendation was made in response to some agencies’ suggestion that, in some cases, there is no alternative to the use of glue traps as a last resort.
27. The [Scottish Government, in response to an oral question, announced on 20 January 2022 that it would legislate to ban glue traps in order “to end the cruel practice of setting glue traps”](#). The policy memorandum states the decision not to implement an interim licensing scheme was taken “as the animals would suffer regardless of who set the trap, they may still pose a risk of capture of non-target species and there are also issues around defining a pest controller”. The policy memorandum also set out that alternative methods of rodent control are available and that some professional pest controllers already no longer use glue traps due to animal welfare concerns.
28. The policy memorandum details that legislation in 2022 regulated the use glue traps in England, banning their use by individuals and introducing a licensing scheme for professional pest controllers. This legislation will come into force in April 2024. The use of glue traps was made an offence in Wales in the Agriculture (Wales) Act, passed on 27 June 2023.

Issues raised during the Committee’s consideration

29. In responses to the Committee’s consultation, stakeholders acknowledged the animal welfare concerns linked to glue traps but there were, however, mixed views about whether they should remain available for use by professional pest controllers in settings where rodent infestations can pose a high-risk to public health, such as hospitals, schools and food production areas.
30. A number of animal welfare stakeholders supported a complete ban, including the Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA), OneKind and the British Veterinary Association (BVA), on the basis of animal welfare concerns and the indiscriminate nature of glue traps.

31. In its written evidence, the BVA cited research which highlights the extreme welfare impacts of glue traps which can include dehydration, hunger, distress, torn skin, broken limbs, hair removal, suffocation, starvation, exhaustion, and self-mutilation. It supported an integrated approach to rodent management, focusing on prevention, monitoring, and humane control and the use of deterrents, such as snap traps, electrocution traps, and cyanide gas as more humane alternatives to glue traps.
32. Both the BVA and OneKind supported further research into, and the development of, alternative methods of rodent control.
33. Scottish Government officials set out the background to the Scottish Government's decision to ban glue traps at the Committee's meeting on 31 May 2023. Officials told the Committee that the "primary driver" for the proposed ban was the SAWC's report but other factors included the "considerable difficulties" in introducing a licensing scheme for an unaccredited industry and the "plenty of satisfactory alternatives for rodent control".
34. Officials confirmed their belief that the alternative methods of rodent control would be appropriate for high-risk settings such as food preparation areas.

An offence for an individual to use or purchase a glue trap

35. The Committee discussed the animal welfare implications of the use of glue traps with stakeholders at its roundtable discussion on 14 June 2023. SAWC highlighted the consensus amongst respondents to its report "that glue traps cause severe and generally prolonged animal suffering".
36. The Scottish SPCA agreed that glue traps should "100 per cent be banned for general public use". The Scottish SPCA went on—



I must admit that the general public has caused concerns for us. Not everybody has the confidence and wherewithal to destroy an animal once it has been caught. We have had live animals on glue traps being put in bins or being drowned. They are horrendous things to use, and they are totally indiscriminate.

A licensing scheme for pest control professionals to use or purchase a glue trap

37. The Committee then pursued the question of whether there are alternative methods of rodent control which are as quick and effective as glue traps and, if there are not, whether there is a need for professional pest controllers to use glue traps in certain circumstances through a licensing scheme.
38. The SAWC acknowledged there was no one solution or alternative to replace glue traps in public health high-risk settings but suggested that "it seems to me that it is feasible, given the overwhelming evidence about animal welfare

and the goodwill and productive thinking, that a couple more years should bring better solutions”.

39. The British Pest Control Association (BPCA) highlighted the current rodent population, telling the Committee its “members are busier than ever” and that there are “near pandemic levels of rodent infestations, particularly in the city centres of Edinburgh and Glasgow”. In relation to effective alternatives, it stated—

” We hope that we will have alternatives but, just to be absolutely clear, at the moment we do not. The glue trap is the only means of rapid capture and, when used professionally, rapid dispatch through blunt force trauma. It is the only thing that we have.

40. The BPCA suggested a complete ban would “have devastating results” and result in increased rodent populations, meaning that “businesses and organisations such as supermarkets, restaurants, pubs, hospitals and schools where there are infestations will be closed for longer periods of time”. It stated biocidal products take approximately two weeks to take effect and that break-back traps are not always effective or appropriate as it can take days for rodents to go near them, plus they are much smaller than glue traps and so more are needed to cover the equivalent area.

41. The SAWC set out the thinking behind its ‘fall-back’ recommendation for a “potential fail-safe [licensing] scheme, which would be specific, case by case and for a limited [three-year] period” and which “might see us through the period while further developments arise in technology and science”.

42. Following the Committee’s roundtable discussion with stakeholders, the [SAWC wrote to members on 7 July 2023](#). This letter referred to an evaluation of the welfare consequences of six lethal rat control methods and re-stated the SAWC’s view that traps and rodenticides should be used as a last resort. The SAWC referred to further developments in rodent control which, it argued, suggests that progress towards the development of both efficacious and humane methods of rodent control is a “realistic prospect”.

43. The BPCA supported a licensing scheme, pointing out that BPCA members are already licensed by NatureScot for bird work, especially gull work. The BPCA explained that—

” We are carefully, closely and robustly licensed to do other aspects of pest control. Similarly, our members cannot purchase rodenticides without proof of qualification and, shortly, they will require proof of continuing professional development. The same applies for insecticides. .. We believe we can have an effective licensing scheme for professional pest controllers that limits the use of glue boards to high-risk situations.

44. The Committee discussed a licensing scheme for professional pest controllers with the Minister for Energy and the Environment on 28 June 2023. The

Minister told the Committee that “the main reason why we ruled out a licensing scheme is that there is no regulatory framework in place for pest controllers”. The Minister explained that, without an accredited body for the profession, it would be impossible to ensure that glue traps were only sold to professionals rather than members of the public.

45. The Minister highlighted the proposed delay to the introduction of the ban, the transition period, which would ensure “pest controllers can adjust and find alternative methods that they are, perhaps, not already trained in or might need to source”.

Proposed offence of selling glue traps

46. As set out earlier in this report, the Scottish Government has indicated its intention to create an offence to sell glue traps. When the Committee took evidence from the Minister, she also indicated that the Scottish Government was considering whether to ban the possession of glue traps.
47. The Minister referred to her letter to the UK Government “setting out our plans and highlighting the fact that we will need ... an exemption from the UK Internal Market Act 2020 to ban the sale of those traps”. The Minister concluded by stating she expects a reply by Stage 2.
48. Following evidence from the Minister, the Committee sought further information from the Scottish Government about the process for seeking an exemption to the UK Internal Market Act 2020. In their [response, dated 11 August 2023, officials set out the process for applying for an exemption](#); they stated that only one application has been made for an exemption (by the Scottish Government for a Scottish ban on certain types of single use plastics). The letter states the process “took longer than expected and was not followed perfectly but, crucially, provided proof of concept that it could be used to secure exclusions from the UKIMA and thus provide a degree of protection from its effects”.

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 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.

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.**
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.**

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The Bill provisions to address raptor persecution

57. The remainder of the Bill (except section 8) introduces provisions relating to wildlife management and muirburn which were recommended by the grouse moor management group (GMMG). Sections 4 and 5 introduce a licensing scheme and training requirements for certain types of wildlife traps and sections 6 and 7 introduce a licensing scheme for land used for red grouse shooting. Sections 9 to 16 relate to muirburn, the burning of vegetation to manage moorland and encourage new growth, by extending the existing licensing scheme and limiting muirburn on peatland. The section 8 provisions, which extend the Scottish SPCA's investigative powers, were not part of the GMMG recommendations.
58. The policy memorandum confirms the link between the proposed measures and raptor persecution. It states the Bill has been introduced—
- ” to address raptor persecution and ensure that the management of grouse moors and related activities are undertaken in an environmentally sustainable and welfare conscious manner. The Bill will do this by implementing the recommendations of the independent review of grouse moor management.
59. The policy memorandum goes on to detail the concerns expressed “for many years” about the numbers of raptors on grouse moors and that “it was inferred that, in some estates, predator control included the illegal killing of raptors”.
60. The policy memorandum states the proposed measures would address raptor persecution by enabling the proposed licences to be modified, suspended or revoked where there is “robust evidence” of raptor persecution or another relevant offence.

Independent review of grouse moor management

61. [NatureScot \(formerly Scottish Natural Heritage\) published a report in May 2017](#) which found that around a third of satellite-tagged golden eagles in Scotland disappeared in suspicious circumstances either on, or around, grouse moors. In response to this report, the Scottish Government established the GMMG, chaired by Professor Alan Werritty, to undertake an independent review of grouse moor management. The terms of reference for the GMMG were—
- ” To examine the environmental impact of grouse moor management practices such as muirburn, the use of medicated grit and mountain hare culls and advise on the option of licensing grouse shooting businesses. In doing so it will look at what can be done to balance the

Government's commitment to tackling wildlife crime with grouse moor management practices, so that this form of management continues to contribute to our rural economy, while being sustainable and compliant with the law.

62. [The GMMG published its report on 19 December 2019](#) and made over 40 recommendations regarding grouse moor management. The report highlighted the “major challenge” of “grappling with the evidence in terms of raptor and upland ecology, environmental law, wildlife law and related police and judicial procedures, veterinary science, the socio-economics of Scotland’s moorland, and much more besides”. The report concluded that—


” ... it is striking how many significant evidence gaps remain and how much of the fundamental science is contested. Especially problematic has been the tension between the ‘expert’ knowledge of scientists reported in peer-reviewed sources and ‘local’ knowledge held by practitioners based in the field.

63. Although split on whether to recommend a licensing scheme for red grouse shooting, the GMMG unanimously recommended a licensing scheme be introduced for the shooting of grouse “if, within five years from the Scottish Government publishing this report, there is no marked improvement in the ecological sustainability of grouse moor management, as evidenced by the populations of breeding golden eagles, hen harriers and peregrines”.
64. In relation to wildlife traps, the GMMG report noted their use as an effective method of predator control but also noted they can capture and cause unintended harm to raptors and other wildlife. The report recommended additional regulation and training requirements. The GMMG also recommended additional regulation for the land management practices of muirburn, managing mountain hares and the use of medicated grit.
65. The [Scottish Government responded to the GMMG’s report on 26 November 2020](#), when it accepted all the GMMG’s recommendations. In relation to a licensing regime for red grouse shooting, the Scottish Government took the view that “the balance of arguments now points towards the need for licensing” and that this should be implemented earlier than the recommended five-year period.
66. The [Scottish Government consulted on provisions relating to grouse moor licensing; muirburn; and trapping and snaring](#) between October and December 2022. An [analysis of the consultation responses was published on 3 April 2023](#).
67. The Wildlife Management and Muirburn (Scotland) Bill gives effect to these recommendations; apart from the recommendations relating to mountain hares, which were implemented via the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 and do not form part of this Bill.

The need for additional regulation of moorland to address raptor persecution?

68. A significant part of the Committee's inquiry into the Bill's provisions focused on the premise of the Bill and the extent to which raptor persecution remains a problem on moorland in Scotland.
69. Many of the respondents to the Committee's consultation on the Bill supported the additional regulation of moorland, with the need to provide further protection to raptors and other wildlife given as a reason by many respondents.
70. RSPB Scotland's response detailed its experiences of raptor and wildlife crime, referring to an "overwhelming weight of peer-reviewed science, innumerable police investigations and a considerable amount of witness evidence proving that crimes against raptors are inextricably linked to grouse moor management". For example, it highlighted a May 2023 study which analysed data from over 140 satellite-tagged hen harriers which revealed "very low survival rates and shows that mortality hazards due to illegal killing were higher for birds using upland areas managed for grouse shooting".
71. RSPB Scotland supported the proposed licensing scheme for the use of wildlife traps and argued that the general licensing scheme is poorly monitored and open to abuse. It told the Committee that, over a period of twenty years, the organisation has "witnessed, documented and reported to the Police, Scottish SPCA and/or the licensing authority numerous instances where such traps are used as 'cover' for the criminal destruction of birds of prey, particularly through the abuse of cage traps permitted to catch corvids, or other instances where there is a complete disregard of the conditions of use for such traps".
72. Police Scotland also supported additional regulation of moorland management and highlighted the "numerous incidents, recent and historic, whereby those linked to shooting estates have intentionally targeted protected birds of prey, which are sometimes perceived as a threat to grouse populations". Police Scotland also referred to "many occasions over recent years when birds of prey have disappeared under suspicious circumstances however, due to evidential thresholds, no criminality could be established".
73. In its response, the Scottish SPCA detailed two cases involving gamekeepers on shooting estate where a large number of wild animals and birds were found dead.
74. This support for additional regulation was coupled with a view that the existing legislation and policies do not go far enough to address this persecution. RSPB Scotland asserted that "the premise that detected raptor persecution cases represent the "tip of the iceberg" is well understood and accepted" and argued that "a step change with meaningful deterrents to wildlife crime is now needed". OneKind argued that "previous attempts to tackle some of these

[animal welfare] concerns have been largely unsuccessful and licensing is a very proportionate approach”.

75. Other respondents to the Committee's consultation on the Bill, however, whilst stressing their disapproval of any form of wildlife crime and their on-going support to prevent it, did not agree that additional regulation was required. These respondents challenged the view that there are high levels of wildlife crime on grouse moor estates and argued that, therefore, the proposed licensing schemes were a disproportionate measure.
76. Scottish Land and Estates (SLE) argued the policy memorandum for the Bill “offers no evidence that these [wildlife crime] offences are particularly common on grouse moors nor that many of these offences impact upon raptors”. It went on to argue that making a connection between describing wildlife crime as an ongoing issue “misleadingly suggests that this Bill is underpinned by evidence that raptor persecution and other so-called ‘related’ wildlife crimes are frequently being committed on Scotland’s grouse moors”. SLE asserted that “this is not the case”. Its submission also suggested the evidence base used by the Scottish Government is “an inadequate and out of date basis for developing regulation”. The British Association of for Shooting and Conservation (BASC) argued it is “disproportionate and illogical” to link wildlife crime and raptor persecution with grouse moor management.
77. Respondents also argued that adequate legislation is already in place to tackle any wildlife crime and rapter persecution. Both BASC and SLE listed what they considered the most relevant pieces of legislation in their submissions.
78. The Committee explored the question of whether the proposed measures are a proportionate response to raptor persecution on moorland in its oral evidence sessions.
79. The bill team set out the Scottish Government’s view that there is a “clear association” and “long-term pattern” linking raptor persecution and land used for grouse shooting. Officials stated that the proposed licensing scheme “is perhaps the most effective way of delivering a meaningful sanction and an effective deterrent to wildlife crime on grouse moors”.
80. When asked for evidence for the connection between raptor persecution and land used for grouse shooting, an official answered—
 First, when there were convictions, the people who were convicted were often associated with the grouse moor business. Secondly, carcasses were usually found on or around grouse moor businesses. Thirdly, there is a clear motivation around the control of raptors to protect grouse stocks and promote the grouse moor business. Hard and clear evidential links and pretty strong circumstantial links exist.
81. [Scottish Government officials provided further evidence connecting raptor persecution with land used for grouse shooting on 28 June 2023](#). The letter

detailed information from the National Wildlife Crime Unit (NWCU) which shows 164 crimes against birds of prey over nine years (2012-13 to 2020-21); the number of crimes varies from year to year, with 25 recorded on or near grouse shooting estates in 2019-20 and 11 in 2020-21. The letter also states there have been 20 “suspicious cases” over the same time period, “where there was insufficient evidence to conclude a crime had definitely been recorded”. The letter also provided a link to a [report commissioned by Scottish Natural Heritage \(now NatureScot\) by Whitfield and Fielding investigated the fates of golden eagles satellite tagged during 2004 – 2016](#).

82. The Committee also discussed the connection between raptor persecution and moorland with members of the GMMG. Professor Werritty spoke about the “clear spatial association between the recovery of illegally killed raptors and managed land for grouse shooting”. Professor Newton told the Committee that the rate of killing or number of cases reported to the RSPB was the highest so far since 2000; Professor Newton agreed that not all cases would be on grouse moors but he concluded that “the general feeling – among conservationists, at any rate – is that the figures represent the tip of the iceberg” and that the statistics “have not declined significantly” since the review group reported.
83. In relation to the recommended additional regulation of wildlife traps, Professor Reid told the Committee “that trapping and snaring is a long-running and controversial issue”. Professor Reid suggested additional regulation would have two benefits. First, he suggested a licensing scheme would give confidence and protection to trap users as—
- ” ... by introducing a licensing system, the hope is that the professionalism of many gamekeepers and land managers will be recognised and they will have the reassurance that they can defend themselves there. In speaking to the public they can say, ‘We do it in the proper way, which has been properly assessed, using the relevant traps in the relevant way’.
84. Second, Professor Reid also suggested the Bill would reduce inconsistency in the regulation of traps and, in doing so, would help address animal cruelty as a result of their misuse—
- ” The law on trapping and snaring has been a bit of a mess because it has been rather inconsistent, so anything that tries to make it simpler by drawing things together is good. The experience has been that the requirement for training and the requirement for visiting traps and snares has reduced the misuse problems with animal cruelty. It seems sensible to try to have greater consistency and greater controls to make sure the abuse is not happening while giving this form of reassurance that professionally operated traps can be used.
85. A range of views were put forward by stakeholders in the Committee’s roundtable discussions about the need for additional regulation on grouse

moors in general. RSPB Scotland told the Committee that “raptor persecution has been a persistent problem, and an overwhelming weight of scientific and witness evidence and the outcomes of police investigations link the majority of raptor persecution crimes with the grouse shooting industry”. It explained its long history, over 25 to 30 years, of collating and publishing figures of raptor persecution across the UK. RSPB Scotland concluded that “we feel very strongly that licensing is a proportionate and necessary step”. REVIVE, a coalition of environmental, animal welfare and social justice organisations for grouse moor reform, also gave its support to the Bill.

