

EXPLANATORY NOTES

Wildlife Management and Muirburn (Scotland) Act 2024 (asp 4)

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WILDLIFE MANAGEMENT AND MUIRBURN (SCOTLAND) ACT 2024

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Wildlife Management and Muirburn (Scotland) Act 2024. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

Overview

3. The Wildlife Management and Muirburn (Scotland) Act 2024 ("the Act") is intended to address raptor persecution and ensure that the management of grouse moors and related activities are undertaken in an environmentally sustainable and welfare conscious manner. The provisions in the Act implement many of the recommendations of the independent review of grouse moor management (which is sometimes referred to as the "Werrity Report")[1].

4. Part 1 of the Act makes a number of provisions in relation wildlife management. This includes:

- a ban on the use, supply and possession of glue traps, unless authorised,
- a ban on the use of snares,
- the establishment of a licensing system for the use of certain wildlife traps (set out in more detail below),
- creating a licensing system for land on which the killing or taking of certain birds is to take place,
- enabling inspectors appointed under the Animal Health and Welfare (Scotland) Act 2006 to search for, examine and seize evidence related to certain wildlife crime when exercising their powers under that Act.

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

[1] grouse-moor-management-review-group-report-scottish-government.pdf (www.gov.scot)

6. Part 3 contains miscellaneous and general provisions relating to enforcement and review of the Act. Schedule 1 contains further provisions as to enforcement of the Act.

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

Part 1—Wildlife Management

Glue traps

Section 1—Offence of using glue trap

8. This section creates the offence of using a glue trap for the purpose of killing or taking (which includes restraining) any animal, or setting a glue trap in a manner that is likely to cause injury to any animal that comes into contact with it unless authorised to do so (see section 5 for details of the authorisation scheme). It is also an offence for a person to knowingly cause or permit an unauthorised person to commit these above offences. The offences do not apply to invertebrates (such as insects).

9. Glue trap is defined in subsection (7) to mean a trap that is designed or capable of catching any animal (excluding invertebrates) involving the use of an adhesive substance. This definition includes home-made glue traps and therefore all offences relating to glue traps would apply to home-made glue traps.

10. A person does not commit an offence if they are an authorised person. "Authorised person" is defined in subsection (7) as being a person authorised by the scheme made under section 5 and acting in accordance with that authorisation.

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

12. The penalty for committing an offence under this section is the same as those in the Wildlife and Countryside Act 1981 ("the 1981 Act") relating to the taking or killing of certain wild birds and wild animals via certain methods[2], being—

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

13. Subsection (6) amends the 1981 Act to remove glue traps from the operation of sections 5 and 11 of that Act. This means that all offences relating to the use of glue traps are in this Act.

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

Section 2—Offence of supplying glue trap

14. This section makes it an offence for a person to supply or offer for supply a glue trap, or to knowingly cause or permit an unauthorised person to do so. The penalty is the same as for section 1.

15. A person does not commit an offence if they are an authorised person (as defined in section 1(7)) or if they had a reasonable excuse to supply the glue trap. An example of reasonable excuse would be if a person's workplace superior compelled them to supply the glue trap.

Section 3—Offence of possessing glue trap

16. This section makes it an offence for a person to possess a glue trap. A person does not commit an offence if they are an authorised person (as defined in section 1(7)) or if they had a reasonable excuse for possessing the glue trap. The penalty is the same as for section 1.

Section 4—Forfeiture and disposal of glue traps

17. This section enables the court to make an order for the forfeiture or disposal of a glue trap where a person is convicted of an offence under section 1, 2 or 3. Where a matter has not resulted in court proceedings, subsection (4) allows the Chief Constable of the Police Service of Scotland to apply to a sheriff or summary sheriff for an order to dispose of any glue trap seized and detained under this Part. Orders under this section allow the chief constable to dispose of a glue trap in any manner as the chief constable considers appropriate; this includes directing another person to dispose of the glue trap.

Section 5—Authorisation for use, supply or possession of glue trap

18. This section enables the Scottish Ministers to make regulations to establish a scheme to authorise the use, supply or possession of glue traps by specified persons in specified circumstances. A person can be authorised under the scheme only if it is necessary or expedient to do so for the purpose of protecting public health and no other method of rodent control is practicable.

19. The regulations may create offences with a maximum penalty of, on summary conviction, imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

20. Before making regulations, the Scottish Ministers must consult local authorities and such other persons as they consider likely to be interested in, or affected, by the authorisation of the use, supply or possession of glue traps.

Snares

Section 6—Prohibition of use of snares

21. This section amends the 1981 Act to prohibit the use of snares. Subsection (2) prohibits the use of snares, except for snares operated by hand, for the purpose of killing or taking any animal and also prohibits using a snare to cause bodily injury to any animal that comes into contact with it. The amendments do not apply to wild birds—this is because section 5(1) of the 1981 Act already prohibits the use of snares for the purpose of killing or taking a wild bird, or

using a snare to cause bodily injury to any wild bird that comes into contact with it. Snares operated by hand are still permitted for use on any animal (other than a wild bird) and by their nature would require a person to monitor and manually operate the snare.