86. Police Scotland referred to the difficulties in investigating wildlife crime, especially in remote rural areas, and confirmed its belief that it is “widely accepted” that raptor persecution is on-going and that the recorded crime figures “could be an underrepresentation of what is actually going on”.
87. Other stakeholders, including moorland estates and land management organisations, suggested the levels of wildlife crime have decreased over recent years and disputed the connection between raptor persecution and grouse moors; this, they argued, rendered the proposed licence unnecessary and disproportionate. BASC argued that RSPB Scotland’s figures showed a 75% reduction in raptor persecution between 2007-21. SLE argued that “the majority” of the 11 crimes against birds of prey recorded in 2020-21 related to incidents in Dumfries and Galloway, where there are no grouse moors. SLE suggested that much of the rationale for the Bill is based on suspicion and that the grouse moor industry “is, in effect, being asked to prove the absence of crime” and asked “how do we go about that?”
88. RSPB Scotland told the Committee that a “much clearer indication of whether raptor persecution is truly declining” is the populations of birds of prey on grouse moors. It referred to hen harriers and peregrine which, it argued, are largely absent from grouse moors and “are certainly not continually breeding successfully”. This, argued RSPB Scotland, “is as clear evidence as anything else that raptor persecution continues unabated”. The Game & Wildlife Conservation Trust (GWCT) indicated that the number of golden eagles in Scotland has passed the threshold of more than 500 pairs to achieve good conservation status but agreed that the information on hen harriers is “patchy”.
89. NatureScot agreed with the link between raptor persecution and grouse moors and the evidence that there are some grouse moors that “are unoccupied by some of our best raptors”. It went on to refer to the ambition of the Bill and told members—



it is a mistake to look at the bill only through the lens of raptor persecution. We are in a nature and climate crisis. With the bill’s provisions, we can up the standards of everybody who is involved in managing Scotland’s uplands for nature and climate.

90. This linked to earlier comments from Professor Reid, from the GMMG, who also stressed the importance of not framing of the whole issue too narrowly as just being about raptor persecution. Professor Reid told the Committee that—

” Our remit was not just to look at raptor persecution; it was to look at grouse moor management more widely. In the report, we made a point about the need to look at the matter in a wider context. It would not be sensible to fragment the different bits too much. It could be said people who commit those offences are generally showing an attitude, approach and willingness to behave in a way in relation to the natural environment that is in line with the things that the bill is trying to stop. If you see the measures as being purely about raptor persecution on grouse moors, I would say that that is an excessively narrow view of what our review tried to look at.

91. The Committee went on to discuss the connection between raptor persecution and grouse moors with the Minister on 28 June 2023. The Minister referred to on-going raptor persecution and told the Committee that the “measures that we have put in place are still not making the significant difference that we intended them to make; they are not eradicating that crime”. The Minister also referred to the understanding that a lot of raptor persecution is unrecorded.

92. Officials went on to refer to unrecorded crimes as “we have long known that recorded crimes do not necessarily tell the whole picture”. An official continued—

” Many crimes go unrecorded, as it is a difficult environment in which to detect crime. Evidence disappears, there are no witnesses and there are no victims to complain or anything like that. For that reason, the evidence that we have on suspicious disappearances has been important and that has not shown the same sort of decline.

93. An official also referred to the GMMG report which identified the recovery in raptor populations as the “key metric” and who believed that “I do not think that we can say that we have seen that recovery in raptor populations”.

94. The Committee asked for further information to be provided after the evidence session about the location of the recorded crimes against birds of prey published by the NWCU. In a [response, dated 11 August 2023, the Scottish Government officials provided supplementary information](#) to the previously shared statistics; this showed 14 of the 25 recorded bird of prey crimes in Scotland in 2019-20, and 8 of the 11 recorded bird of prey crimes in 2020-21, were recorded as killed on or around grouse moors.

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 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.**

General issues raised relating to both the section 4 and section 6 licensing schemes

99. Sections 4 and 5 would introduce a licensing scheme for the use of certain wildlife traps and sections 6 and 7 would introduce a licensing scheme for land used to shoot red grouse.
100. As the proposals for the administration and management of both licensing schemes are broadly similar, this section of the report considers general themes and views expressed during the Committee's inquiry.
101. Subsequent parts of this report will consider separately any specific issues raised in relation to the individual licensing schemes.

Sections 4 and 5 – Regulation of certain wildlife traps

102. Section 4 of the Bill would introduce licensing and mandatory training for the use of certain kinds of wildlife traps and section 5 would provide for the penalties relating to the use of spring traps.
103. The use of traps is widely recognised as an important part of wildlife management and predator control and existing legislation sets out which traps can be used and under what conditions. The policy memorandum, for example, states there are a number of bird species that are generally accepted to cause damage or pose a threat and NatureScot issue general licences which entitles people to kill or take these birds under specific circumstances and conditions.
104. Section 4 would amend the 1981 Act to establish a 'section 12A' licensing scheme (section 12A denotes the amended section of the 1981 Act which would provide for this licensing scheme). The new requirements would apply to individuals using either certain wildlife traps for the purpose of taking wild birds or using those spring traps approved by an order made under section 50 of the Agriculture (Scotland) Act 1948. Currently, the only order made under the 1948 Act is the [Spring Traps Approval \(Scotland\) Order 2011 \(the STAO\)](#). Licence holders would also be required to display their licence number on each trap they use and to use the trap in accordance with the approved training course.
105. Section 4 sets out further provision relating to the wildlife trap licensing scheme. This includes provision about the application process at section 12B; the granting and content of a wildlife trap licence (including provision that the licence holder must complete an approved training course and that licences must be granted or renewed every ten years) at section 12C; and the modification, suspension and revocation of licences (including the relevant

offences which might invoke the modification, suspension or revocation of a licence) at section 12D. Section 4 also provides that Scottish Ministers may delegate the administration of the licensing scheme to NatureScot.

106. The Policy Memorandum states that NatureScot would consult with stakeholders before issuing guidance on what evidence must be submitted when applying for a licence and the format of the training courses.

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

107. Sections 6 and 7 of the Bill relate to the licensing of land used for the killing and taking of certain birds.
108. Landowners hold the sporting rights to kill or take wild birds and animals as part of their property rights for a specific area of land. This right has been modified through various pieces of legislation, notably the 1981 Act, which prevents the killing of all wild birds and then allows those with the legal right, or permission from the person with that legal right, to kill and take certain species so long as certain conditions are met.
109. The Bill seeks to amend landowners' right to kill and take red grouse so that it could only be exercised under licence. Accordingly, section 6 would amend the 1981 Act to establish a 'section 16AA' licensing scheme (section 16AA denotes the amended section of the 1981 Act which would provide for this licensing scheme). The certain birds for which a section 16AA licence would be required would be those listed in schedule 2 of the 1981 Act; the bill provides that only red grouse would be listed, although additional birds may be added by regulations. These regulations would be made under the affirmative procedure.
110. Section 7 sets out further provision relating to the section 16AA licensing scheme. This includes provision about the application process (including that licences must be granted or renewed on an annual basis) and the modification, suspension and revocation of licences (including the relevant offences which might invoke the modification, suspension or revocation of a licence) at section 16AA; an appeals process at section 16AB; and a code of practice at sections 16AC and 16AD. Section 7 also provides that Scottish Ministers may delegate the administration of the licensing scheme to NatureScot.

Licensing schemes – modification, suspension and revocation of a licence

111. The Bill provides for the modification, suspension and revocation of wildlife trap licences via the proposed section 12D and for grouse shooting licences via the proposed section 16AA.

112. The Bill would enable NatureScot to modify each type of licence “at any time”. The Bill would enable NatureScot to suspend or revoke each type of licence if the licence holder fails to comply with licence conditions or if NatureScot is satisfied that the licence holder has committed a relevant offence as specified in the Bill for that type of licence. The Bill would also enable NatureScot to suspend either a section 12A (wildlife trap) or section 16AA (grouse shooting) licence if, despite NatureScot not being satisfied that the licence holder has committed an offence, (i) there is “an official investigation or proceedings in relation to a suspected relevant offence” and (ii) NatureScot is satisfied that, in the event of a conviction of a relevant offence, NatureScot would then be satisfied that a relevant offence has been committed.
113. The policy memorandum sets out that both licensing schemes would be subject to NatureScot’s internal complaint procedure and that licence applicants/holders, if still dissatisfied with a decision, may also be able to appeal to the Scottish Public Services. The Bill also provides that section 16AA licence applicants or holders have the right to appeal to the sheriff to appeal a decision by NatureScot to refuse to grant a licence; to attach a condition to a licence; or to modify, suspend or revoke a licence.
114. Section 16AA(11) defines an official investigation as “an investigation by Police 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”. Section 8 of the Bill would give a power to Scottish Ministers to extend the powers of animal welfare inspectors authorised under section 49 (2)(a) of the Animal Health and Welfare (Scotland) Act 2006 to investigate relevant offences relating to wild animals as set out in Part 1 of the Bill and Part 1 of the 1981 Act, should they deem it appropriate to do so. This relates to the potential expansion of the role of Scottish SPCA inspectors in the investigation of wildlife crime.
115. The policy memorandum states the section 16AA provisions would address the on-going issue of wildlife crime by enabling a licence to be modified, suspended or revoked “where there is robust evidence of raptor persecution or other relevant wildlife crime”.
116. There were a range of views on these provisions put forward in responses to the Committee’s consultation on the Bill. Environmental, conservation and animal welfare organisations supported the provisions; SAWC considered the provisions as “proportionate” and an “important interim measure where there is an official investigation”.
117. Many moorland estates and land management organisations, however, raised a number of concerns which were broadly similar in relation to wildlife trap licences and section 16AA licences. These included concerns that any decision in relation to a section 16AA licence could be due to ‘minor’ failure to have regard to the associated code of practice (such as failure to follow guidance or submitting information late); that a licence could be suspended on the basis of an official investigation “simply by the recording of a complaint or

report” or by a vexatious complaint; or a licence could be modified at any time at the discretion of NatureScot which would “create legal and operational uncertainty for no public benefit”. Concerns were strongly expressed about the risk of licences being suspended on the basis of an official investigation following vexatious, unsubstantiated complaints. Scottish Countryside Alliance thought it would be “all too easy for those opposed to shooting to make a vexatious complaint or allegation in order to initiate an investigation resulting in a licence being withdrawn or suspended”. Shooting estates and gamekeepers expressed concerns about the impact this could have on their business and livelihoods.

118. The Committee sought clarification from Scottish Government officials on the circumstances when a licence could be revoked or suspended in respect of both licensing regimes. Officials confirmed that a licence could only be revoked when an investigation has concluded and the relevant authority is satisfied that a relevant offence has been committed.
119. In relation to a suspension of a licence, officials confirmed that “it would be for the licensing authority to determine – based on the circumstances and the degree of the offence – whether it would be appropriate to suspend a licence pending the investigation”. Officials went on to explain that—

” ... [suspension of a licence] is not an automatic position. It is clear that it would be dependent on the degree of seriousness of the offence. That power is for use in the case of a particularly egregious sort of offence where it appeared that something terrible had happened and it would be unacceptable for the business to continue while a police investigation rolled on.

120. Officials also stated—

” The licensing authority would have to be satisfied that an offence had been committed and that, on the balance of probability, it had been committed by someone who was connected to the management of the grouse moor. It would not be sufficient to find a mammal or bird that had been illegally killed; the licensing authority would have to be satisfied that that connection existed before it could decide to suspend a licence. It would also discuss the matter with Police Scotland.

The approach is based on the model that NatureScot currently operates for the suspension of general licences; in other words, we are taking an established model that we know works. As a result, the reasoning will be the same—NatureScot will have to look at the body of evidence and whatever else is presented by Police Scotland to see whether it can make that connection. It is not the case that there will be grounds for suspending a licence simply as a result of a crime being committed.

121. When asked whether a licence could be suspended on the basis of a vexatious complaint, officials did not think “it would occur to the licensing authority to immediately suspend a licence”. Later, officials confirmed that, “if the police were investigating [an alleged offence], NatureScot would not routinely immediately suspend a licence”.
122. The Committee discussed the provisions relating to the modification, suspension and revocation of a wildlife trap or section 16AA licence with members of the GMMG. Professor Reid told the Committee, in response to a question about the section 16AA regime, that “in any licensing scheme there is a choice to be made between rigidity, which gives you clarity and certainty, and flexibility, which inevitably involves a degree of discretion and uncertainty”. He gave his view that a system with flexibility would be “the best, fairest and most proportionate way to operate a licence system” given the scientific evidence around grouse moor management “is uncertain and changing, where the natural environment is always changing, and where you are dealing with enterprises of a vast range of size, scale and nature”. He added that, “with anything else, you would have to have rigid tests, and one size would not fit all, certainly given the changing climate, the changing natural environment and the changing understanding of the pressures on it”.
123. Professor Reid also described the safeguards available in relation to section 16AA licences—
- ” The appeal mechanism provides a safeguard. There is also the potential for judicial review eventually, ministerial control and the ombudsman, but it is a matter of choice. If you have an absolute checklist and there are items on the checklist that you cannot prove one way or another, there will have to be flexibility. That means giving discretion to public authorities, but our entire public administration system depends on discretion being in the hands of licensing bodies, Government grant-awarding bodies and so on. There are remarkably few situations where you are absolutely entitled to certain licences and so on. There is always an element of discretion.
124. Professor Reid further argued that he felt the proposed power to NatureScot to suspend a licence without being satisfied that an offence has been committed “has been included to enable quick interim action to be taken when there is perhaps not a complete case but strong indicative evidence”. He thought that “it is a fairly strong power, and I envisage it being used very rarely, if at all”.
125. Professor Reid concluded that “I accept the concerns that there are not absolute written guarantees, but that is inevitable unless we have an incredibly fixed, rigid system that cannot respond to changing circumstances and cannot respond quickly to situations that involve real problems”.

126. The Committee discussed this issue with stakeholders at its roundtables on both 14 and 21 June 2023. NatureScot set out its expectations about how the section 16AA licence, for example, would operate—



We will make interventions based on the best information that we have in front of us. That information needs to be robust otherwise we will be challenged. I cannot envisage a situation in which we would suspend a licence based on no evidence.

In constructing a framework to make the scheme work in practice—as we did for general licence restrictions—we will work with stakeholders to set out the type of evidence that we will consider and the circumstances in which we would consider suspension, revocation or modification. We will not construct a licensing framework that we are not comfortable would withstand scrutiny. When we constructed the framework for general licences, we were taken to judicial review. However, we had put in place a process involving robust evidence, an appeals mechanism, the right for people to be heard and a right to respond, based on our assessment of the evidence, and that all withstood scrutiny. I cannot envisage a situation in which we would not try to replicate that in the current bill.

127. The Committee discussed the definition of an official investigation. Police Scotland explained that an investigation is opened as soon as someone contacts the police as “technically, [the issue raised with the police] needs to be resolved in one way or another”. As Police Scotland explained, the point of an investigation is to establish whether a crime has been committed. Police Scotland confirmed this could be established very early on, “in that case, a full-blown investigation does not really commence” whereas, in other circumstances, further enquiry is required to establish the facts. Police Scotland confirmed that “technically, there is no such thing as an unofficial investigation because, once someone contacts the police, there is a paper trail that needs to be finalised”.
128. SLE stressed that the reassurances provided by NatureScot do not address the concerns those organisations have based on the “black letter of the law”. BASC argued that “it is simply not enough to get an informal reassurance from NatureScot ... but the certainty in law that we require must reflect that”. SLE also raised concerns that there is nothing in the Bill “that limits suspension to, say, a period of weeks”.
129. Moorland estates and land management organisations repeated their concerns about a vexatious complaint leading to a licence suspension. The Scottish Gamekeepers Association (SGA) said gamekeepers were “scared to death” of the possible implications of vexatious complaints. BASC referred to some people’s opposition to grouse shooting, illustrated by the extent of vandalism of traps and snares, and suggested that “the idea that someone who opposes grouse shooting can call the police and start an official investigation is a reality, not a hypothesis”. SLE agreed, arguing that a

suspension – possibly of some length, depending on the investigation – could have “disproportionate effects” and mean long-term investment in grouse moor management is no longer “an attractive proposition”. SLE referred to this suspension provision as “draconian”.