22. "Snare" is not defined in the 1981 Act and so takes its ordinary meaning. According to the Oxford English Dictionary, "snare" means "a device for capturing small wild animals or birds, usually consisting of a string with a running noose in which a foot or the head may be caught". Any type of cable restraint would therefore be a snare and their use would be prohibited.

23. Subsection (3) repeals sections 11A to 11F of the 1981 Act. Those sections contain provisions relating to the use of snares, such as training requirements and requirements for identification numbers and for record keeping.

24. Subsection (4) amends section 16 of the 1981 Act to remove the ability of the licensing authority to grant a licence to authorise the use of a snare for the purpose of killing or taking wild animals or killing wild birds. A licence under section 16(1) can still be granted for use of snares for the purpose of taking a wild bird in limited circumstances.

25. Subsections (5) to (7) make consequential amendments to the 1981 Act to remove references to snares and the snaring provisions repealed by subsection (4).

Regulation of certain wildlife traps

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

26. Section 1(1)(a) of the 1981 Act provides that it is an offence to intentionally or recklessly kill, injure or take any wild bird[3]. Section 2 of that Act provides exceptions to the offences in section 1 including killing or taking any wild bird outside the close season for that bird if you had a legal right or permission to do so. Section 5(1) prohibits certain methods of killing and taking wild birds: this includes traps.

27. In relation to wild animals[4], section 9(1) of the 1981 Act provides that it is an offence to intentionally or recklessly kill, injure or take any wild animal included in Schedule 5. Section 10 of the 1981 Act provides exceptions to the offences in section 9. Section 11(1) prohibits certain methods of killing and taking of any animal. Section 11(2) further prohibits certain methods of killing and taking certain wild animals included in schedule 6 or 6ZA. Among other things, section 11(2) makes it an offence to:

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

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

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

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

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

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

Section 7—Wildlife traps

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

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

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

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

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

35. Inserted section 12A(6) makes it an offence to tamper with, disarm or destroy a trap to which that section applies, without a reasonable excuse. An example of a reasonable excuse would be if a person came across an injured animal trapped in a lawfully-set trap and they disarmed or destroyed the trap to free the injured animal, then the person does not commit an offence. Inserted section 12A(7) makes it an offence for a person to knowingly cause or permit another person to commit an offence under section 12A(6). In the example above, if another person was present and allowed the trap to be destroyed by the other person in order to free the injured animal, then neither person would commit an offence as the person who did the destroying had a reasonable excuse for doing so.

36. A person who uses a trap without a wildlife trap licence commits an offence under inserted section 12A(3). A person who fails to comply with inserted section 12A(4) also commits an offence (for example, they have a wildlife trap licence but do not use the trap in the correct manner). And a person who tampers, disarms or destroys a trap without a reasonable excuse, and a person who knowingly causes or permits another person to do so, also commit an offence. Section 7(6) provides that the penalty for these offences is, on summary conviction, imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). A judge may choose to impose a lesser sentence depending on the circumstances of the case. The standard scale for fines is set out in section 225 of the Criminal Procedure (Scotland) Act 1995. At the time of the Act's introduction, level 5 on the standard scale was £5,000.

37. There may be instances where a person has complied with the requirements of inserted section 12A, but catch an unintended animal (for example, they lawfully set a trap to catch a weasel but unintentionally catch a badger). Inserted section 12A(8) provides a defence for this. The person must have set the trap to catch an animal that may have been lawfully killed or taken by those means, complied with the rest of the section and taken all reasonable steps to prevent another animal (other than an invertebrate) from being killed, taken or injured by the trap.

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

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

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

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

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

43. Inserted section 12F makes it an offence, without reasonable excuse, to possess or use a trap to which section 12A applies on land without the permission of the landowner or occupier. Section 7(6) provides that the penalty for those offences is on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). A judge may choose to impose a lesser sentence depending on the circumstances of the case. The standard scale for fines is set out in section 225 of the Criminal Procedure (Scotland) Act 1995. At the time of the Bill's introduction, level 5 on the standard scale was £5,000.

44. Inserted section 12G gives the Scottish Ministers the powers to, by regulations subject to the affirmative procedure[5], make further provision in relation to wildlife traps to which inserted section 12A applies, how a licence number is to be displayed on a trap, the approved training courses, and the definition of "relevant offence". The Scottish Ministers are required to, before making such regulations, consult Scottish Natural Heritage and such other persons who may be interested in or affected by wildlife trap licensing.

45. Section 7(3) amends section 16 the 1981 Act to disapply the need for the landowner or occupier's authorisation (per inserted section 12F) so long as the person has a licence granted under section 16 of the 1981 Act for the purposes listed in paragraphs (a) to (k) (for example, for scientific, research or education purposes).

46. Section 7(4) amends section 16A of the 1981 Act to enable the Scottish Ministers to delegate their functions under inserted sections 12B (relating to wildlife trap licence applications), 12C (grant of wildlife trap licences), 12D (modifying, suspending and revoking wildlife trap licences) and 12E (relating to approved training courses) to Scottish Natural Heritage.

47. Section 7(5) amends section 17 of the 1981 Act to make it an offence to provide false statements when obtaining a wildlife trap licence. The penalty for this is, on summary conviction, imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). A judge may choose to impose a lesser sentence depending on the circumstances of the case. The standard scale for fines is set out in section 225 of the Criminal Procedure (Scotland) Act 1995. At the time of the Act's introduction, level 5 on the standard scale was £5,000.