130. NatureScot stressed any decisions to suspend a licence would take into account the wider context. NatureScot’s representative emphasised that it would “not act in isolation; we will have intelligence and the background and history, which will give us an understanding of whether or not the most recent investigation continues to remove our trust and confidence that an operator is acting within the intention and spirit of how we issue licences”.
131. NatureScot also referred to its extensive experience in licensing, of issuing around 90 types of licences to about 5,000 holders annually via a range of licensing approaches and expertise in handling sanctions for different types of license breaches, from administrative errors to unlawful activities.
132. NatureScot refuted the suggestion that a member of its staff would, as was suggested, “exercise the full discretionary powers” under the Bill in contravention of the organisation’s policies and procedures.
133. The Committee discussed the proposed powers to modify, suspend and revoke a wildlife trap of section 16AA licence with the Minister on 28 June 2023. The Minister confirmed that the provisions allowing for these licences to be suspended without NatureScot being satisfied a relevant offence has been committed were included to address the “potential for an incident to be so severe that it might have to suspend a licence quickly” and provide flexibility where “something so egregious and severe has happened that NatureScot feels that it should take that action”. The Minister referred to NatureScot’s commitment to engage with stakeholders where concerns or complaints are raised and to NatureScot’s responsibilities as a public body to act appropriately; she concluded with her firm view that NatureScot would “not suspend a licence unless there is a very good reason to do so, and I think that that is the right approach to take”.
134. In a subsequent [letter to the Committee, dated 11 August 2023, officials](#) re-confirmed the Scottish Government’s view that “we expect a decision to suspend a licence under these provisions will only be done in very exceptional circumstances, for example in egregious cases where there is compelling reason to suggest that a wildlife offence has been committed and that suspension of a licence is necessary to prevent further risks to wildlife”.
135. [SLE wrote to the Committee, on 12 September 2023, to draw its attention to a letter from nearly 400 rural businesses](#). The letter “warns of the implications of

the draft section 16AA licence for grouse shooting, and sets out how four critical flaws could be remedied by way of amendment".ⁱ

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.**
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.**
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.**
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**

ⁱ The Buccleuch Arms, St Boswells, is one of the signatories to the letter and Rachael Hamilton declared an interest as a director of Borders Hotels Ltd. Rachael Hamilton was not a signatory to the letter herself.

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.
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.

Licensing schemes – relevant offences

144. The proposed sections 12D(5) and 16AA(11) list the relevant offences for the purposes of the respective licensing schemes (in respect of which licences could be suspended or revoked) – noting they are not the same for the different regimes. The Bill would give the Scottish Ministers the power to make regulations to modify the list of relevant offences. This would be done under the affirmative parliamentary procedure.

145. Some environmental, conservation and animal welfare organisations, in their responses to the Committee’s consultation on the Bill, put forward a number of suggestions for additional legislation to be added to the list of relevant offences. Moorland estates and land management organisations, however, argued that the list of relevant offences was too wide.
146. In evidence to the Committee, Scottish Government officials explained that the relevant offences in respect of section 16AA licences had been included as “they could all be connected with the management of grouse moors” and that “they are generally offences relating to protected species that might predate on grouse or grouse eggs”.
147. Members of the GMMG indicated they were content with the relevant offences set out in the Bill.
148. The Committee discussed the list of relevant offences with stakeholders in separate sessions which largely focused on wildlife trap licences and subsequently on section 16AA licences. In the session discussing section 16AA licences, NatureScot supported the range of offences, telling the Committee that “grouse moors do not operate in isolation; they operate as part of an estate that will have integrated uses for farming, forestry and agriculture”. NatureScot went on—
- ” From NatureScot’s perspective as a regulator, if we have lost trust that people can comply with the Protection of Badgers Act 1992, the Wildlife and Countryside Act 1981 and the habitats regulations, we have to ask ourselves whether those are the kind of people to whom we want to issue licences for all those purposes. It is important that we look at the context of what is happening in the round, not just through the lens of raptor persecution.
149. RSPB Scotland suggested that animal welfare offences under Animal Health and Welfare (Scotland) Act 2006 should be included. RSPB Scotland told members that, although much of the predator control undertaken on grouse moors is legal, there is also some misuse of traps and snares and the inclusion of offences under the 2006 Act would help address this.
150. BASC disagreed that the Protection of Badgers Act 1992 and the Hunting with Dogs (Scotland) Act 2023 should be included as relevant offences in the inserted section 16AA(11) as they are not connected to grouse moor management. It told the Committee that grouse moors are not badgers’ preferred habitat and “there are no fox hunts on grouse moors”. BASC thought “there is, ecologically, no link between crimes against badgers and managed grouse moors” and that the inclusion of this legislation “shows us that parts of the Bill are based on stigma rather than reality”.
151. [These comments were subsequently disputed by Scottish Badgers, who wrote to the Committee on 1 July 2023](#). Scottish Badgers told the Committee that the evidence given was “wrong” and that badgers preferred habitat did

include grouse moors. It went on to state that the low population on grouse moors was indicative of on-going badger persecution.

152. SLE also disagreed with the range of relevant offences. Discussing the relevant offences for section 16AA licences, it argued this was discriminatory, as it would hold grouse moor operators to a much higher standard in law than any other type of land manager. It argued—

” The effect of the bill would be to say that, if someone commits a crime under the conservation legislation on a farm, they will be able to continue to operate their farm and will suffer a penalty only if their guilt has been proved beyond reasonable doubt. However, two miles down the road, on a grouse moor, it will be a completely different story: there, a person can have their licence taken away without any proof of their guilt to any standard.

153. The Law Society of Scotland agreed that, within the broader aim of the legislation to consider biodiversity issues across the countryside, the wider range of relevant offences “can fit into that context more easily”. The Law Society of Scotland also acknowledged, however, that “there is a danger that the bill will be unfair if a different level of treatment is applied to grouse moors compared to the wider countryside”.
154. When asked about this specific point, Scottish Government officials told the Committee that “the difference between the two scenarios ... is that there is not a long track record of farmers shooting golden eagles”. Officials restated the Scottish Government’s position that “the measure is proportionate and justified because of the long association between some elements of grouse moor management and wildlife crime”.
155. The Committee discussed the range of relevant offences with the Minister on 28 June 2023. The Minister told the Committee that the relevant offences reflected those recommended by the GMMG, whose remit covered all aspects of grouse moor management, and that she did not support the suggestion the relevant offences should be narrowed down to focus on raptor persecution.

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.**

Licensing schemes – reporting requirements

159. The policy memorandum states that further licence conditions, such as record keeping, could be required by NatureScot. The Committee understands further licence conditions would be explored by NatureScot as part of its consultation on the detailed guidance relating to the licensing schemes.
160. Professor Werritty told the Committee that any information gathered as a result of the reporting requirement would be “a valuable outcome of the Bill” and help “to develop a more credible science base across the whole area of moorland management”. He also said “it is very striking how little we know when it comes to robust detail about the way in which the natural environment of a grouse moor operates”.
161. In relation to wildlife trap licences, some stakeholders suggested that licence users should be required to report on the use of wildlife traps, and the number and species of animal captured, in order to understand the impacts of traps on animal welfare and conservation. The SGA agreed with a provision on reporting, telling the Committee it could “easily be done” and would provide feedback on the number of animals being trapped and dispatched.
162. The GWCT acknowledged that, whilst additional reporting in relation to wildlife traps might impose an administrative burden, such requirements could also assist trap operators to demonstrate compliance, best practice and conservation benefits. It gave the example that the introduction of training, registration and identification numbers for snare operators has “materially contributed to improvement in management practice”. The GWCT suggested that extending these standards to other traps “seems a practical step, but only if there is consistency and streamlining of administration, training, oversight and to obviate the need for multiple Identity tag numbers”.
163. SLE indicated it would support reporting requirements so long as there was “good reason” why this information was being collected.
164. NatureScot confirmed that most of the other licences it issues include a reporting requirement and that “these are always for a reason and we articulate that reason to all our licence holders”.

165. **The Committee notes the licence conditions could include reporting requirements. The Committee also notes these would be part of the**

consultation that NatureScot must hold before issuing detailed guidance on the licensing schemes.

- 166. There was general agreement amongst witnesses that reporting requirements can be beneficial and support good practice. The Committee recognises the potential benefits of information gathering about land management in the context of the climate and nature crises, so long as any reporting requirements are not disproportionate or unduly burdensome.**

DRAFT

Sections 4 and 5 – Regulation of certain wildlife traps – specific issues

167. This part of the Bill considers specific issues raised in relation to the individual licensing schemes and wider provisions relating to the regulation of certain wildlife traps and land used for grouse shooting.

Section 4 – wildlife trap licence numbers, trap vandalism and whether a specific offence is needed to address this?

168. As set out previously, the proposed wildlife trap licence under section 12A would require a trap user to display their licence number on every trap they use under the licence. Currently, trap users are only required to display a licence number on traps used to catch live birds and on snares. The requirement is essentially expanded by the Bill to cover spring traps.

169. The issue of the tampering, vandalism or malicious interference, of wildlife traps had been identified by the GMMG—

” The industry already feels itself under attack and even vulnerable to malicious interference as evidenced by damage to and tampering with snares, traps and cages which are often reported to the Police. Should a licensing scheme be introduced, the grouse sector fears that the incentive for malicious interference could well increase.

170. In its written evidence, the SGA referred to its campaign, over a number of years, for a specific offence for deliberate vandalism of, or tampering with, legal predator control tools and suggested that the Bill “represents the perfect opportunity” to introduce this offence. The SGA argued that “there are no other industries in Scotland where it would be tolerated for members of the public to enter a workplace and vandalise someone’s work tools, with no risk of penalty”.

171. A number of moorland estates and land management organisations expressed their concerns about what SLE referred to as the potential “unintended consequences” of extending the requirement for licence numbers to be displayed on traps “which are used much more readily” than traps used to catch live birds.

172. SLE told the Committee that the requirement to display the licence number on all traps, including spring traps, “essentially results in that trapping infrastructure becoming personalised”. SLE highlighted the instances of trap vandalism experienced by the moorland estates it represents and expressed a concern that the vandalism on traps displaying a licence number would put trap users at a greater risk of penalty and, especially, the loss of a licence. SLE went on—

” ... if you have a unique licence number that is tied to a trap, that trap could then be sabotaged and be made illegal through other ways and means, through the actions of a third party. That trap would then tie the illegally set operation to an individual. If there is a unique licence number, that individual is much more likely to be that suspect in any investigation that then comes down the line. ... You can have your personal licence to trap suspended. Moreover, the licence to shoot grouse could be suspended by the initiation of an official investigation.

173. The Committee also heard about the prevalence, and impact of, trap vandalism when it visited the Roxburghe estate on 19 June 2023. Gamekeepers told members that they have approximately 100 instances of trap vandalism each year.
174. SLE went on to set out the “pretty seismic consequences” for animal welfare of the most common form of trap vandalism, which exposes the trap to the elements, especially for any non-target species who are caught. SLE also set out “the strongest feeling from the sector” that the penalties for trap vandalism should equal those for mis-setting a trap.
175. Moorland estates and land management organisations reiterated their call for a specific offence of trap vandalism to be introduced, via the Bill, to prevent trap vandalism. The Scottish SPCA also supported an offence of trap vandalism due to the possible animal welfare implications for any animal caught in a trap that has been tampered with.
176. Scottish Government officials sought to reassure the Committee on 31 May 2023 that trap vandalism is sufficiently covered by existing offences; officials also stated, however, that they would explore with Police Scotland and the Crown Office and Procurator Fiscal’s Office (COPFS) whether an additional and specific offence of trap vandalism is required. [The Scottish Government's subsequent letter of 28 June 2023 clarified that tampering with traps could be prosecuted](#) as a statutory offence of vandalism under the Criminal Law (Consolidation) (Scotland) Act 1995 or as a common law malicious mischief.
177. Scottish Government officials also told the Committee that an offence of trap vandalism would be difficult to enforce as, “in the same way as it is difficult to identify and prosecute people for raptor persecution, it is difficult to identify and prosecute people who are tampering with a trap”.
178. Professor Reid, a GMMG member, was not convinced that introducing an offence of tampering with a trap would have much impact. He told the Committee on 14 June 2023—

” In one sense, about half the crime in Scotland could possibly just be dealt with as breaches of the peace, but we want separate named crimes that deal with different things for a variety of reasons. The question is whether one thinks it important to have a public signal of a specific named offence to justify something that is already criminal.

179. Professor Reid added that “you would hit exactly the same problems that you have with raptor persecution with regard to gathering the evidence”.

180. When the Committee discussed the issue with the Minister for Energy and the Environment on 28 June 2023, she stated that trap tampering was more likely to disable a trap rather than result in any cruelty to animals. She told the Committee—

” I am not convinced that people would really want to do what you are suggesting in a way that would prolong the suffering of animals, because that is probably not their modus operandi or where they are coming from, from a philosophical point of view. From what I have heard, what they are most likely to be doing when they interfere or tamper with traps is disabling them to ensure that they do not trap—by, for example, taking off doors or hinges, smashing them up or whatever they might do so that traps are not operational.

181. In relation to an offence of tampering with a wildlife trap, the Minister reiterated the Scottish Government’s view that existing offences “provide enough of a deterrent” but said she was “open to any suggestions that might be made in the committee’s report or might come from individuals about stage 2 amendments”.

182. In their [letter to the Committee, dated 11 August 2023, Scottish Government officials](#) referred to their discussions with Police Scotland and the COPFS about whether an additional and specific offence of trap vandalism is required. Officials indicated they “expect to conclude these discussions ahead of Stage 2 and we will provide the Committee with a further update following those discussions”.

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 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.
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.

Delegated power provisions

190. The DPLRC reported that section 4(2) would delegate two powers to the Scottish Ministers to exercise. These powers would be subject to the affirmative procedure.
191. The inserted section 12(8) would give the Scottish Ministers the power to add, modify or remove traps (or descriptions of traps) from the proposed section 12A licensing scheme. The Scottish Government explained this power would “allow Scottish Ministers to respond in the event that new traps are developed or existing traps are modified or removed from the market”.
192. The inserted section 12G(3) would give the Scottish Ministers power to make further provision relating to the proposed section 12A licensing scheme, including how a licence number is to be displayed on a trap, the approved training courses, and the definition of relevant offence. The Scottish

Government explained this power would provide the flexibility required to ensure the list of relevant offences can be kept up to date.

193. The DPLRC found both delegated powers under section 4 acceptable and agreed with the affirmative procedure for both.

194. **The Committee notes, and agrees with, the DPLRC's conclusion that the delegated powers provided for in section 4(2) are acceptable and that the affirmative procedure would be appropriate.**

DRAFT

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

195. This part of the report considers issues raised with the Committee specifically relating to sections 6 and 7 of the Bill and which relate to the licensing of land used for the killing and taking of certain birds.

Inserted section 16AA – annual licences

196. The proposed section 16AA(5)(b) would provide that a licence “may be granted or renewed for a period not exceeding 1 year” The policy memorandum sets out the reasons for this as, first, “grouse shooting is a seasonal activity and estates who sell rights to shoot grouse on their land generally decide on an annual basis whether to open for commercial shooting in the following season” and, second, this is the approach taken with other NatureScot licences. The GMMG did not make specific recommendations about the licence period.
197. The Committee’s consultation on the Bill showed mixed views about the proposed annual licence. LSS thought the annual licence application process – depending on the procedure – “has the potential to be unduly burdensome” for the licensing authority, applicants and potential consultees, such as Police Scotland. LSS suggested a longer period, such as three to five years, would be more appropriate and would not compromise NatureScot’s ability to intervene, if necessary.
198. All the submissions from moorland estates and land management organisations opposed the annual licence. SLE argued annual licences would be a “fundamental flaw” of the licensing scheme as it would mean that grouse moor owners/employees would “not know from one year to the next whether they are able to operate”. SLE detailed what it considers the likely impacts associated with an annual licensing scheme in its submission. BASC agreed that annual licences were “unworkable” and would “provide no confidence or certainty for the land management sector and may act as a deterrent to application, resulting in the dereliction of well-managed grouse moors”. Douglas and Angus Estates set out its experiences of moorland management over decades and its view that an annual licence would not be practicable, it stated—



Sound moorland management is a long-term process and cannot be delivered by granting a 12-month licence – the idea is frankly idiotic. I have been managing heather moorland for over 35 years and the benefits of efforts made 25 or 30 years ago are only just beginning to become apparent.

199. Some moorland estates and land management organisations argued this provision would breach landowners’ rights under the European Convention of Human Rights (ECHR). BASC, for example, told the Committee in its written evidence that “this is totally inconsistent with the principle of equality before the law and ... infringes property rights as well as the right to a fair trial guaranteed under the ECHR”.
200. Scottish Government officials told the Committee that “it is our judgement that that [an annual licensing scheme] would be the appropriate level” but that the Scottish Government was “always open to hearing” alternative suggestions.
201. The Committee discussed the proposed requirement for annual licences with members of the GMMG. Although the report did not make a specific recommendation regarding the period of a licence, members of the review group thought the annual licence renewal “is unnecessary” and indicated that “licences of up to five years on a rolling basis would be welcomed”. Professor Reid told the Committee—

” If, once a licence was granted, you could do very little about it, there would be a stronger case for having annual licences, because the annual renewal would be the only way of keeping an eye on things, changing things or affecting things. Given that the bill provides quite wide powers for ministers or NatureScot to modify, suspend or revoke licences, I think that annual renewal is probably unnecessary.
202. There was also agreement amongst those stakeholders who commented on this issue at the Committee’s roundtable on 21 June that the proposed annual licence was not practical. SLE told the Committee the proposal was “problematic” and “illogical”. It argued that “the significant financial investment that goes into grouse moor management is long term, as are the employment of gamekeepers and the capital investment, which requires a long-term outlook”. It went on “likewise, the concerns about raptors that underpin the scheme are long term—that problem is not seasonal”.
203. NatureScot, who would administer and monitor the licensing scheme, told the Committee it would “probably prefer a bit more flexibility” and that “a licence duration of between three and five years sounds about right and sits more comfortably with other civil licensing schemes that we know work well”. NatureScot referred to the power it would have to modify licences ‘at any time’ under section 16AA(8)(a) and the expectation that annual returns would be a condition of the licence.
204. The Committee discussed the annual licence with the Minister on 28 June 2023. The Minister supported NatureScot’s interest in the application process not to be onerous and said she was “completely open” to a longer licensing period. Officials referred to the initial reasoning for the annual licence, set out earlier in this report, but stated that “very strong representations from some stakeholders that that would cause difficulties for their long-term planning” had prompted a review of this aspect of the Bill.

205. At the Committee's request, Law Society of Scotland considered some stakeholders' assertion that the Bill could breach ECHR rights. In its [response, dated 18 August 2023, Law Society of Scotland](#) notes that Bills introduced in to the Scottish Parliament must be considered to be compliant with the ECHR as part of the determination that they are within the legislative competence of the Parliament. Law Society of Scotland notes that both the Presiding Officer and the Scottish Government have determined that the Bill is within the legislative competence of the Scottish Parliament.

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.**

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

207. The policy memorandum sets out that the licensing schemes would fall under NatureScot's established internal appeals process and, beyond that, licence holders or applicants may be able to appeal to the Scottish Public Services Ombudsman. Under the section 16AA licence scheme, however, applicants would also have the right to appeal to the sheriff in relation to a decision by NatureScot to refuse to grant a licence, to attach a condition to the licence or to modify, suspend or revoke a licence.

208. SLE argued that the right to appeal a suspension is "of very little comfort" as there would be no obligation on NatureScot to notify or share information with a licence holder which would make it "very difficult on a practical level" to appeal and, therefore, did not think the appeal provision "really provides access to justice".

209. The Committee explored the question of whether the Bill should be amended to include additional safeguards to allow licence holders to appeal a licence suspension or revocation. Professor Reid noted that a discretionary power for sheriffs to decide that a penalty imposed by NatureScot should have no effect, pending determination of an appeal, exists in several environmental licensing schemes. He further noted that it is a question of finding the right balance between licence holders' interests and the public interest. He thought that "NatureScot and ministers would take into account the length of time of an

appeal and the difficulties associated with that when deciding whether they would be justified in suspending a licence during an investigation rather than beforehand”.

210. This discretionary power was raised at the roundtable with stakeholders on 21 June 2023. SLE noted the length of time it can take to hear a determination on an appeal and stated that, “during which time, if the business is unable to operate, the damage would be permanent – there would be no reparation”.
211. Scottish Government officials confirmed the length of time for an appeal to be heard would depend on the circumstances and on the remedy being sought by the licence holder. They confirmed appellants may seek an interim interdict of the suspension of the licence or a suspension of the revocation of the licence. Officials confirmed that an interim interdict could be held the next day.

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.

Inserted section 16AC – section 16AA licence: code of practice

213. Section 16AA licensing decisions “must have regard in particular to the applicant’s compliance with a code of practice” and section 16AA(6) states licence holders “must have regard” to the code.
214. Section 16AC would require the Scottish Ministers to prepare and publish a code of practice “for the purpose of providing guidance” about land used for grouse shooting. In particular, the code may provide guidance on (a) how land should be managed to reduce disturbance of, and harm to, any wild animal, bird or plant; (b) how the taking or killing of wild birds should be carried out; and (c) predation control. The code must be reviewed every five years and the Scottish Ministers must consult before making the first code and before reviewing and revising the code thereafter. The preparation, publication, review and revision of the code may be (and is expected to be) delegated to NatureScot.
215. In responses to the Committee’s consultation on the Bill, moorland estate and land management organisations expressed some concern about the status of the code, and particularly the requirement for licence holders to have regard to it, given no information is available about its content.
216. In evidence to the Committee, Scottish Government officials stated the code would include a range of recommendations and that “there will be things that you must absolutely comply with—that is, legal requirements; there will be things that you really should comply with; and there will be things that are good practice and which might or might not apply to your particular business”.

217. Members asked why there was a duty to “have regard to”, rather than a duty to “comply with”, the code. Officials answered that requiring absolute compliance “would mean having a one-size-fits-all code” but, as “businesses are of different sizes, are in different geographical locations and have different resources at their disposal, so we recognise that having such a code would not fit everyone”.
218. Scottish Government officials expected a draft code of practice would be available to share with the Committee “at some stage during the passage of the Bill”.
219. The Committee discussed the role of the code of practice with stakeholders at its roundtable on 21 June 2023. RSPB Scotland said the code would be “essential in ensuring that grouse moors are managed in an environmentally sustainable and legal fashion” and should address predator control, mountain hare management, muirburn, use of medicated grit and the creation of hill tracks.
220. SLE argued that the wide range of issues to be included in the code was disproportionate in the context of a licensing scheme driven by the specific aim of addressing raptor persecution. BASC suggested that it was difficult to comment on whether the code was a proportionate measure as it hasn’t been drafted yet; it claimed “the intrusiveness of the Bill means that it [the code] requires more clarity”.
221. NatureScot told the Committee the code would help drive up standards in moorland management and confirmed it has begun consultation with stakeholders on its content. The Committee discussed the role of the code in informing NatureScot’s decisions to grant, modify, revoke or suspend a section 16AA licence; NatureScot confirmed any breach of the code would inform its decision but that it would “depend on the nature of the breach”.
222. The Committee discussed the code of practice with the Minister on 28 June 2023. Members asked whether the code would implement recommendations made by the GMMG about the collection of data relating to land used for grouse shooting. The Minister stressed that NatureScot, in consultation with stakeholders, would develop the code but agreed that it could be “a very useful tool” to evidence good moorland management practices. The Minister thought that “the philosophy that I heard NatureScot outline is the right one” as “it is not there to stand in the way of good practice; it is there to encourage good practice, to licence it and, as you said, to get data off the back of that”.
223. The Minister did not agree with the suggestion that more information on the code should be included in the Bill and argued this would be “very much putting the cart before the horse”.
224. In their [letter to the Committee, dated 11 August 2023, Scottish Government officials](#) updated members that NatureScot is in the planning stages of developing the code of practice with stakeholders through the Moorland

Forum. Officials expressed a hope that they will be in position to share a copy of the draft code of practice with the Committee ahead of Stage 3.

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.**

Delegated power provisions

227. The DPLRC reported that sections 6 and 7 would delegate two powers to the Scottish Ministers to exercise. These powers would be subject to the affirmative procedure.
228. Under section 6(3), the inserted Part 1B into schedule 2 of the 1981 Act would set out those birds for which a section 16AA licence would be required. The Bill proposes that only red grouse is on this list. Under the 1981 Act, the Scottish Ministers would have the power to amend this list under the negative procedure; section 6(3) would amend the 1981 Act to require the affirmative procedure is used. The Scottish Government explained this procedure is required “because (a) it will impose a burden upon persons subject to the licensing requirements and (b) the exercise of the power involves amending primary legislation”.
229. Under section 7(2), the inserted section 16AA(12) would give the Scottish Ministers the power to modify the definition of a relevant offence. The DPLRC reported that “it is commonplace to take such powers so that the Government can respond to the creation, modification and removal of offences from the statute book”.
230. The DPLRC found both delegated powers under section 4 acceptable and agreed with the affirmative procedure for both.

231. **The Committee notes, and agrees with, the DPLRC’s conclusion that the delegated powers provided for in sections 6(3) and 7(2) are acceptable and that the affirmative procedure would be appropriate.**

Sections 9 - 19 - muirburn licensing

232. Part 2 of the Bill would introduce a new licensing scheme for making muirburn in Scotland. Section 18 defines “making muirburn” in the context of the Bill as including “the setting of fire to or burning of heather or other vegetation”.
233. Muirburn is undertaken for a range of land management purposes including—
- the removal of accumulated dead and woody plant material in order to encourage new growth and thereby make vegetation more palatable to grazing animals;
 - to maintain variation in composition and height to allow greater access by livestock and increase foraging and nesting opportunities for moorland game and wildlife; and
 - to reduce the risk of wildfires by reducing the accumulation of potential fuel.
234. The policy memorandum states that, on moorland areas managed for driven grouse shooting, a practice of rotational muirburn is carried out on small areas of heather in order to “produce a mosaic in which heather of different heights and ages occur within the territory of each grouse pair”.
235. At present, making muirburn in Scotland is regulated under sections 23-27A of the Hill Farming Act 1946. The 1946 Act provides that a person can only make muirburn during the muirburn season, which runs between 1 October to 15 April (or until 30 April if authorised by the landowner); muirburn can only be made outwith the muirburn season under licence from NatureScot. Best practice for muirburn is set out in the voluntary [muirburn code](#). There is no statutory prohibition on making muirburn on peatland, although the muirburn code sets out that “burning should not take place on peatland, except as part of a habitat restoration plan, approved by NatureScot”. The Code defines peatlands as organic soils with more than 60% organic matter which is over 50cm thick.
236. The Bill is intended to repeal and replace the muirburn provisions of the 1946 Act by introducing a licensing scheme for making muirburn. As with other licensing schemes established by the Bill, administration of the scheme would be delegated to NatureScot.

Background to the Bill and the proposed licensing scheme

237. The policy memorandum sets out the scientific context for muirburn; it states that—
- ” ... muirburn is a complex issue, with research suggesting that muirburn has both beneficial and adverse effects ... well-managed muirburn

normally achieves its desired aims of providing good habitats for grouse and other species. But the wider impacts of muirburn are highly contested, with variable and sometimes contradictory findings from different experiments and monitoring work.

238. Alongside other grouse moor management issues, muirburn was considered by the GMMG. The Group's main recommendation was that all muirburn (not only on grouse moors) should be subject to increased legal regulation and, after reviewing options for how this could be achieved, recommended a licensing scheme.
239. The review made further recommendations in relation to muirburn, which included—
- That the Scottish Government should increase regulatory control relating to the muirburn code and be subject to regular updates to ensure it reflects the best available knowledge and consideration of predicted changes to the climate. The Group also recommended that this process be subject to expert peer review;
 - That SNH [NatureScot] and the Rural Payments and Inspections Directorate (RPID) should be given power and resources to monitor adherence to the muirburn code by any land manager carrying out muirburn, whether or not they are in receipt of muirburn-related support payments;
 - That increased training should be required for any land manager directly involved in setting and managing fires;
 - That a fire danger rating system for Scotland should be introduced to better support decision-making about where and when to burn; and
 - That the Scottish Government explore changes to the current RPID support payments that would discourage malpractice more effectively than the current very limited breach and penalty powers.
240. The policy memorandum references these and other recommendations from recent reports in relation to muirburn. It notes that the GMMG's report "recognised the benefits of muirburn" – that it provides nutritious shoots for grouse, livestock, deer and mountain hares, can increase biodiversity in dry heaths and restrict colonisation by woodland – but also highlighted there was "strong evidence that muirburn can have a detrimental impact on biodiversity, hydrology and soil stability", especially on blanket bog, wet heath areas and peat-forming plant species. It further references the deer working group's 2020 recommendation that muirburn for wild deer should only be made under licence and the Climate Change Committee's 2020 recommendation to ban rotational muirburn.
241. In 2022, NatureScot published a [Scottish Government-commissioned review of the current evidence on muirburn](#). The review found that "the evidence base surrounding the impacts of muirburn on wildfire, soil carbon and habitats and species is somewhat limited and sometimes contested", identifying

potential risks and potential benefits in different circumstances, as well as a number of ‘known unknowns’. The policy memorandum states that, in the absence of complete evidence, NatureScot has assessed that a precautionary approach to muirburn should be taken. The policy memorandum clarifies that, in this context, a precautionary approach means taking account of activities which present a risk to carbon storage, alongside considering the role of muirburn as a potential tool to manage wildfire risk.

242. Section 9 introduces a requirement for a muirburn licence to make muirburn. Section 10 makes provision for applications for muirburn licences, including the purposes for which an application can be sought. Section 11 would provide that licencing decisions would, among other things, be based on an applicant’s regard to the Muirburn Code. Section 12 provides for the content and conditions of a muirburn licence. Among other things, every muirburn licence is conditional subject to having regard to the Muirburn Code. Section 13 provides for modification, suspension and revocation of muirburn licences. Section 14 would place the muirburn code on a statutory footing as it confers a duty on Scottish Ministers to prepare a muirburn code, to be reviewed every five years. The remaining sections of Part 2 of the Bill make further provision relating to muirburn.

Support and opposition to the licensing scheme

243. The Committee discussed the proposed licensing scheme for muirburn with members of the GMMG on 14 June 2023. GMMG members indicated they are satisfied, in broad terms, that the Bill would implement their recommendations. In particular, the GMMG witnesses emphasised that their “strongest recommendation” was that the existing muirburn code, though “by and large very well constructed”, is not proving to be effective because it is voluntary. Professor Reid explained the proposed licensing system would be key to placing the muirburn code on a more robust footing as, “with the requirement for a licence, the code moves from being something voluntary, under which there are absolutely no sanctions for ignoring it, to something that, if ignored, will put your licence at risk”.
244. Professor Werritty emphasised the need for the regulatory framework to adapt as the science develops. He said—



I emphasise again a point that we reflected on in our report, which is the notion of adaptive management. It goes back to what Professor Reid was saying earlier about the need to provide some wiggle room in the bill and not to make it unduly prescriptive, because, as the science base develops—I emphasise that the science base underpinning a lot of moorland management is incredibly fragmented, contested and incomplete—and as the gaps begin to be filled in, we can tighten up some of the regulatory models and adjust and move forward in a way that could be beneficial for both climate change and protecting biodiversity.

245. The Committee discussed the benefits of a licensing scheme in enabling data collection in order to better understand the impacts of muirburn. Professor Werritty highlighted that a potential benefit of a licensing scheme would be the ability to gather data. He noted both the scientific uncertainty that the “muirburn literature is full of enormous contradictions and uncertainty” and the practical uncertainty in terms of “the lack of evidence on how moorlands are managed”. He stated that—

” ... if we can assemble a much richer database as an ancillary benefit of the bill, that will advance the science. There will then be a virtuous loop that can inform adjustments to the regulatory system so that we can begin to tweak it as the science becomes more secure and firmly attested.

246. In evidence on 21 June 2023, NatureScot echoed Professor Werritty’s views on data collection. NatureScot highlighted that a licensing scheme would enable the collection of better data on the extent of muirburn in Scotland and its impact on biodiversity and on any potential link between muirburn and wildfires. NatureScot highlighted it has been using satellite imagery to map the extent of burning in Scotland over the last three years, but that it has not yet been able to distinguish muirburn from wildfire using those maps. NatureScot suggested that one of the benefits of the licensing scheme would be to provide that on-the-ground data as the expectation of the licensing scheme is that “we will know what’s being burned, where, for what purpose, and being reassured that the appropriate standards are in place”.

247. The Committee heard from stakeholders in relation to muirburn on 21 June. In both the written and oral evidence, views were mixed on introducing a licensing scheme. Generally speaking, environment and wildlife conservation organisations were in favour of the proposed licensing scheme, while moorland estates and land management organisations were opposed to the proposals. Both those who favoured and those who were opposed to the licensing scheme made reference to the complex nature of the evidence base.

248. Environmental and wildlife conservation organisations raised issues around the ineffectiveness of the existing muirburn code and stressed the risks of carrying out muirburn inappropriately. In relation to the ineffectiveness of the existing muirburn code, RSPB Scotland set out a detailed response to the Committee’s consultation on the Bill. It stated that “the existing regulatory framework is no longer fit for purpose” as it does not prevent bad practice in relation to a high-risk land management activity. RSPB Scotland highlighted reports of muirburn that has been carried out inappropriately, for example, at nest sites, where there is tree regeneration, on peatland areas, on steep slopes and scree.

249. Some organisations linked the regulation of muirburn with meeting climate change emissions targets. REVIVE: the coalition for grouse moor reform was in favour of greater regulation and argued that muirburn prevents large areas

of Scotland from developing greater biodiversity and from sequestering more carbon than currently. REVIVE also referred to the Code's voluntary status and suggested that compliance is not regularly monitored. Stop Climate Chaos Scotland stated that, "in order to meet Scotland's emission reduction targets, it is vital that changes – including to muirburn – are made to current land use and land management".