48. Section 7(6) amends section 21 of the 1981 Act to prescribe penalties for sections 12A and 12F, as discussed above.

49. Section 7(7) provides for the parliamentary procedure for regulations under inserted sections 12A and 12G. These regulations are subject to the affirmative procedure.

50. Section 7(8) amends section 27 of the 1981 Act to provide for the key terms used in inserted sections 12A to 12G, namely "wildlife trap licence" and "wildlife trap licence number" to be defined for the purposes of the Part. These expressions are defined by reference to inserted section 12A(12).

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

Section 8—Penalties relating to use of spring traps

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

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

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

Licensing of land for killing and taking of certain birds

Section 9—Killing and taking of certain birds permitted only on land with section 16AA licence

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

54. Under section 1 of the 1981 Act, it is an offence to (among other things) kill, injure or take any wild bird[6]. Section 2 of the 1981 Act contains exceptions to this offence. At present, this allows the killing or taking of a bird (or the injuring of the bird in an attempt to kill it) if that bird is included in Part I of schedule 2 *and* if the killing, taking or injuring is done outside of the close season of that bird. Section 2(4) gives the periods of the year that constitutes the close season for certain types of birds. The killing or taking a wild bird includes the act of restraining it in order to kill or take it.

55. Section 9(2) amends section 2 of the 1981 Act to make it clear that no offence is committed under that section if the bird that was killed, injured or taken was also included in Part 1B of Schedule 2 and a licence under section 16AA was held in respect of the land on which the bird was killed, injured or taken. The net effect of the amendment is that the bird must be included in both Part I and 1B of schedule 2. It is a defence if the person who killed, injured or took such a bird had a reasonable belief that an unsuspended section 16AA licence was held in respect of the land. The existing penalty for an offence under section 1 applies:

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

56. With respect to the requirement to have a licence under section 16AA, no offence is committed if a bird included in Part 1B of Schedule 2 is killed or taken (or injured in an attempt to do so) outside of its close season if a bird of prey was used to kill or take the bird. However, this requires that the person who killed or took the bird had the legal right, or permission, to do so. If a person injured the Part 1B bird in an attempt to kill it using a bird of prey and had to

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

then subsequently kill the bird (in a manner that caused minimal possible suffering), the person would not have committed an offence. The net effect of this amendment would mean that falconers would not need to have a section 16AA licence or to check that one is in place, before they kill or take a bird using falconry. It would also mean that, if they had to shoot a Part 1B bird that was injured as a result of falconry in order to end its suffering, they would not need a section 16AA licence to do so.

57. Section 9(5) inserts Part 1B into Schedule 2. This covers the birds which may be taken or killed on land with a section 16AA licence. At present, new Part 1B only includes red grouse, however section 9(3) amends section 26 of the 1981 Act to enable the Scottish Ministers to make regulations to add or remove birds from Part 1B of Schedule 2. Birds included in Part 1B must also be included in Part I.

Section 10—Licensing: land on which certain birds may be killed or taken

58. This section amends the 1981 Act to create a licensing scheme for land on which the killing or taking of grouse is to occur. Licensing under this section only applies outside of the close season of the bird[7]. Within the close season, the licensing requirements under section 16 of the 1981 Act apply.[8]

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

60. Applications must be made to the relevant authority (the Scottish Ministers or, if delegated under section 16A(1B) of the 1981 Act (as inserted by section 10(3)), Scottish Natural Heritage), who may issue the licence if satisfied that it is appropriate to do so having regard to the applicant's compliance with the code of practice required under inserted section 16AC. Among other things, when applying for a licence the person must provide any such information as the licensing authority may require and pay a fee if required (and the licensing authority is required to publicise such information and fees that they require in the application process).

61. The licence itself must set out the matters such as the area (or areas) of land it applies to. The licence is subject to any reasonable conditions that the relevant authority attaches to it, such as a requirement to report on activities, or if there is more than one type of bird listed in Part 1B, the requirement to kill or take only the type or types of bird to which the licence relates. The licence may be modified, suspended or revoked by the authority. Every licence must be subject to the condition that the licence holder must have regard to a code of practice made in accordance with section 16AC. The relevant authority may modify the licence at any time. Grounds for suspension or revocation include a failure to comply with conditions of the licence and where the relevant authority is satisfied that a relevant offence has been committed. Relevant offences are listed in inserted section 16AA(13) and broadly cover related wildlife offences (such as offences under Part 1 of the 1981 Act relating to the killing and taking of wild birds and wild animals). These offences have been identified as being relevant as the grouse moor management review was undertaken to examine ongoing evidence of raptor

[7] "Close season" is defined in section 2(4) of the 1981 Act.
[8] See paragraph 28 above.

persecution on or around grouse moors. The review also discussed the practice of wider predator control undertaken on grouse moors. This list can be amended by regulations under inserted section 16AA(14). The relevant authority is required to give 14 days' notice of a suspension or revocation, but may specify an alternate notice period in the notice. Inserted section 16AA(11) provides that if a person's licence is suspended, then they are treated as not having that licence for the duration of the suspension (and therefore they may commit an offence if they continue to act as if they have a licence).

62. If the relevant authority decides not to grant a section 16AA licence, or decides to modify, suspend or revoke a licence, they must provide the reasons for the decision to the applicant or, as the case may be, the licence holder.

63. Inserted section 16AB enables a person to appeal to a sheriff against a decision of the relevant authority to refuse to grant a section 16AA licence, to attach a condition to such a licence and to modify, suspend or revoke such a licence. Where the person resides in Scotland, the appeal must be made to a sheriff or summary sheriff of the sheriffdom in which the person resides. In all other cases, the appeal must be made to a sheriff or summary sheriff at Edinburgh sheriff court (see inserted section 16AB(8)).

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

65. Inserted section 16AE requires the Scottish Ministers to prepare a report on the operation and effect of section 16AA licences and must include an assessment of the conservation status of the bird species specified in subsection (2). The report must be laid before the Scottish Parliament. A report must be prepared and laid for each reporting period (see subsection (6)). Inserted section 16AF allows the Scottish Ministers' reporting functions under section 16AE to be delegated to Scottish Natural Heritage.

66. Section 10(3) amends section 16A of the 1981 Act to allow the Scottish Ministers to delegate, by written direction, their functions under section 16AA (other than the regulation-making power) to Scottish Natural Heritage.

67. Section 10(4) makes it an offence under the 1981 Act to make a false statement to obtain a section 16AA licence. The offence is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both). A judge may choose to impose a lesser sentence depending on the circumstances of the case. The standard scale for fines is set out in section 225 of the Criminal Procedure (Scotland) Act 1995. At the time of the Bill's introduction, level 5 on the standard scale was £5,000.

68. Section 10(5) provides that regulations under section 16AA(14) are subject to the affirmative procedure.

Investigation of wildlife offences

Section 11—Powers to inspect and investigate certain wildlife offences

69. The Animal Health and Welfare (Scotland) Act 2006 ("the 2006 Act") contains powers for inspectors appointed under section 49(2)(a) of that Act. Such powers relate to the investigation of animal welfare offences (with which that Act is principally concerned). This section amends the 2006 Act to enable such appointed inspectors to search for, examine and seize evidence of a relevant offence, but only when they are already exercising their other powers under the 2006 Act. For example, if an inspector is investigating an animal welfare concern, for example a report of a domestic or wild animal caught in an illegally set trap or snare, on a property then they may also search the property for any other illegally set traps or snares.

70. The relevant offences are defined in that paragraph and are specific under Part 1 of the 1981 Act, which generally relate to the killing and taking or wild birds and wild animals. The Scottish Ministers may amend the definition of "relevant offence" through regulations. Those regulations will be subject to the affirmative procedure (defined by section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010) ("the ILRA 2010").

Part 2—Muirburn licensing

Requirement for muirburn licence

Overview of muirburn provisions

71. Part 2 of the Act deals with the regulation of muirburn. "Muirburn" is a Scottish word for the intentional and controlled burning of moorland vegetation (heather or grassland) in order to encourage new growth. It is typically undertaken in order to produce a habitat conducive to livestock grazing and supporting populations of ground nesting game birds such as grouse. The practice of setting fire to moorland vegetation for this purpose is known as making muirburn, which is given its legal definition for the purposes of Part 2 in section 22.

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

- Section 12 criminalises the making of muirburn unless it is done in accordance with a muirburn licence.
- Sections 13 to 17 are about how licences are obtained, their contents and how, once granted, a licence can be suspended, revoked or modified.
- A condition of every muirburn licence is that the person to whom it is granted must have regard to the Muirburn Code (see section 15(2)(a)). Section 18 deals with the making and revising of that Code.
- A further condition of every muirburn licence is that notice has to be given to site owners and neighbours before muirburn is made (see section 15(2)(b)(iii)). Section 19 sets out the notice requirements.
- A stipulation of every muirburn licence that allows muirburn to be made for the purpose of managing the habitats of moorland game or wildlife or improving the grazing potential of moorland for livestock is that it only allows muirburn to be made for those purposes during the muirburn season (see section 14(2)). Section 20 defines the muirburn season.

- On their face, the preceding sections say that the Scottish Ministers will be the public body that deals with regulating muirburn by, amongst other things, granting muirburn licences and producing the Muirburn Code. Section 21 allows the Scottish Ministers to delegate some of their functions under Part 2 so that they can instead be carried out in practice by Scottish Natural Heritage.
- Section 22 defines terms used elsewhere in Part 2.
- The Act, once commenced, will largely replace the current legal regime for regulating the making of muirburn. That regime is set out in the Hill Farming Act 1946. Section 23 repeals (i.e. removes from the statute book) those provisions of the Hill Farming Act 1946 that Part 2 of the Act supersedes and modifies remaining provisions of that Act so that they interface correctly with Part 2.

Requirement for muirburn licence

Section 12—Requirement for muirburn licence

73. Section 12 criminalises the making of muirburn where it is not done in accordance with the terms of a muirburn licence that has effect at the time. As the offence may also be committed by a person who causes or permits the making of muirburn, it applies not only to the person who starts the fires but also, for example, the estate manager who orders the making of muirburn.

74. A muirburn licence is a licence granted under section 14. A muirburn licence only has effect for the period it says it has effect (see section 15(1)(d)), and does not have effect within that period if and for so long as it has been suspended under section 16 (see subsection (5) of that section).