250. NatureScot set out its support for the Bill and a statutory muirburn code. NatureScot stated it was "hugely supportive of the need to underpin existing practice with greater strength, which is what the Bill will allow us to do".
251. In its written submission, the Scottish Fire and Rescue Service (SFRS) supported the introduction of a licensing scheme and emphasised that muirburn is carried out in a number of ways and for different purposes. SFRS stated—
- ” ... 'muirburn' covers a wide range of practices ranging from the practice of burning heather on sporting estates to encourage the growth of new heather for attracting and feeding Grouse, usually carried out by a team of experienced, well equipped and organised practitioners under the supervision of a Gamekeeper on a rotational basis, forming a mosaic of vegetation at different stages of growth; to the lighting of gorse or other rank vegetation to clear space for the grazing of livestock on farms and crofts, usually carried out by an individual with little in the way of equipment or experience.
252. The SFRS concluded that, "given this broad range of practice and the approaches to the use of fire as a vegetation management tool, there is a clear and pressing need to apply additional regulation which allows the various uses of fire to be better regulated and managed to bring about a safer and more manageable approach than is currently in place".
253. Some moorland estates and land management organisations were opposed to additional regulation, however and asserted that periodic muirburn improves peatland, prevents wildfires and facilitates restoration by encouraging growth. For example, the BASC said muirburn "provides a mosaic landscape which supports rich biodiversity, in both the context of flora and fauna".
254. These organisations also referred to the lack of scientific consensus about the impact of muirburn. The GWCT supported the muirburn code being reviewed and updated to reflect emerging research but that this did not equal a requirement for additional regulation. It told the Committee that, "much of the science around muirburn is characterised by evidence gaps which leaves it prone to politics rather than objective analysis".
255. Agriculture and land management organisations also emphasised that burning vegetation is a tool used on agricultural land as well as on grouse moors.

256. The Scottish Crofting Federation (SCF) was supportive of “more effective implementation of the code” but expressed concerns about accessibility and how the licensing scheme would work for small-scale landholdings.
257. The SFRS also raised that, whilst it agrees with the need for a licensing system, it felt that the absence of a requirement for practitioners to undertake training “is a significant omission”. In its submission, it emphasised that every person aiming to burn vegetation for vegetation management should have had “some form of learning on the muirburn code and training on the use of fire” in order to ensure that the muirburn code is adhered to. The SFRS said—
- ” Fire is a dangerous tool, both for those using it and for the landscape it is being used on. In order to introduce a consistent approach, a minimum acceptable standard, and to ensure practitioners have a basic understanding of the muirburn code and the safe application, control and extinguishment of fire we think that the Bill should require, as part of the granting of a licence, that all practitioners have undertaken suitable and appropriate training.
258. This echoes the recommendations made by the GMMG that training should be required of anyone undertaking muirburn. Speaking to the Committee on 14 June, Professor Werritty stated that regularly updated training would be important to ensure strong compliance with the muirburn code. He emphasised “training of key personnel as a fundamental part of the proposed code, and we very much hope that it will be included”.
259. Evidence from NatureScot on 21 June suggested that training is being considered as part of the licensing system. NatureScot noted that—
- ” On standards of training, we are working quite hard to ensure that the people who undertake the activity are appropriately trained. That is in the bill, and it is incumbent on us, the Scottish Fire and Rescue Service and practitioners to ensure that we set the bar in the right place. Of course, we must ensure consistency and think about how we square the standards and skills that are appropriate to grouse moors, where the people involved are exemplary in their management of fire, with those in crofting communities and those of farmers, who do not have the same resources or skills. We would like standards to be raised and applied consistently so that we can be assured that safeguards are in place.
260. In her evidence on 28 June 2023, the Minister confirmed the Scottish Government’s view that the licences are going to be straightforward to apply for and her expectation that training would form part of the licence application and muirburn code.
261. The Minister highlighted that the information collected by the licencing scheme “will provide better data on what is happening where might allow the science to develop in a way that has not been possible so far”.

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.**
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.**
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.**

The purposes for which a muirburn licence would be granted

268. **Section 10 of the Bill provides that a muirburn licence would only be granted for the specified purposes outlined in the Bill. Different purposes are specified for non-peatland (section 10(2)(a)) and peatland (section 10(2)(b)), with**

licences able to be issued for a more limited range of purposes on peatland than on non-peatland. The Bill gives the Scottish Ministers the power to make regulations to modify these purposes; these regulations would be made under the affirmative procedure.

269. The purposes for which a licence for muirburn on non-peatland could be sought are: managing the habitats of moorland game or wildlife; improving the grazing potential of moorland for livestock; conserving, restoring, enhancing or managing the natural environment; preventing or reducing the risk of wildfires causing harm to people or damage to property; and research.
270. The purposes for which a licence for muirburn on peatland could be sought are more limited and are to restore the natural environment; prevent or reduce the risk of wildfires causing damage to people, property or habitats; and research. Section 11 makes further provision for licences for muirburn on peatland as it provides that licences would be granted if “no other method of vegetation control is available” (section 11(1)(b)(ii)).
271. Under the Bill, therefore, it would not be possible for land managers to apply for a licence for muirburn on peatland for the purpose of managing habitats for moorland game or wildlife or improving moorland for livestock grazing.

Delegated power provisions

272. The DPLRC reported that section 10(5) would delegate a power to the Scottish Ministers to modify the purposes for which a muirburn licence would be granted. This power would be subject to the affirmative procedure.
273. Given that the exercise of this power has the potential to significantly alter the effect of the legislation, the DPLRC queried whether it was appropriate for this aspect of the Bill to be open to amendment by subordinate legislation. The DPLRC’s report sets out the Scottish Government’s response.
274. The DPLRC noted that—
- ” ... the purposes for which muirburn can be made are central to the operation of Part 2 of the Bill. While the Committee recognises the need to respond to new scientific evidence, it considers that any changes to this provision may merit greater parliamentary scrutiny. It therefore highlights this provision to the lead committee.

- 275. The Committee notes the DPLRC’s conclusion that any regulations made under section 10(5) should be afforded greater parliamentary scrutiny. The Committee notes it will be for the relevant lead committee to determine the appropriate level of scrutiny for any regulations made under this power.**

Different purposes for peatland and non-peatland licences

276. As set out earlier in this report, there is no statutory prohibition on making muirburn on peatland but the current muirburn code sets out that “burning should not take place on peatland, except as part of a habitat restoration plan, approved by NatureScot”. The proposal to differentiate between land that is peatland and land that is not peatland within the licensing scheme was discussed with witnesses.
277. Officials told the Committee on 31 May 2023 that the provision on peatland is intentionally narrower. Officials explained that the Bill would allow a muirburn licence to be granted on peatland where “a landowner might take the view that muirburn is the right way to go in order to restore or repair the land, if it is agreed with NatureScot ... but burning of peatland is not permitted for the wider range of purposes that are set out in section 10(2)(a)”.
278. Officials went on to acknowledge that the evidence around the impacts of muirburn is complex and contested, but stated that burning on peatlands would be “subject to a higher degree of scrutiny” due to the “greater risk of environmental damage” to this carbon store. Officials told the Committee that—
- ” The first thing to say is that this is clearly an area in which there is a lot of contested science and we are not settling on a particular view of whether burning on peatland is necessarily damaging. We are saying that there is a risk of serious carbon emission through burning that damages the peat; there is a risk of peat degrading and emitting; and there is also a risk that the peat will catch fire, which would again cause catastrophic carbon emissions and could be a serious long-term issue to deal with. Those are the sort of risks that we are seeking to mitigate but, again, I would say that it is not settled science.
279. Many environmental and conservation stakeholders agreed that peatland should be treated differently to non-peatlands due to their importance for climate change. In the evidence session on 21 June, the IUCN Peatland Programme argued that the scientific literature is not consistent in its definition of peatland which has fuelled a perception of a lack of consensus in the science. It suggested that “much of the research that has been produced to date inconsistently and inaccurately describes the peatland type, condition and past and present Management regimes, and the generic terms that are used in that research—such as “moorland”, which encompass both peatland and non-peatland types—make interpretation of the science really difficult”. It also noted that the long-term studies referenced by moorland management organisations had not yet been subject to peer review. The IUCN Peatland Programme suggested that more research was needed “to compare burning management and healthy peatlands rather than work that compares two degraded states”.
280. However, moorland estates and land management organisations such as the GWCT, SLE, and BASC disagreed that peatland should be treated

separately, due to the uncertainties around the impacts of muirburn on peatlands.

281. The GWCT referred to the uncertainties in the science and argued that the differing views between stakeholders “illustrates ... how complex the issue is”. The GWCT also raised concerns that limiting muirburn on peatland would impact biodiversity. It told the Committee that “with longer-term studies that look at burning over a real-term burning cycle, you start to see ecosystem service benefits over time”. It suggested that the Bill does not contain provision to allow burning on peatland “to deliver those kinds of benefits” and that this “will tie the Scottish Government’s hands on what it can do to deliver on biodiversity and climate change”.

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.

Licenses granted for the purpose of preventing wildfire

284. As set out earlier in the report, a licence for muirburn on non-peatland could be granted to prevent, or reduce the risk of, wildfires causing harm to people or damage to property. A licence for muirburn on peatland could also be granted to prevent, or reduce the risk of, wildfires causing harm to people or damage to property, as well as preventing or reducing the risk of damage to habitats. The ability to use muirburn to prevent wildfires was discussed during evidence.

285. The SFRS explained how controlled burning, or muirburn, can be used to manage the risk of wildfires. It told the Committee that—

” ... the practice of muirburn is instrumental in reducing the risk of wildfire because it manages the fuel load, and it is the fuel load that is the real problem when it comes to the intensity of fire that we are seeing. Climate change is not having an impact on the number of fires that we are having, but it is having an impact on the fire behaviour that we are seeing and the intensity of fires. That, combined with an increased fuel load or an unmanaged fuel load, will result in a perfect storm for wildfires.

286. Scottish Government officials acknowledged to the Committee on 31 May that “wildfire is clearly a serious risk”, and as a result, the Scottish Government is “absolutely certain that it needs to be in the bill”.

287. When it gave evidence on 21 June 2023, NatureScot emphasised that, in the context of a climate and nature emergency, the Bill would require muirburn on peatlands to be undertaken in a more targeted way: “it must happen for very specific purposes and in very specific places”. It underscored, however, that muirburn would remain “a tool in the toolbox”—

” ... we know that muirburn must remain absolutely integral to our ability to reduce the risk of wildfire. I make that point absolutely clear: muirburn must remain as a tool in our toolbox. The main reason for that, in peatland and other habitats, is the need to protect our assets. That means that there is a need for strategic planning of where and how best to burn to reduce the risk of wildfire.

288. Most witnesses who gave evidence on 21 June 2023 agreed that muirburn should be permitted to prevent or reduce the risk of wildfires. SLE, for example, emphasised the use of muirburn in managing the fuel load on moorlands and the role of burning techniques in controlling the spread of wildfires.

289. Some witnesses, however, spoke of their concern that licence applicants would use wildfire prevention as a loophole to undertake muirburn on peatland for other purposes and called for reassurances that the licensing scheme would not permit this. In the evidence session on 21 June, RSPB Scotland stated that it “can broadly accept that” muirburn should be one of the tools to manage wildfire but argued that it must “be done in extremis, rather than as normal”. They felt that “provision needs to be made in the bill to stop that becoming routine”.

290. In response to this concern, NatureScot emphasised the responsibility of the licence applicant to be clear about the purpose for which they would be seeking a muirburn licence—

” The onus is on the applicant to be able to demonstrate that, in their view, they are using muirburn in the most sensible place on their property. Owner-occupiers know their ground better than we do, so the onus is on the applicant to demonstrate that, in any particular case, certain areas should be burned to protect the habitat and to deliver on the core purposes of the bill. That is very much a joint consideration. Our relationship with applicants is based on trust and confidence.

291. In response to these concerns, officials told the Committee that—

” The licensing authority will try to follow the latest science and it will need to be au fait with what is actually happening on the ground. It will also need to take advice from the Scottish Fire and Rescue Service.

The Scottish Government will clearly be influenced by its advice on that.

At the end of the day, it will be a matter for the licensing authority to decide where wildfire risk is best managed by muirburn and the extent of the muirburn that is necessary to manage that wildfire risk, if that is put forward as the primary purpose for burning.

292. The Committee discussed the extent to which muirburn could itself cause wildfires.
293. Professor Newton, one of the GMMG members, told the Committee on 14 June 2023 that wildfires were rarely caused by muirburn. He said that wildfires have been more likely to occur on agricultural land outside the muirburn season and in areas that have not been burned for several decades, where there has been a “huge build-up of dry trash on the ground”. Professor Newton stated that “it is mostly under those circumstances that we have cases of fires penetrating deep into the peat, which is where the problems start”.

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.

Muirburn only permitted where ‘no other method of vegetation control is available’

295. The Committee discussed the provision that a muirburn licence would only be granted on peatland “where no other method of vegetation control is available” (section 11(b)(ii)) with witnesses.
296. The Committee discussed alternative forms of vegetation control with stakeholders, particularly in relation to managing vegetation for wildfire risk. Short-term methods such as muirburn, cutting and grazing were discussed, as well as longer-term methods for creating resilient habitats, such as rewetting and creating more diverse landscapes.
297. Some stakeholders supported this provision. For example, the IUCN UK Peatland Programme advocated rewetting as an alternative method of vegetation control and recommended the muirburn code should describe what methods of vegetation control should be considered as part of the application assessment and guidance. IUCN said—

- ” ... given the Scottish Government’s commitment to tackling the nature and biodiversity crisis and supporting peatland restoration, rewetting peatland would be a major way of dealing with the fuel load issue. Once you rewet peatland, there will be a reduction in heather cover within five to 10 years, and that will, in turn, reduce fuel load.
298. Other stakeholders raised concerns over the efficacy and risks associated with alternative methods and strongly argued that muirburn should remain a method of vegetation control. The GWCT suggested that there is limited information on the range of peatland management techniques, suggesting that all the tools need to be retained together—
- ” If you think that the science on muirburn and environmental impact is complex and requires more study than there is even less science on rewetting and cutting...Although we think cutting and rewetting are important management tools, they shouldn’t be prioritised over muirburn, they should all be in one toolbox and they should be reviewed in an adaptive management context.
299. From a wildfire perspective, the SFRS told the Committee that—
- ” Cutting is effective, up to a point, but in that respect the analogy that I use quite regularly is of the difference between attending a fire at a hoarder’s house and a fire at the house of a minimalist. Cutting leaves the dry layer that encourages the spread of fire. Cutting is used to control muirburn, but in that case the cut material is still wet. That is the key part. If that material is allowed to dry out, you will have the fine fuel underneath the top vegetation layers, and that is what propagates and encourages fire.
300. RSPB Scotland suggested that rewetted peat bogs are more resilient to wildfire spread. It noted that “there is growing evidence—including from the fire on Saddleworth moor, in England, and the fire on our neighbouring reserve at Dove Stone—that restored habitats are more resilient to wildfire than non-restored habitats” and noted that more diverse upland landscapes including restored peat bogs are important to taking “a longer-term view” on creating landscapes resilient to wildfire.
301. SFRS further told the Committee that—
- ” Rewetting is a long-term tool, but, as has been said a number of times, the science in that respect is conflicting, so a bit of work is required. Similarly, the variegated planting of species has a demonstrable impact on how fire spreads as opposed to having a continuity of similar fuels. However, muirburn is absolutely the most effective way of removing the fuel, because it manages the landscape and prevents wildfire.
302. Many witnesses shared the view expressed by the SFRS that “muirburn is definitely the most effective [method of vegetation control], because it removes the fuel in its entirety”.

303. The Minister told the Committee on 28 June 2023 that alternatives to muirburn, where those exist, would be considered preferable—

” We have to be clear that muirburn will not be the first option if another process could achieve the same outcome, because muirburn has the potential to damage the peat. If someone goes straight to using muirburn without taking other methods into account, NatureScot will probably want to know what else they have looked at and why they cannot use other methods.

304. The Committee also discussed the specific wording of section 11(b)(ii), that a licence is granted for peatland if NatureScot is satisfied that “no other method of vegetation control is available”. NatureScot told the Committee that “one of the questions that we must pose is why burning is being used in the absence of alternatives” and was “sure that there will be lots of answers as to why burning is the most appropriate method”.

305. On 14 June 2023, Professor Reid from the GMMG suggested that, from a practical perspective, this requirement sets a very high standard—

” It is possible that the term “reasonably available” or something like that might be more appropriate. Again, you have the problem that setting a rigid test takes away your flexibility and your ability to respond to different circumstances. People will differ on whether other control is available for rocky ground, on steep ground and so on. There can be issues. A bit of fuzziness can be helpful for operating the system.

306. The Committee discussed with witnesses if the Bill should provide for where no other method of vegetation control is ‘appropriate’, rather than ‘available’.

307. When she gave evidence on 28 June 2023, the Minister mooted a third option – ‘practicable’ – on the basis that the word ‘available’ might “give the wrong impression”. The Minister told members that “other methods are available, but they may not be the right methods”. The Minister noted that this would be considered at Stage 2.

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.

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.**

Definition of peatland

310. Section 18 includes a definition of “peatland” as “land where the soil has a layer of peat with a thickness of more than 40 centimetres”. This section also defines peat as “soil which has an organic content (that is, content consisting of living and dead plant and animal material) of more than 60%”.
311. The policy memorandum acknowledges “there is no single definition of peatland”. The current muirburn code defines peat as exceeding 50cm but the Scottish Government committed to review this in response to the GMMG report. The policy memorandum sets out the Scottish Government’s reasoning for the 40cm definition of peatland and why it ruled out a deeper or shallower measurement. It concluded that the 40cm corresponds with the Heather and Grass etc. Burning (England) Regulations 2001 and, as this definition will protect areas of peatland associated with shallower peat, it was felt this definition was in line with the precautionary principle.
312. The Scottish Government bill team explained the rationale for the 40cm depth definition when it gave evidence to the Committee on 31 May 2023. Officials recognised that any definition would be an arbitrary measurement but stated that regulating a wider area of peatland was being taken in line with the Scottish Government’s precautionary approach to muirburn—

” Again, this is a much-debated issue in this area. At present, the figure in the code of practice is 50cm but there are people arguing that it should be 30cm while, south of the border, the figure of 40cm applies in protected areas. We were trying to balance some of the arguments and take what we thought was a precautionary approach. Indeed, I think that that has been the underlying principle in all of our work on muirburn, and the provisions that you are seeing in the bill are a recognition that this is an area of significant concern.

There are big issues at stake as far as carbon emissions are concerned, but there are also big issues at stake with regard to effective management for grazing and other agricultural purposes. We have therefore tried to balance all of that and have taken, where possible, a precautionary approach to minimise the potential risk to the environment—certainly while the scientific debate goes on about the effects of muirburn on carbon emissions, the damage to peat and so on. These are on-going debates, and we want to be able to react accordingly in the future, but, in the meantime, we think that the 40cm figure represents a practical and pragmatic approach to setting a depth for peat to which our controls will apply.

313. The Committee discussed the provisions with members of the GMMG on 14 June 2023. Professor Newton told the Committee that, whether “this magical figure of 40cm—or 30cm or 50cm or whatever it might be” is the right depth was “a difficult question to answer ... but it does not really tell you all that you need to know, which is who will be affected and over what sort of area”.
314. The Committee discussed the proposed definition and existing peat depth data with stakeholders. Some stakeholders took the view that the definition should stay at 50cm because there is existing data on peat depths over 50cm. The GWCT told the Committee that “there is no evidence to support the recalibration of peatland to 40cm”. It also referred to the practical difficulties of applying the definition, stating that peat depths can vary considerably within just a few metres and there is currently no spatial data at any reasonable resolution for peatlands at 40cm. The GWCT suggested the 40cm definition “might either disincentivise muirburn, because of the confusion”.
315. On the specific point about existing data on peat depths over 50cm, Scottish Government officials on 28 June 2023 highlighted that “they are not sufficiently detailed for this purpose”.
316. Other stakeholders thought that all peatland should be afforded stricter protection to reflect the complex ecology of peat but believed that, if there is to be a definition, then 30cm would be more appropriate. The representative from the IUCN UK Peatland Programme made reference to several academic studies that defined peatland as containing peat at shallower depths than 40cm and containing 30% organic content. They stated that “excluding shallower peat from burning protection can have damaging consequences for the achievement of climate change and biodiversity goals”.
317. Though disagreeing on whether burning should be permitted on peatlands, there was some agreement between stakeholders with different views about the need to take a more holistic view of peatland ecosystems. GWCT advocated moving to a definition of peatland focused on ecosystem functioning rather than depth limits. The IUCN agreed with this point, emphasising that shallow areas of degraded peat are not covered by policy and land management decisions, and advocating for “a more holistic look at and a move away from an arbitrary depth definition in relation to peat.”
318. On 21 June 2023, NatureScot set out its view that, given the importance of the peatland resource in tackling climate change, it would not be unreasonable to expect muirburn practitioners to develop a better understanding of the peatland they manage. NatureScot told the Committee—
- ” Going back to first principles, given that we are in a climate and nature crisis, when the peatland resource is so important, if someone proposed to burn an area of peatland, I would ask why they proposed to do that without really understanding what was going on under the surface. It is not unreasonable to expect an applicant to be able to demonstrate that they have knowledge of that. We do not have the

data nationally, and it will always be really hard to get that data. Therefore, there will be an onus on an applicant to demonstrate that they have an understanding that the right safeguards are in place.

Again, going back to first principles, I note that we are in a climate crisis and we are expecting transformative land use. That is a change, and I accept that people will struggle with it, but, from our point of view, we will not get to net zero unless people start to change their behaviour. Tackling burning is part of that, as is protecting our peatland resource. That is why the Scottish Government is putting £250 million into addressing some of the damage and modification that has led to peatlands being in poor condition. The last thing that we want to see is applications being made that risk greater damage than we already have.

319. Land management organisations expressed concerns to the Committee about how onerous a task it would be to survey peatland depths in order to apply for a muirburn licence on peatland. In its evidence on 21 June 2023, SLE highlighted a comment in NatureScot’s review of muirburn relating to the amount of time it would take to use a peat probe; SLE told the Committee that “clearly, in the context of our larger landholdings, that presents a significant challenge”. It went on to say that it “would massively welcome much more information about what methodology will be used for determining the peat depth, because that is clearly a vacant area in the bill at the moment”.
320. SLE told the Committee that “the fact that we do not have a methodology to scrutinise is a big part of the problem” and voiced concerns that, “if you have not followed the methodology to the letter, there is a real risk of your being prosecuted or caught out by the legislation”. Scottish Government officials, on 21 June 2023, reassured the Committee that “if a person has honestly followed the methodology that NatureScot has set out and the results that they have provided have concluded that the land is not peatland, then it is not peatland”.
321. The GWCT and SLE advocated for “ignition point” recording of peat depths. The GWCT told the Committee that the—
- ” ... peat probe survey that is carried out across even a whole hillside in accordance with the bill would still leave large areas categorised as either peatland or not, because probing is done at a simple resolution. We would therefore advocate for ignition point recording and adaptive management, so that data is collected over time and we can learn from that.
322. SLE agreed, adding—
- ” As we have just heard, peat depth can be hugely variable. How do we know that the bit of land that NatureScot probes when it does its assurance check will be the same bit of land that is probed when a land

manager does their survey? There needs to be consistency and clarity. I support—100 per cent—the point that Nick Hesford [GWCT] raised about ignition points being the points at which the measurement should be taken, because at least that would provide a little bit of clarity. If the point at which the fire starts is the point at which you measure, that will make it much easier for land managers to follow the provision.

323. Scottish Government officials told the Committee that “a proportionate approach would be required here, and NatureScot will take it”. Officials went on—

” That is exactly the sort of issue that will be covered by the methodology that NatureScot will give to applicants and discuss with them before the scheme comes into effect. Any piece of land might have pockets of peat layer that are deeper than 40cm. That does not mean that the whole parcel of land is defined as peatland. There will, precisely as you say, be specifications for the proportion of the area that needs to be more than 40cm deep for it to be included in the scheme.

324. In [Scottish Government officials' letter providing supplementary information to the Committee, dated 28 June 2023](#), Scottish Government officials highlighted existing peatland depth survey guidance and methodology which is currently being utilised for work undertaken for the Peatland Code.

325. The Minister explained the rationale behind the choice of the 40cm definition when she gave evidence to the Committee on 28 June 2023—

” We are taking the view that 40cm is a significant depth and suggests a mature peatland. We do not want to be too restrictive by going to 30cm. If science develops—if irrefutable science comes before us—in either direction and shows that 50cm would be better or that 30cm would be more reasonable, we have flexibility to amend the definition. However, for the purposes of the bill, we have gone for 40cm because we think that that is a reasonable depth.

We must protect peatland as much as possible. I went through all the reasons why peatland is important [earlier in the meeting]. To use 50cm as the definition was not the right approach. I cannot be more exact. I would love to be able to point to a definitive reason for the 40cm depth, but that is where we have landed, based on the value of peat and the potential risk to that very valuable natural resource.

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 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.**

Delegated power provisions

330. The DPLRC reported that section 18(2) would delegate a power to the Scottish Ministers to amend the definition of peat and peatland. This power would be subject to the affirmative procedure.
331. The DPLRC observed that the definition of peatland is central to the system of muirburn licensing and that the science on muirburn on peatland is contested. The DPLRC queried, therefore, whether it was appropriate for this aspect of the Bill to be open to amendment by subordinate legislation. The DPLRC's report sets out the Scottish Government's response.

332. The DPLRC noted that—

” ... the definition of “peat” and “peatland” are central to the operation of Part 2 of the Bill. While the Committee recognises the need to respond to new scientific evidence, it considers that any changes to this provision may merit greater parliamentary scrutiny. It therefore highlights this provision to the lead committee.

333. The Committee notes the DPLRC’s conclusion that any regulations made under section 18(2) should be afforded greater parliamentary scrutiny. The Committee notes it will be for the relevant lead committee to determine the appropriate level of scrutiny for any regulations made under this power.

Modification, suspension and revocation of a licence

334. Section 13 makes provision for the Scottish Ministers to modify, suspend or revoke a muirburn licence. Whereas section 13(1)(b) states that a licence may be suspended or revoked if the Scottish Ministers “are satisfied that a relevant person has committed an offence under this Part”, section 13(2)(c) allows the Scottish Ministers to suspend or revoke a licence if an official investigation is underway in relation to an offence “despite not being satisfied” that a relevant person has committed an offence. Similar provisions have been included in the wildlife trap and section 16AA licensing schemes which are discussed in earlier sections of this report.

335. As with the similar provisions included in the wildlife trap and section 16AA licensing schemes, many moorland estates and land management organisations expressed concerns about this provision. These stakeholders felt “it would be disproportionate and unreasonable to suspend a licence because of the initiation of a police investigation” and raised specific concerns about an official investigation being easily triggered by malicious or vexatious allegations.

336. When raised with the Minister at the Committee’s meeting on 28 June 2023, the Minister referred back to the assurances NatureScot had sought to provide. She referred to NatureScot’s intention to work with potential licence applicants on the licensing scheme, Muirburn code and guidance; the “processes, procedures and frameworks” that guide NatureScot’s decision-making and concluded that “NatureScot’s answers [to questions in the evidence session on 21 June] addressed quite a lot of the concerns”.

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.**

Muirburn season

340. Section 16 provides that muirburn season would run between 1 October to 15 April. The Bill gives the Scottish Ministers the power to make regulations to modify these dates, for specified reasons only; these regulations would be made under the affirmative procedure.
341. When it gave evidence on 21 June 2023, RSPB Scotland highlighted climate change predictions which state that bird breeding seasons come forward by one day every eight years as a result of climate change. As a result, RSPB Scotland questioned whether the muirburn season should close earlier than 15 April; it suggested—
- ” ... an end of muirburn season date of 15 March would be more appropriate than 15 April. By 15 March, birds such as golden eagles have started breeding, and, by late March, many wading birds have started breeding as well—including red-listed species. There is a climate and nature crisis. The compromise might be 31 March, but 15 April is too late.
342. In response, the GWCT referred to a 2021 British Trust for Ornithology report which concluded there is little overlap between the current burning season and the nesting attempts of most upland bird species and there is a very low overall risk from muirburn for populations of upland species.
343. In response to a question, the Minister wrote to Ariane Burgess on 8 November to state she has asked Scottish Government officials and NatureScot for further advice on the issue of closing the muirburn season

earlier than 15 April. The Minister also highlights the Bill would give the Scottish Ministers the power to amend the dates of muirburn season via secondary legislation.

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.**

Delegated power provisions

345. The DPLRC reported that section 16(2) would delegate a power to the Scottish Ministers to amend the dates of the muirburn season. These powers would be subject to the affirmative procedure.
346. The Scottish Government told the DPLRC this power was necessary in order to ensure that the dates of the open season continue to align with weather patterns and wild animal breeding cycles. The DPLRC noted the dates could only be amended for specified reasons only and considered that this restriction ensures the power extends no further than is necessary.
347. The DPLRC found the delegated power under section 16(2) acceptable and agreed with the affirmative procedure.

348. **The Committee notes, and agrees with, the DPLRC’s conclusion that the delegated power provided for in section 16(2) is acceptable and that the affirmative procedure would be appropriate.**

Proposed ban on the use of snares and cable restraints

Introduction

349. The Scottish Government's consultation document states that a snare or cable restraint is a thin wire noose used for catching and/or restraining a wild animal, such as a fox or rabbit, for the purpose of predator control.
350. There have been technical adjustments to the traditional snare design, which include a safety stop, double swivels and breakaway sections, which land managers argue considerably reduce the welfare risks associated with the use of traditional or older designs of snares. [BASC details these technical adjustments in its letter to the Committee, dated 12 October 2023](#). These can be called 'humane cable restraints' but will be referred to as modified cable restraints in this report.
351. The use of snares and modified cable restraints is regulated by section 11 of the 1981 Act, as amended. It is an offence to use or set a snare in a position where it could cause bodily injury to any wild bird coming into contact with it.
352. The Wildlife and Natural Environment (Scotland) Act 2011 made a number of amendments to the 1981 Act, introducing requirements to check snares at least once in every 24-hour period and for training, record keeping and the use of identification tags registered with NatureScot. The provisions also introduced the need for establishment of approved training bodies to deliver training and created an administrative role within Police Scotland to maintain records of trained operators.
353. The [Nature Conservation \(Scotland\) Act 2004](#) also amended the 1981 Act to ban setting snares in a position calculated to cause unnecessary suffering to any animal coming into contact with it.
354. The Animals and Wildlife Penalties, Protections and Powers Act 2020 extended vicarious liability to offences involving the illegal setting of traps and snares.
355. The 1981 Act also requires the Scottish Government to undertake a review of the snaring regulations every five years. The last statutory review of snaring was completed in 2022; one of its recommendations was that a wider review of snaring should be undertaken.
356. In response to a parliamentary question, the Scottish Government subsequently confirmed that the wider review of snaring would include consideration of a ban on snares in Scotland. The Scottish Government asked the SAWC to report on the welfare implications of snaring and the Rural Environment and Land Management (RELM) Group^[1] to provide its views on

the implications on land management of a ban on snaring. The SAWC concluded that the use of snares causes significant welfare harm to both target and non-target species and recommended a ban on the sale and use of snares. The RELM Group set out a number of findings relating to the use of snares arguing for their retention as a legal predator control tool. [1] RELM is an informal alliance of organisations working together on issues regarding grouse moor regulation, and includes SLE, the SGA and BASC, who also gave evidence to the Committee individually on this issue.

357. This wider review was ongoing when the Bill was introduced and the Scottish Government, therefore, decided not to include any provisions relating to snaring in the Bill at that point but indicated it would do so at Stage 2.
358. As a result, the Committee did not include a question on snaring when it consulted on the Bill in its call for views, but discussed the need for additional regulation of snaring briefly with stakeholders in its Stage 1 oral evidence and agreed it would take further evidence on snaring when these amendments were lodged.
359. When Scottish Government officials gave evidence to the Committee on the Bill on 31 May 2023, they indicated that the delay in including provisions on snaring in the Bill as introduced was to gather evidence on the welfare implications of modified cable restraints. The [Minister wrote to the Committee on 22 August 2023](#) to confirm the Scottish Government's intention to bring forward amendments to ban the use of snares in Scotland at Stage 2.
360. The [Scottish Government held a consultation on the use of snares between 22 August and 3 October 2023](#). The Scottish Government's consultation document stated that—

” ... we believe that there is sufficient evidence to show that use of snares can lead to unacceptable levels of suffering for wild animals. Further, even where snares are used in strict accordance with the conditions set out in the 1981 Act, they remain, by their nature, indiscriminate and as such they pose an unacceptable risk to non-target species including other wildlife and domestic species such as cats.

The Scottish Government is satisfied that other, more humane and efficient methods of predator control such as shooting and trapping are available to land managers and that a ban on the use of snares would not prevent them from undertaking necessary wildlife management.

361. Accordingly, the Scottish Government consulted on an amendment to the 1981 Act to prohibit the use of a snare or other type of cable restraint for the purpose of killing or trapping a wild animal; and to prohibit the use of a snare or other type of cable restraint in any way that is likely to injure a wild animal.
362. The Scottish Government confirmed that, while it does not propose to make it an offence to possess or sell a snare, it will keep this policy under review. The

consultation stated “this is because many snares that are set are made by practitioners using readily available materials and therefore a ban on the sale of snares will have a limited affect”.