75. Section 12(5) sets the maximum penalty for committing the offence as 6 months' imprisonment and a level 5 fine on the standard scale. A judge may choose to impose a lesser sentence depending on the circumstances of the case. The standard scale for fines is set out in section 225 of the Criminal Procedure (Scotland) Act 1995. At the time of the Bill's introduction, level 5 on the standard scale was £5,000.

76. Section 12(1) provides that a reasonable excuse may be available to a person who has made muirburn in contravention of a muirburn licence. Examples of what may constitute a reasonable excuse are:

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

77. Section 12(3) clarifies a specific circumstance where an offence is not committed. This is where a person has a muirburn licence in relation to land, and the licence is for land that is not peatland. If the person makes muirburn in accordance with that licence and later find out that the land is peatland, the person has not committed an offence.

78. If an unlicensed person makes muirburn in connection with that person's completion of a muirburn training course (see section 17), then section 12(4) provides that it is not an offence to do so.

Muirburn licences

Section 13—Application for muirburn licence

79. Section 13 sets out the requirements for applying for a muirburn licence. An application that does not fulfil the requirements would not be valid and therefore could not provide a basis for granting a licence under section 14.

80. Amongst other things (such as evidence of having completed an approved training course or the payment of a fee), an application has to specify the purpose for which the applicant wishes to make muirburn, which must be one of the purposes listed in subsection (2). Subsection (2) sets out different lists of permissible purposes depending on whether or not the land in question is peatland (as defined in section 22). For example, preventing, or reducing the risk, of wildfires, which could include the managing of fuel loads that would otherwise cause wildfires.

81. Subsection (5) gives the Scottish Ministers a power to modify by regulations the lists of permissible purposes for which muirburn can be made. Regulations under that power would be subject to the affirmative procedure (which is defined in section 29 of the ILRA 2010). Before making regulations to modify the list of purposes the Scottish Ministers must consult Scottish Natural Heritage and such other persons as they consider likely to be interested in or affected by the licensing of muirburn.

82. Subsection (8) makes it a crime to knowingly or recklessly make a false statement about anything material in order to obtain a muirburn licence. The maximum penalty for anyone committing the offence is the same as for anyone committing the offence under section 9 (see paragraph 75 above).

Section 14—Grant of muirburn licence

83. Section 14 empowers the Scottish Ministers, on receiving an application that meets the requirements in section 13, to grant a muirburn licence. Subsection (1) sets out the considerations relevant to a decision on whether to grant a licence. Subsection (2) places restrictions on the granting of muirburn licences depending on whether it is within or outwith the muirburn season.

84. While section 14 says it is for the Scottish Ministers to grant licences, it is a function which they can delegate to Scottish Natural Heritage under section 21.

Section 15—Muirburn licences: content and conditions

85. Section 15(1) sets out the basic information that every muirburn licence must contain.

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

- the person to whom the licence is issued must have regard to the Muirburn Code (see section 18),
- a person intending to make muirburn must also have regard to the Muirburn Code, complete a training course approved under section 17 before making muirburn and must also comply with section 19 (which relates to notice requirements).

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

88. Failure to comply with the conditions of a muirburn licence may be a criminal offence under section 12(1) if it results in muirburn being made otherwise than in accordance with the licence's terms.

Section 16—Modification, suspension and revocation of muirburn licence

89. Section 13 allows the Scottish Ministers to modify, suspend and revoke muirburn licences. This is a function which they can delegate under section 21. For brevity, in the following explanation of section 16, "the licensing authority" is used to mean the Scottish Ministers or Scottish National Heritage if they have delegated the relevant functions.

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

91. The same notice requirements apply to decisions to revoke (i.e. withdraw) or suspend a person's muirburn licence. In addition, section 16 restricts the circumstances in which the licensing authority can decide to revoke or suspend a licence.

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

93. Suspending a muirburn licence is an alternative option for the licensing authority in the same circumstances as those in which it could revoke.

94. Section 16(5) states that a muirburn licence is of no effect while suspended. As mentioned in the explanation of section 12, this means that for the duration of the suspension it would be an offence under that section to cause or permit anything to be done for which a muirburn licence is required.

95. Subsection (6) of section 16 requires a court that convicts a person of an offence under Part 2 to notify the licensing authority of that fact. This is so the licensing authority can decide whether to suspend or revoke a muirburn licence in light of the conviction, and can take it into account in considering future licence applications.

Section 17—Approved training courses

96. Section 17 requires the Scottish Ministers (or if they delegate the function, Scottish Natural Heritage) to approve training courses. Before applying for a muirburn licence, a person is required to complete an approved training course and must provide evidence of having done

so when applying for a muirburn licence. The section allows the relevant authority to make provision such as determining training requirements, accrediting courses and trainers and the minimum criteria for the successful completion of courses.

Making muirburn

Section 18—Muirburn Code

97. Section 18 requires the Scottish Ministers (or if they delegate the function, Scottish Natural Heritage) to prepare and publish a code of practice on making muirburn safely and appropriately and thereafter to review it on a 5 yearly cycle. The legal purpose of the Code is to act as a set of norms to which muirburn licence holders are required to have regard as a condition of their licence (see section 15(2)(a)). Moreover, when a new licence is applied for, the extent of the applicant's past compliance with the code will fall to be considered in deciding whether it is appropriate to grant the new licence (see section 14(1)(a)).

Section 19—Notice of muirburn activity

98. It is a condition of every muirburn licence that a person intending to make muirburn must comply with this section (see section 15(2)(b)(iii)). This section sets out the detail about to whom, and how, notice is to be given.

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

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

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

Section 20—Muirburn season

101. A muirburn licence only allows muirburn to be made for certain purposes during the muirburn season. Section 20 defines the muirburn season.

102. It further empowers the Scottish Ministers to modify what constitutes the muirburn season by regulations if they consider it necessary or expedient to do so in for the reasons set out in section 20(3). Any regulations changing what constitutes the muirburn season will be subject to the affirmative procedure. The affirmative procedure is defined by section 29 of the ILRA 2010. Before making any regulations to change the muirburn season, Scottish Ministers must also consult Scottish Natural Heritage and such other persons as they consider likely to be interested in or affected by the making or muirburn which includes persons involved in managing the land on which muirburn is made.

Miscellaneous

Section 21—Delegation

103. Section 21 allows the Scottish Ministers to delegate, by written direction, several of the functions Part 2 confers on them to Scottish Natural Heritage. This includes functions in relation to muirburn licencing and the Muirburn Code.

Section 22—Interpretation of Part

104. Section 22 defines terms used elsewhere in Part 2.

105. It also empowers the Scottish Ministers to change the definition of "peat" and "peatland" for the purposes of the Part by regulations. Any regulations doing that will be subject to the affirmative procedure. The affirmative procedure is defined by section 29 of the ILRA 2010. Before making any such regulations, Scottish Ministers must also consult Scottish Natural Heritage and such other persons as they consider likely to be interested in or affected by the making or muirburn

Section 23—Repeals and consequential amendments

106. Section 23 modifies the Hill Farming Act 1946 in consequence of what the rest of Part 2 does.

107. The rest of Part 2 largely supersedes the Hill Farming Act's regulation of muirburn. Accordingly, section 23 modifies that Act in the following ways:

- Sections 23 to 23C are repealed. They banned making muirburn outwith its muirburn season except with a licence.
- Section 24 is modified so that a tenant's making of muirburn in contravention of the terms of a lease is made lawful only if, in addition to fulfilling the other conditions specified in that section, the muirburn is made in accordance with the new rules of Part 2.
- Sections 25 and 26 are repealed. They were part of the legislative scheme criminalising the making of muirburn in certain circumstances, and criminalising a failure to give proper notice of an intention to do so, which is superseded by the new licensing regime of Part 2.
- Section 26A, which sets out how notice is to be given, is modified to remove its references to notices under provisions that are being repealed. The whole section is not repealed though, because it will continue to govern the giving of notice for the purpose of section 24.
- Section 27 is repealed because it set out the penalties for the offences in the repealed sections 25 and 26.
- Section 27A, which deals with the application to the Crown of the muirburn provisions, is modified to remove the references to the sections that are being repealed.

Part 3—Miscellaneous and general provisions

Enforcement provisions

Section 24—Powers of entry, search and seizure with warrant

108. This section confers power on a sheriff (and summary sheriff (see below)) or justice of the peace to grant a warrant authorising a constable to enter and search premises (including houses, vehicles, and moveable structures like a tent) where there are reasonable grounds for believing that an offence has been, or is being, committed under section 1, 2, 3 or 12 at the premises, or there is evidence at the premises of such an offence having been committed. A warrant may be granted if the premises are unoccupied (including temporarily unoccupied). A warrant may also be granted if access to the premises has been refused or is reasonably expected to be refused, and, unless it would frustrate the purpose of the warrant, notice has been given to the occupier.

109. By virtue of subsection (5), the warrant may authorise the constable to break into premises and search anything in, or anyone on, the premises. The constable can take away anything that the constable thinks is evidence that an offence under section 1, 2, 3 or 12 of the Act is being or has been committed. Subsection (7) allows a constable to require material which is in, for example, digital format to be printed or saved onto a device that the police can take away.

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

Section 25—Further restrictions on powers of entry and seizure

111. This section restricts the powers granted by a warrant under section 24. The power of entry may only be exercised at a reasonable time of day. For example, in the case of domestic premises, outside normal sleeping hours and in the case of business premises, during normal business hours. And where the premises were unoccupied or the occupier was temporarily absent, the constable must leave the premises as effectively secured against entry as the constable found them.

Section 26—Powers of local weights and measures authorities

112. Section 26 introduces the schedule, which makes provision about the powers of Trading Standards (and its officers) to enforce the offences under sections 2 and 3 of the Act in its area and related matters.

113. In Scotland, a local weights and measures authority is the local authority for the area. In these Notes, the local weights and measures authority for a local authority area is referred to as "Trading Standards" (for the area) and its officers are referred to as "Trading Standards officers".

Section 27—Offence of obstructing officer of local weights and measures authority

114. This section makes it an offence for a person to intentionally obstruct or refuse to co-operate with Trading Standards officers[9] in the exercise of their functions under the Act or to fail to provide the officer with such assistance as may be requested. It is also an offence for a person to intentionally or recklessly supply incorrect information, or make a false statement, to a Trading Standards officer. Obstructing a constable is already an offence under section 90 of the Police and Fire Reform (Scotland) Act 2012.