363. The Scottish Government wrote to the Committee on 31 October 2023 with an [update on the analysis of responses and a summary of the quantitative analysis of the responses to the closed \(yes/no\) questions](#). The responses showed 70% of respondents agreed with proposals to ban the use of snares and other cable restraints; 71% of respondents did not want an exception to allow snaring for research purposes; and 73% of respondents did not want any other exceptions.
364. The [Scottish Government published its consultation analysis on 7 November 2023](#) which provided a further breakdown of the responses by respondent type.
365. The Committee took evidence on the proposed amendment from the Minister on 1 November 2023 and a panel of stakeholders on 8 November 2023. In advance of the Committee’s additional evidence sessions, a number of organisations wrote to set out their views on the Scottish Government’s proposed amendments. This correspondence is published on the [Committee’s web pages](#).
366. The day before the Committee took evidence from the Minister, [SLE wrote to the Committee on 31 October 2023 with a proposal being put forward by land management organisations for a licensing scheme for the use of cable restraints](#). The Minister told the Committee she was considering this proposal when she gave evidence on 1 November 2023. The day after the Committee heard from stakeholders, the [Minister wrote to the Committee on 9 November to confirm the Scottish Government will proceed with a full ban on the use of snares and will not include a licensing scheme for any purpose](#).

Animal welfare concerns over the use of snares

367. When the Minister gave evidence on 1 November 2023, she set out the animal welfare concerns and reasons for proposing a ban on the use of snares—
- ” I cannot ignore the weight of evidence that snares can and do lead to high levels of suffering. Their indiscriminate nature also means that non-target animals are frequently caught, including protected species such as badgers. I do not believe that further regulation would address those fundamental issues, and I believe that a ban on the use of snares is needed.
368. She went on to set out some of the SAWC’s conclusions of the welfare implications of snaring—
- ” It talks about the sentience of animals and the capacity of animals to experience pain and other negative impacts from snaring, including

psychological impacts. It said that non-target species, including some protected species, were routinely caught in snares, and suffer and may die. Animals go through not only the physical impact of the snare but the psychological distress, particularly when they are left for many hours caught in a snare, where they could be exposed to other predator attacks and are out in an exposed area and subject to the weather. They do not have access to food, they could be away from their young or they could be young animals that are away from their mother.

369. The Minister confirmed the Scottish Government's views that these welfare implications result from both snares set in accordance with the 1981 Act and illegally set snares. She also confirmed the Scottish Government's view that none of the amendments to the 1981 Act have "been strong enough or been able to fully address the animal welfare issues that snaring poses, no matter who sets the snares".
370. The Committee discussed the animal welfare implications of using snares with stakeholders on 8 November. The SAWC stated its view that "any live trap will have an impact on the welfare of the animal that is captured ... there is a risk of asphyxiation, strangulation and evisceration, all of which have been well documented". OneKind and the Scottish SPCA also set out their view that snares cause significant animal welfare harm and their support for a ban.
371. Land management organisations, however, argued that modified cable restraints do not present the same animal welfare risks and supported a licensing scheme to permit their continued use. Land management organisations detailed the modifications which, they argued, reduced the animal welfare impacts on captured animals – stops set at 26cm which would prevent asphyxiation; a breakaway device which have allowed some deer and badgers to break free and significantly reduced the catch of non-target species. The SGA reported that gamekeepers "often find the animal [caught in a modified cable restraint] sleeping". BASC and the SGA also highlighted best practice around where modified cable restraints are placed (not in areas where there are non-target species) and either checking more regularly or at a different time of the day.
372. Animal welfare organisations, however, argued that modified cable restraints were "to all intents and purposes" a rebranded snare and agreed with the Scottish Government's position that these remain a risk to animal welfare.
373. The Minister also confirmed the Scottish Government's animal welfare concerns about modified cable restraints in her letter of 9 November 2023. She told the Committee that "the evidence I have seen demonstrates that the use of any kind of snare has unacceptable risks to animal welfare of both target and non-target species and that there are more humane alternative methods available".

Alternative methods of predation control

374. The Committee discussed the alternative methods of predation control with the Minister and stakeholders.
375. The Minister agreed that “the appropriate method of control depends on a number of factors” and set out alternative methods of predation control to snaring, including shooting and trapping. The Minister accepted that other trapping methods were not as effective as snares but referred to conservation bodies, such as RSPB Scotland and the Woodland Trust, who do not use snaring as a method of predation control and highlighted RSPB Scotland’s position, taking into account it is “an organisation which cares about ground-nesting birds”.
376. Officials told the Committee that “we have not come across anywhere where people say there is nowhere that they can shoot”. The Scottish Government added that its understanding was that the issue was not that shooting would not be possible in some circumstances, rather that snaring was the preferred method over shooting as it “is a more effective use of manpower”. The Minister said that—
- ” The argument that has been put to us is that shooting will take more people, so it comes from an economic or business point of view. That is the main reason why they want to retain snaring. It is not about a risk associated with more shooting; it is that it will require more people to be out shooting foxes if they cannot go round the estate and set snares and then go back in eight hours’ time or whatever, which is less labour intensive.
377. Land management organisations disagreed with the Scottish Government’s position that shooting will always be an available method and stressed the conditions and circumstances – such as dense cover, weather or topography – which could make shooting impractical or unsafe. The SGA’s representative gave an example from the estate he works on and explained that, due to the “quite steep topography, we are heavily forested on all sides and we are surrounded by commercial forestry”, it is not always possible to control fox numbers by shooting alone despite the estate’s “best efforts”.
378. When asked, the Minister was unable to comment on the extent to which snares, or modified cable restraints, are currently used for predation control beyond how many licence numbers have been issued, and undertook to provide any more granular information the Scottish Government holds on this to the Committee. Land managers, however, highlighted the extent to which they used snares, or modified cable restraints, and argued that it would be difficult to make up the shortfall if this method of predation control was banned. The figures land management organisations provided to the Committee vary for different parts of Scotland but give an indication of the extent to which snaring is currently in use. SLE said that 61% of foxes in Scotland are controlled using lamping or thermal means, 39% by snaring and that, “to our knowledge, zero per cent are controlled using live-capture traps”. It gave a further example of the southern uplands region where, over 2021-22,

55% of foxes were snared, 38% shot and 7% controlled by dogs. The SGA's representative told the Committee that, on the estate he manages, 61% of the approximate 200 foxes controlled a year, are by the use of modified cable restraints; he argued that a ban on these "would be absolutely detrimental to practice on the estate".

379. The National Farmers Union of Scotland (NFUS) told the Committee that, "from a farmer's point of view, pest control is a necessary activity on farms". NFUS went on to say that foxes return for lambs and that snaring is sometimes the only option which "can be due to the topography and the type of land ... but can also be due to time constraints and lack of skills". In relation to impacts on livestock, SAWC referenced Scottish Government research indicating that fox predation of lambs is a very low strand of the problems that affect lambs (whilst noting the Commission was not asked to provide a view on the need to control foxes by the Scottish Government). NFUS responded to this, accepting that a wide range of things impact on lamb losses, however, it argued that banning snares would mean "something else that farmers would not be able to do anything about".
380. Animal welfare organisations highlighted large-scale landscape management projects being put in place by some conservation organisations, such as Cairngorms Connect, which included looking at how to control predator impacts through alternative models, describing this as "really visionary" work in this area. The GWCT agreed these types of landscape projects were important but supported the continued use of modified cable restraints as a "short-term opportunity" as—

” ... to transfer sensible land use practice, as in the examples, quickly and over a very significant scale is, to say the least, going to take us a very long time. We need other options in the interim to be able to ensure that we can balance the good work that occasionally happens in the landscape with the immediate and pressing issue that is presented by fox predation.

Impact of a ban on conservation and biodiversity

381. The Committee discussed the impact of a ban on conservation and biodiversity with stakeholders on 8 November 2023. The GWCT highlighted the impacts of predators on "rare, iconic and vulnerable species such as curlew, lapwing, oystercatcher, black grouse and capercaillie – the list goes on". The GWCT highlighted its Otterburn predation experiment which ran between 2000 and 2008, and which has been repeated, which it argues proves the case that "the use of predation control, and snares in particular, have a role to play in improving the lot of upland birds".
382. Referring to the recent ban on the use of snares in Wales, BASC suggested this would be a "complete disaster" for ground-nesting birds in some areas. BASC also highlighted that, at the time of year when cover is too high to

control fox numbers by shooting, this is also the “time of most conservation need” when ground-nesting birds are nesting.

383. The SGA’s representative gave the example that, in the upper hills of the estate he works on and where modified cable restraints are in use, there are successful broods of lapwing, curlew and golden plover.
384. The Minister told the Committee that she had not asked NatureScot for advice about how a ban on snaring would impact conservation and biodiversity. When asked this question by the Committee, NatureScot said that “it is difficult to answer the question, because there are many different factors involved, but we do support the need for coherent predator management control, and we recognise that predation is one of the factors that can have an impact on ground-nesting birds and biodiversity”. When asked if removing snaring would negatively impact on grouse-nesting birds, NatureScot also said—
- ” There is a risk that it could have, but that has not been quantified in any way. There are alternative methods. It is a matter of balancing the welfare implications with the available tools and deciding on whether alternative methods could be stepped up and used in place of snaring.
385. As described above, the Minister also highlighted to the Committee that conservation organisations such as RSPB Scotland do not use snaring as a predator control method. OneKind noted GWCT research noting that the widespread rearing and releasing of gamebirds has probably improved fox food supply in autumn and winter, arguing that the essential purpose of snaring is to protect gamebirds (as opposed to a conservation purpose. SLE emphasised that the motivations for gamekeepers for snaring were not limited to producing game birds.
386. GWCT noted the importance of landscape-scale conservation but also argued that removing snaring was a risk to ground-nesting birds in advance of longer-term changes being realised from these types of approach. GWCT argued that “the issue is that shifting the overall behaviour and culture around changing landscape use to suit the birds that are at risk will take a long time, and we need something that helps the cause of those birds in the interim”.

Longer-term monitoring of the effectiveness of a ban

387. In response to a question about whether the Scottish Government would monitor the effectiveness of a ban on the use of snares, the Minister confirmed that this would be done by data collection and on-going engagement with gamekeepers.
388. The GWCT agreed that, if a ban is introduced, “it is incumbent on us to produce evidence about what is happening, not just in relation to fox predation and the catch rate, but in terms of conservation benefit”.

Extension of vicarious liability

389. The Committee asked if vicarious liability – already extended to include certain snaring offences under the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 – would be extended to the proposed ban on snaring. The Minister answered that, whilst “it would be reasonable for it to remain in place in relation to new snaring offences”, she was “still considering her final position” on the matter. The Minister stated that, as a breach of the proposed ban could lead to a section 16AA licence being suspended, “that might be a sufficient deterrent” without extending vicarious liability. When asked by the Committee, the Minister confirmed that no vicarious liability charges have been made under existing snaring offences.
390. The Committee raised this when they took evidence from stakeholders on 8 November 2023. SLE argued that vicarious liability would not be required under a licensing scheme as removal of a licence to snare could cover an entire landholding. GWCT considered there was no need for vicarious liability emphasising that a ban would not stop people already setting snares illegally, such as poachers, who have not been sanctioned to use snares in the first place. OneKind did not explicitly call for vicarious liability in relation to the proposed ban on snaring, but referred to the prior introduction by the Scottish Government of vicarious liability for certain wildlife offences and stated vicarious liability can be “a powerful tool to drive change”.

Conclusions and recommendations

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 practitioner 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 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.
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.

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.

DRAFT

Proposal for the extension of powers for the Scottish SPCA to investigate wildlife crime

Introduction

399. On 17 June 2022, in line with commitments in the Bute House Agreement, the Scottish Government established an independent taskforce to consider whether to give the Scottish SPCA, through legislation, additional powers to investigate wildlife crime. The policy memorandum states that the review was undertaken “due to a perceived gap in the ability for Scottish SPCA inspectors to adequately respond to wildlife crime”. The policy memorandum goes on to quote from the review report a summary of the perceived limitations on the Scottish SPCA’s investigatory powers under the 2006 Act—



... the SSPCA are unable to investigate offences where an animal is not under the direct control of a person and is not being caused to suffer. It also means they are unable to investigate and, where appropriate, seize, illegal traps, snares, poisonous baits and wild animals that may have died as a result of these activities. This creates a situation where the SSPCA may find themselves at a site where an animal has already died, and they are unable to directly seize any evidence and/or cannot extend their search to wider areas of land in the immediate vicinity.

400. The Bill was introduced after the Taskforce had reported to the Scottish Ministers, but before the Scottish Government had published its report and responded to its conclusions. The policy memorandum set out that, the Scottish Government was considering the findings of the report and if a decision is made to extend the powers of the Scottish SPCA to investigate wildlife crime, the Scottish Government would bring forward further provisions by amendment at Stage 2, following the outcome of further consultation.

401. Section 8 would give Scottish Ministers regulation-making powers to extend the powers of the Scottish SPCA to investigate wildlife crime. Currently, the Scottish SPCA acts as a reporting agency to the COPFS in respect of animal welfare offences. Under the Animal Health and Welfare (Scotland) Act 2006, the Scottish SPCA may investigate animal welfare offences and may enter and search premises under warrant, seize animals and issue animal welfare notices. The regulation-making powers would enable the Scottish SPCA to investigate relevant offences relating to wild animals as set out in Part 1 of this Bill and Part 1 of the Wildlife and Countryside Act 1981.

Issues raised during the Committee's consideration

402. In its consultation on the Bill, the Committee asked for views about the proposal to give the Scottish SPCA additional powers to investigate wildlife crime.
403. There was support, mainly from animal welfare and environmental organisations, for the prospect of additional powers. The main arguments in favour of the proposals were to enable the Scottish SPCA to provide an additional resource to support the investigation and enforcement of wildlife crime (in the context of wider enforcement challenges in remote areas), recognising that its animal welfare role can mean inspectors come across evidence of wildlife crime, but are prevented from gathering evidence. A range of animal welfare and conservation organisations supported an expansion of powers.
404. A number of these organisations argued the Scottish SPCA would support and complement Police Scotland in its investigation and enforcement of wildlife crime. For example, RSPB Scotland told the Committee that “this “free” resource, paid for by Scottish SPCA members, would complement and support the police, increase the likelihood of securing best evidence, and increase the deterrent effect through more effective enforcement and successful prosecutions”. In oral evidence on 21 June 2023, RSPB Scotland said—

” We support an extension of SSPCA powers. The SSPCA already has powers to investigate some wildlife crime on the basis that an animal is suffering. To give a very brief example, a few years ago a member of the public was walking across a grouse moor and found a gull floundering in an illegally set spring trap and bleeding heavily, and because there was an immediate welfare implication, the Scottish SPCA was called. An inspector attended within an hour and euthanised the gull. However, his powers did not allow him to search for similar traps, and only a week later the police went on to the ground using their powers under section 19 of the 1981 act and found that a line of 10 traps had been set across that hillside. Had the SSPCA been given powers to search land under the Wildlife and Countryside Act 1981, that evidence could have been uncovered much quicker and other animals could have been spared suffering.

405. Other organisations made similar arguments in support of additional Scottish SPCA powers when they gave oral evidence. The SAWC told the Committee—

” Arguably, animal welfare investigations cannot take place because of the difficulty of responding in a timely manner to incidents in remote locations. There is animal suffering out there that is not being investigated because of the resource issue. It seemed to the commission that it would be sensible to add all these experienced, trained officers to the body.

406. The organisations opposed to the proposal mainly represented land management, farming, and country sports interests. Arguments against the proposal primarily focused on three objections: that the statutory powers for investigation of wildlife crime should reside with Police Scotland and not a charitable body; that there is mistrust within rural communities towards the Scottish SPCA due to its advocacy work and perceived partiality, in particular in relation to its support for a snaring ban; and that the Scottish SPCA may have insufficient training and resources, and be subject to inadequate scrutiny to undertake the proposed new powers effectively.
407. In its submission, SLE suggested a perceived bias and potential conflict of interest of the Scottish SPCA due to its advocacy work in relation to animal welfare which might compromise an investigation by the Scottish SPCA. SLE suggested that this could lead to mistrust among land managers towards the future investigation of wildlife crime as the proposals have “given rise to tangible concern from wildlife management practitioners that investigations could be tainted by bias”. During its oral evidence on 14 June 2023, SLE expanded on these concerns about the perceived partiality of the Scottish SPCA due to its promotion of campaigns regarding traps and snares, suggesting that, as a result, “people might not feel comfortable or feel that the SSPCA could impartially investigate an incident involving wildlife crime”.
408. The SGA described that there was mutual respect between land and wildlife management practitioners and the Scottish SPCA, but stated—
- ” However, when it comes to investigative powers, I think that the only organisation that should investigate is Police Scotland, because it is the only fair organisation that looks at those things. It also has far more powers now. Wildlife crime has become really serious, so I believe that it should be down to the police.
409. SLE noted concerns about the potential suspension of a licence (under the licensing framework introduced by this Bill) by NatureScot on commencement of an official investigation, possibly commenced by an investigation by the Scottish SPCA, without the requirement for NatureScot to be satisfied that a relevant offence has been committed. This is linked to broader concerns from SLE and other land management organisations about the threshold for an ‘official investigation’ enabling licence suspension, including concerns about investigations being triggered by vexatious complaints. In the case of expansion of Scottish SPCA powers, there was a further specific concern that licence suspension could also happen without a requirement for police involvement, depending on how any new powers were framed.
410. Police Scotland highlighted a number of concerns about any expanded role for the Scottish SPCA in investigating wildlife crime, particularly that there would be public confusion about which organisation, Police Scotland or the Scottish SPCA, would be identified as the lead enforcement agency and thereby to be contacted to report suspected crime.