115. An offence under this section is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000) or a term of imprisonment not exceeding 6 months, or both.

Section 28—Offence of impersonating officer of a local weights and measures authority

116. This section makes it an offence to claim to be a Trading Standards officer[10] exercising powers under the Act. An offence under this section is punishable (on summary conviction) by a fine not exceeding level 5 on the standard scale (currently £5,000).

Section 29— Individual culpability where organisation commits offence

117. This section makes provision where offences under section 1, 2 or 3 or Part 2 are committed by legal entities such as companies, partnerships, and associations. Where an offence under the Act is committed by a "relevant organisation", this section provides that the relevant organisation and, in some cases, a "responsible individual" in that organisation are both to be held responsible. This section ensures that those running legal entities who are responsible for the decisions leading to an offence under the Part can also be prosecuted for it.

Section 30—Crown application: criminal offences

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

Section 31—Crown application: powers of entry

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

Review of operation and effectiveness

Section 32—Review of operation and effectiveness

120. This section requires the Scottish Ministers to carry out a review of the operation and effectiveness of the Act in respect of the prohibition of glue traps and snares, the extension of the powers of inspectors (by virtue of section 8A of this Act) and the licensing of the making

[9] See paragraph 113.
[10] See paragraph 113

of muirburn. The review must be completed no later than 5 years after the day on which the Act receives Royal Assent, and a report must be prepared, laid before the Scottish Parliament and published.

General provisions

Section 33—Regulations

121. This section allows regulations under the Act to include the ancillary provision listed, and to make different provision for different purposes. This section does not apply to regulations under section 35(2) (relating to the commencement of provisions of this Act).

Section 34—Ancillary provision

122. This section allows the Scottish Ministers, by regulations, to make standalone ancillary provision in relation to the Act, once enacted, or any provision made under it. Any regulations making ancillary provision which textually amends primary legislation will be subject to the affirmative procedure; otherwise, any regulations making ancillary provision under this power will be subject to the negative procedure[11] (see subsections (2) and (3)).

Section 35—Commencement

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

Section 36—Short title

124. This section provides that the short title of the Act is the Wildlife Management and Muirburn (Scotland) Act 2024.

Schedule—Investigatory powers of a local weights and measures authority

General

125. Paragraph 1 of the schedule sets out some overarching limits governing the use of the investigatory powers conferred on Trading Standards[12] by virtue of the schedule. Trading Standards may use these powers for investigating if offences are being committed under sections 2 (offence of supplying of glue traps) or 3 (offence of possessing glue trap). However, to be able to use the more intrusive powers (such as seizing items or documents, requiring information to be produced or seeking a search warrant) a Trading Standards officer has to reasonably suspect that an offence is being committed.

126. In addition, where the powers relate to taking entry to premises, the provisions make clear that access to a private dwelling may only occur where a warrant has been obtained from a sheriff.

[11] The negative procedure is defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010.
[12] See paragraph 112.

Power to purchase glue trap

127. Paragraph 4 of the schedule enables Trading Standards officers to carry out test purchases in order to ascertain if offences are being committed. To do so, Trading Standards officers can enter any premises which are generally open to the public, inspect products and make purchases. They may also direct another person to attempt to carry out a purchase in order to see if the seller commits an offence (and paragraph 2 of the schedule provides that a person doing so does not commit an offence).

Power to observe carrying on of business etc.

128. Paragraph 5 enables Trading Standards officers to enter premises to which the public has access and watch how business is conducted. This may be combined with other powers, such as the power to make test purchases (see paragraph 4 of the schedule).

Power to enter premises without warrant

129. Paragraph 6 of the schedule enables Trading Standards officers to visit any premises which aren't used as a private dwelling for the purposes of checking whether an offence is being committed under section 2 or 3. This is broader than the powers of entry conferred in relation to test purchases or observing business as the premises in question don't have to be open to members of the public.

130. Trading Standard officers are required to give notice, unless the occupier has waived the requirement to give notice or the officer reasonably believes that giving notice would defeat the purpose of entry. Where the premises are occupied, the officer must produce evidence of their identity and provide a document setting out why entry is necessary and indicating the nature of the offence under section 27 (offence of obstructing officer of local weights and measures authority) unless it is not reasonably practicable to do so.

Power to inspect and test glue trap

131. Paragraph 7 of the schedule confirms that a Trading Standards officer can inspect and test a glue trap (or arrange for this to be tested), or an item suspected to be a glue trap on premises to which entry has been taken under paragraph 6 or 11.

Power to seize and retain items

132. Paragraph 8 of the schedule, which must be read with paragraph 1, enables a Trading Standards officer to seize and retain an item (other than a document, to which different rules apply). Where items are to be seized, the officer must first produce evidence of their identity and authority to do so unless not reasonably practicable to do so.

133. Where an item is taken, the officer must take reasonable steps to tell the person from whom it has been taken that it has been seized and provide the person with a record of what item has been taken. The "reasonable steps" element covers the possibility that the person from whom items are taken may not be on the premises at the time and that the officer must therefore try to make them aware of the situation.

134. Sub-paragraph (5) places limits on how long any item seized may be held before it is to be returned. However, if the item is ultimately likely to be forfeited it may never be returned (see section 4).