411. Police Scotland also queried which organisation would have primacy in any investigation, pointing out that, “there may be a tendency for them [Scottish SPCA] to instigate and commence investigations without Police involvement”. Police Scotland noted that this could lead to duplication of work through “a crossover whereby both Police Scotland and the Scottish SPCA are separately carrying out investigative work ... without the other’s knowledge”.
412. Police Scotland also shared the concerns expressed by other opponents of the additional powers about whether the Scottish SPCA may be vulnerable to conflicts of interest in relation to certain activities and wildlife management practices that, while currently legal, such as the use of snares, are opposed by the Scottish SPCA as a matter of policy. The need to comply with crime reporting standards and other standards and guidance was emphasised, and Police Scotland stated that were Scottish SPCA powers increased, “an overhaul of training, processes and accountability for the Scottish SPCA would be required”.
413. The Committee explored the prospect of additional powers with the Scottish SPCA. The Scottish SPCA told the Committee on 14 June 2023 that “the bill would allow us only to do what we currently do for all domestic animals” and that, with regard to suggestions that the Scottish SPCA would not act impartially and would prosecute persons in line with a campaign against snaring, that “the idea that we could prosecute somebody for setting a perfectly legal snare or any other trap is not right—that could not possibly happen”.
414. In response to concerns regarding a lack of impartiality on some policy issues, the Scottish SPCA told the Committee that “no person can be charged or taken to court for something because it does not follow our policy”.
415. On working with Police Scotland, the Scottish SPCA told the Committee that it was waiting on the Scottish Government’s decision in response to the report of the Scottish Government’s taskforce and that, “if it says that we can have extra powers and it sets out the conditions, we will work with the police and the Government to ensure that we can do it. I can assure you that that would be done to the satisfaction of the Crown Office and would meet the legal requirements”.
416. The [Scottish Government published the Taskforce report on 21 June 2023](#). The review, which reported to the Scottish Ministers in October 2022, was chaired by Susan Davies FRSE, Chief Executive of the Scottish Seabird Centre, and involved engagement with Police Scotland, the COPFS and Scottish Government policy officials. The report states that the review period was time limited, and relied significantly on information presented in previous debates and motions within the Scottish Parliament, and included a review of the current powers afforded to the Scottish SPCA including under the Animal Health and Welfare (Scotland) Act 2006, and requirements of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) and associated codes of practice.

417. As part of the review process the report states that meetings were held with representatives from the following organisations as a sample of those who had submitted responses to the consultation on wildlife crime investigative powers for the Scottish SPCA: BASC, COPFS, NFUS, NWCU, NatureScot, Police Scotland, RSPB Scotland, Scottish Badgers, SGA, SLE, and the Scottish SPCA.
418. The taskforce noted that institutional support from COPFS, Police Scotland and the National Wildlife Crime Unit for an extension of powers to the Scottish SPCA “is not readily forthcoming” on account of “concerns over primacy of responsibility, access to intelligence or interference with other cases and health and safety risks to personnel”. Notwithstanding such concerns, the taskforce also noted that “a strong commitment to partnership working” exists between these organisations. The taskforce, therefore, recommended that a policy of enhanced partnership working between the Scottish SPCA and these organisations and within the Partnership for Action Against Wildlife Crime in Scotland (PAW Scotland) should be followed rather than the extension of powers to the Scottish SPCA through legislation.
419. The [Minister for Energy and the Environment subsequently wrote to the Committee on 27 June 2023](#) to inform it of the Scottish Government’s proposals to bring forward further provisions for the extension of powers to the Scottish SPCA to investigate wildlife crime. The Minister stated that the Scottish Government agrees with the taskforce’s recommendation for further partnership working through the provision of additional training and protocols in which Police Scotland would have primacy over the investigation of cases and offences. The Minister also stated that the Scottish Government “also propose that further limited powers for Scottish SPCA inspectors should be provided” and that these “additional powers could only be exercised when an inspector is already responding to a case using their existing powers under the 2006 Act”. The Committee understands that these proposals will be brought as an amendment at Stage 2.
420. In the letter, the Minister set out the Scottish Governments reasons for proposing additional powers for Scottish SPCA inspectors, and thereby going further than the recommendation of the independent taskforce. The Minister described the proposals as “a balanced compromise” which would allow Scottish SPCA inspectors “who are already on the spot, investigating animal welfare offences under their existing powers” to seize and secure evidence pertaining to related wildlife crimes. The Minister stated that this approach “would not however lead to the SSPCA becoming an alternative wildlife crime enforcement agency” and that Police Scotland “would retain primacy for all wildlife crime”.
421. The Committee discussed the proposed additional powers with the Minister for Energy and the Environment when she gave evidence to the Committee on 28 June. The Minister provided further explanation for the proposed additional powers—

” Time and time again, what has come up in evidence on this bill and others that deal with any kind of animal harm and cruelty is those situations in which the SSPCA has not been able to act and take evidence that would have helped a police investigation. When the SSPCA is called to a scene, it is able to deal with any live animals, but, if dead animals are involved, it is not able to give that evidence to the police.

422. The Committee wrote to the Scottish Government following its Stage 1 oral evidence and requested further information about when an investigation by the Scottish SPCA could be defined as an ‘official investigation’ for the purposes of the licence suspension provisions in the Bill.
423. [Responding by letter, Scottish Government officials](#) told the Committee that an official investigation by the Scottish SPCA will be “any investigation where they, acting under their powers as set out in schedule 1 of the Animal Health and Welfare (Scotland) Act 2006 (by virtue of being appointed as an inspector by the Scottish Ministers or otherwise being authorised by Ministers to act as an inspector under section 49(2) of that Act) and have sought to gather evidence in accordance with those powers for the purposes of considering whether a relevant offence, as set out in the Bill has been committed”. Officials set out the expectation that the decision on whether to suspend licences would be primarily based on evidence presented to NatureScot by Police Scotland, who is the primary reporting body to the COPFS. They added, however, that NatureScot may also take into account any evidence presented to them by one or more of the other reporting bodies (including the Scottish SPCA) who are a specialist reporting agency and have powers to investigate any of the relevant offences set out in the Bill.
424. The Scottish Government held a [consultation on the powers of Scottish SPCA inspectors between 22 August and 3 October 2023](#). The Scottish Government’s consultation document stated that—
- ” It is widely accepted that wildlife crime is difficult to detect and investigate and that this leads to difficulties in mounting prosecutions and convicting those responsible. These crimes often occur in remote locations where there are few or no witnesses. When incidents are discovered, it is often impossible for police officers to attend the scene quickly and delays increase the likelihood of any evidence being destroyed – either deliberately or simply as a result of exposure.
425. The consultation document provided a summary of the various legislative attempts to extend the powers of the Scottish SPCA under the 2006 Act, as well as the recommendation of the independent taskforce. The consultation set out the Scottish Government’s proposals “to provide Scottish SPCA inspectors who are acting under the 2006 Act” to search, examine and seize evidence in connection with various offences under the Wildlife and Countryside Act 1981 and with the proposed offences of using or purchasing a glue trap under the Bill.

426. The Scottish Government stated that Police Scotland would retain primacy over investigation of wildlife cases and that the proposals would not give the Scottish SPCA “the powers to stop and search people or powers to arrest people suspected of committing a wildlife crime”.
427. The Scottish Government wrote to the Committee on 31 October 2023 with an [update on the analysis of responses and a summary of the quantitative analysis of the responses to the closed \(yes/no\) questions](#). The Scottish Government published its [consultation analysis on 7 November 2023](#) which provided a further breakdown of the responses by respondent type.
428. In November 2023, the Committee took further evidence from the Minister and relevant stakeholder organisations on the Scottish Government’s stated proposals for additional Scottish SPCA powers, ahead of the expected introduction of amendments at stage 2. The Committee heard from the Minister on 1 November 2023 and stakeholders on 8 November 2023.
429. The Minister stated that, although the Scottish Government in proposing additional new powers for the Scottish SPCA has not followed the more limited recommendation of the independent taskforce for greater partnership working between the Scottish SPCA and the police and other bodies, partnership working between the bodies would continue through a protocol under the proposals—

” There already is partnership working between them. If the bill is passed, protocols will be put in place between the police and the SSPCA on how the new functions in the powers should work, including what reporting mechanisms there will be and how the agencies can work together effectively. That will ensure that there is partnership working. It might not be exactly to the letter of what the task force said or the partnership working that it advocated, but there will still be enhanced partnership working between the police, the procurator fiscal and the SSPCA, in line with the powers that I have outlined.

430. Susan Davies, the review lead of the independent taskforce on Scottish SPCA powers, was supportive of the Scottish Government’s proposals as “a sensible extension of the current situation”.
431. With regard to the partnership working and any future protocol between the Scottish SPCA and Police Scotland, the Minister reiterated that Police Scotland would retain primacy over investigations—

” The police have primacy over offences under the Wildlife and Countryside Act 1981 and, as such, will progress an investigation. However, in certain circumstances, if it is agreed by Police Scotland and the SSPCA, the SSPCA may report subsequent issues. That goes back to the protocols and partnership working. There will be no powers of arrest or search of persons or the craving of a search warrant provided to the SSPCA. It is very much about the SSPCA assisting the

police in a way that fills the gap around evidence gathering, which was an issue for many years.

432. The Committee discussed these issues with stakeholders on 8 November 2023. Members explored whether the scope of the proposed expansion of powers was clear. The Scottish Government consultation states that “additional powers could only be exercised when an inspector is already responding to a case using their existing powers under the 2006 Act”. The Committee asked stakeholders about the scenario where the Scottish SPCA responded to a call about a live animal caught in a trap, under its powers under the 2006 act, but the animal died before the inspector arrived at the scene, and whether the current proposals would enable an approved inspector then to enter land and gather evidence of a suspected wildlife crime.
433. There appeared to be different interpretations of the proposed new powers. For example, the Scottish SPCA said that “If somebody phoned us up saying that there was a dead raptor up a hill that had been there for six months... we would tell them to phone Police Scotland”. The Scottish SPCA also talked about the specific scenario of being present at a scene while an animal is still alive but dies, for example in trap or snare, while the Scottish SPCA are present at the scene. However, Susan Davies suggested the proposed additional powers would apply where an animal dies before the Scottish SPCA attend, stating, “My understanding is that, if the SSPCA gets a call about a live animal and it arrives and that animal is dead, it is very limited in what it can do. The power would give it more scope to investigate”.
434. In relation to the proposed protocol, some stakeholder organisations expressed concerns about a lack of clarity in the Scottish Government’s proposals about the exact provisions of a protocol between the Scottish SPCA and Police Scotland and how it would operate.
435. RSPB Scotland also emphasised the importance of partnership working and that the Scottish SPCA already had significant experience of dealing with evidence of crime, and reporting cases to the COPFS within its animal welfare role. It also raised the value in increasing the resource for wildlife crime enforcement—

” One of the key things that we have found over many years is the importance of partnership working. In our view, the SSPCA brings considerable added value to wildlife crime investigations, often because it has resources that Police Scotland does not necessarily have.

At the moment, in the whole of Scotland, there are probably about a dozen police officers who are experienced in investigating wildlife crime cases and who regularly do wildlife crime investigations and take them to the level of reporting them to the procurator fiscal. The increased powers that are set out in the bill will increase the possibility that wildlife criminals will be detected and potentially prosecuted, and that

will have a significant deterrent value above and beyond everything else that has been said today.

436. Police Scotland stated that “there needs to be a very clear protocol with well-defined roles and responsibilities, in order for things to work successfully if the new powers are enacted”. COPFS indicated that it “could neither endorse nor oppose the proposals” without further information about the provisions and stated their preference for “the safeguards being drafted in advance of the legislation being put in place”. Although unaware of the details of any future protocol, the Scottish SPCA stated it foresees “absolutely no reason why we could not agree with what is potentially coming down the line”.
437. Stakeholders agreed that Police Scotland should retain primacy in any investigation in which the Scottish SPCA utilises its additional powers. Police Scotland made the point that “communication would be key” in this partnership, and that the Scottish SPCA should notify the police of when it makes use of its additional powers “in writing in quite a tight timescale”. The National Wildlife Crime Unit agreed with the suggestion for such notifications, describing it as “a really good governance process”. Stakeholders were open to further consideration of whether such notifications should be made before, during or after the Scottish SPCA’s use of its additional powers.
438. Responding to a question of whether the Scottish SPCA could use its additional powers were the Bill passed and commenced before a protocol is agreed with Police Scotland, Scottish Government officials stated on 1 November 2023 that the Scottish Ministers “do not necessarily need to commence the provisions until all the arrangements for the protocol are in place”.
439. Susan Davies considered this to be “a pragmatic step to take” but advised that any delay for the commencement of the protocol on the use of the additional powers should not be open-ended—
- ” It is important to have a strong commitment to working on the detail of the protocols and to putting them in place fairly quickly after the legislation is enacted. The approach will take some time to bed in and there will be issues, but if there is a real commitment to partnership working alongside it, the organisations will work through that in a sensible manner.
440. The Minister suggested that one way to give “comfort that the police retain primacy” within future partnership working and any investigation, and thereby allay concerns among some stakeholders that the Scottish SPCA would be empowered to begin an official investigation which could result in the suspension of a licence, could be that an official investigation is deemed to have begun only when a crime number is applied. The Minister stressed that she was merely “leaning towards this” as a possible solution, and that under the protocol “an investigation will be a police investigation”.

441. Stakeholders discussed the merits of using the application of a crime number to mark the commencement of an official investigation but considered that further clarification was needed from the Scottish Ministers on how an official investigation would be defined within the proposals.
442. The Minister stated that the protocol between the Scottish SPCA and Police Scotland would include provisions for the training of Scottish SPCA inspectors in the use of additional powers. The Minister went on to state that the training would complement the existing abilities of the Scottish SPCA and that training, and the authority to use the additional powers, would only be provided to specific individual inspectors—
- ” The SSPCA is already well versed in collecting evidence that is admissible in cases and it already has a relationship with the procurator fiscal and the police in that regard. Therefore, the training will build on existing training, and it will be specific officers who will undergo it. It will not be a case of rolling out the training to absolutely every single officer in the SSPCA. Specific officers will be identified, trained and involved in the setting up of the protocols and the partnership working.
443. SLE suggested that the additional powers should only be granted to individual Scottish SPCA inspectors who have completed two wildlife crime investigation related courses - the wildlife crime officer induction course, along with the investigator training course.
444. Police Scotland agreed that “if the powers are afforded to the SSPCA, training and ensuring that a reasonable standard is met will be absolutely key” in relation to evidential and forensic considerations as these “might not be immediately obvious to someone who does not have that investigative mind to the same extent” as trained police officers. Police Scotland added that some aspects of police investigative training, such as covert policing methods, would not be suitable for Scottish SPCA inspectors and that a new training system may need to be created for the purpose of the protocol.
445. COPFS stated its view of there being “an increased risk when offences are investigated by specialist reporting agencies compared to the police ”due to a differential level of training and experience”. COPFS considered the training of Scottish SPCA inspectors as one of the “main safeguards” for the effective operation, and its support of, partnership working between the Scottish SPCA and Police Scotland.
446. [COPFS wrote to the Committee on 7 November 2023](#) to set out its concerns in more detail regarding the risks associated with the obtaining and reporting of evidence by specialist reporting agencies (SRAs), such as the Scottish SPCA. To pursue the robust and effective prosecution of wildlife crime, COPFS stated that a reporting agency should have “knowledge and awareness of the law covering the offences being investigated, the rules of evidence and the extent and limits of their investigative powers” in order to

“ensure that all evidence is obtained properly, fairly and lawfully to ensure it is admissible in court”. COPFS warned that, were these steps not taken, “certain actions carried out during the course of the investigation may negatively impact on the admissibility of evidence and ultimately COPFS’ ability to take proceedings against an accused person”. COPFS recommended increased accountability for Scottish SPCA inspectors in the form of additional formal procedures to enable independent scrutiny of the Scottish SPCA’s handling of wildlife crime cases.

447. Susan Davies noted that the proposed additional powers and increased partnership working do not relate to responsibilities over the prosecution of wildlife crime as “the decision to prosecute sits not with the SSPCA or Police Scotland but with the Crown Office. It has ultimate control, on the basis of the standard and quality of the evidence that is presented”.
448. On whether any such requirement for additional training, and the uptake of new powers more generally would impact upon the Scottish SPCA’s resourcing, the Scottish SPCA explained that the number of inspectors receiving training would be limited and the additional powers could result in efficiencies in the organisation’s investigatory work—

” There is no plan to increase our resource—we are not going to put in an extra 20 inspectors, for example, and not all inspectors will end up doing the proper training. There is no additional resource, and there should be no additional cost to us. In a way, the suggested approach might save us money, because we would already be at the scene. At the moment, we have to involve the police, wait until they are available and then go back there. Often we could have just taken most steps on our first visit, but that is all part of the protocol.

Conclusions and recommendations

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.

- 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.**
- 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.**
- 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.**
- 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.**