Powers in relation to documents

135. Paragraph 9 of the schedule, which must be read with paragraph 1, details the powers that a Trading Standards officer has in relation to documents. The powers are detailed in paragraph 9(1), but paragraph 1(3) of the schedule limits the use of such powers to where the officer has reason to suspect that an offence is being committed. And an officer cannot require the production of a document which is legally privileged (such as a letter from a solicitor giving legal advice).

136. It is worth noting for these purposes that "document" takes its meaning from schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010, namely: "document" means anything in which information is recorded in any form (and references to producing a document are to be read accordingly). This is a broad definition and includes information stored in electronic formats. Where the document is in electronic format, the officer may require a copy of the document to be produced in a format that can be taken away. For example, this may be by printing out a page from a database or transferring information onto a portable storage device. However, a person can't otherwise be asked to create a document (for example by bringing different sources of information together).

137. As with the power relating to the seizure of items other than documents, the officer must take reasonable steps to tell the person from whom the document is seized that it has been taken and provide a written record of what has been taken.

Power to break open container etc.

138. Paragraph 10 of the schedule enables a Trading Standards officer to break open containers in order to be able to inspect, copy or seize and retain items or documents where the officer reasonably suspects that an offence has been or is being committed. In this context, containers may be a variety of different things, ranging from a locked cupboard or safe to a computer hard drive or mobile phone.

Power of entry with warrant

139. Paragraph 11 of the schedule provides a means for a Trading Standards officer to obtain a search warrant from a sheriff or summary sheriff[13] in certain situations (detailed in paragraph 11(1)). But paragraph 1(3) of the schedule limits the use of the power of entry with warrant to circumstances in which the officer has reason to suspect that an offence under section 2 or 3 has been, or is being, committed.

140. A warrant granted under this paragraph lasts for 28 days. It may entitle an officer to enter the premises in question (and this can be a private dwelling), using force if necessary, and to exercise the powers in paragraphs 7 to 10 of the schedule. It also entitles an officer to be accompanied onto the premises by such other persons as the officer thinks necessary and also to take such equipment onto the premises as the officer thinks necessary. For example, it may be necessary for a locksmith to attend to open any locked containers.

[13] See paragraph 110 for explanation of the definition of "sheriff".

141. If the premises are occupied, the officer must produce evidence of the warrant to an occupier of the premises. If the premises are unoccupied when the officer exercises the power of search under the warrant, the officer has to leave a notice for the occupier informing them that the premises have been entered under a search warrant and must also make sure that the premises are secured as effectively as they were when the officer entered the premises.

Power to require assistance from person on premises

142. Paragraph 12 of the schedule is a power available when a Trading Standards officer is visiting or inspecting premises under paragraph 6 or has taken entry under a warrant granted under paragraph 11. While there, the officer can require any person who is on premises to provide the officer with such assistance as the officer reasonably considers necessary. For example, this might involve providing access to locked areas or helping the officer locate and inspect items. A person who fails to help the officer in this way may be committing an offence under section 27.

Access to seized items and documents

143. Paragraph 13 of the schedule provides for a person who has had an item or a document seized as part of an investigation to have supervised access to the item or be able to take or request a copy of the document. However, access can be denied if there are reasonable grounds for believing that it might risk the investigation in some way to allow the person to see the item or have a copy.

144. Where a person requests access to an item or a copy of a document, Trading Standards can recover the costs involved in meeting the request.

Notice of testing of item

145. Paragraph 14 of the schedule provides for a person who is (or is to be) prosecuted as a result of a test of a glue trap or item to be told about the results of the test and given the opportunity (if possible) to arrange for the item to be tested by someone else if reasonably practicable to do so.

Application for release of item or document

146. Paragraph 15 of the schedule enables a person who has an interest in a glue trap, item or document which has been retained by Trading Standards to apply to a sheriff for the release of the item. A sheriff may do so only where either (i) no proceedings for an offence have been brought within the period of 12 months from the day on which the thing was taken, or (ii) proceedings have been brought and are finished and the thing has not been forfeited as part of those proceedings.

Compensation

147. Paragraph 16 of the schedule makes provision for the payment of compensation by Trading Standards in circumstances where an item has been seized in relation to a suspected offence, but no offence has been disclosed. Provided that the person from whom the item was taken was not negligent or in some way responsible for the item being taken (for example by not co-operating with the investigation) they are entitled to compensation for any or loss or damage suffered as a result of the item being taken and kept. Any disagreement as to the amount of compensation is to be resolved by arbitration.

PARLIAMENTARY HISTORY

148. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	***Reference***
Bill as introduced – 21 March 2023	SP Bill 24, Session 6 (2023)
Policy memorandum	SP Bill 24 - PM Session 6 (2023)
Explanatory notes	SP Bill 24 - EN Session 6 (2023)
Financial memorandum	SP Bill 24 - FM Session 6 (2023)
Delegated powers memorandum	SP Bill 24 - DPM Session 6 (2023)
Stage 1	
Rural Affairs and Islands Committee	
10th Meeting 2023, 29 March 2023	In private
17th Meeting 2023, 31 May 2023	Col 40 - 78
18th Meeting 2023, 14 June 2023	Col. 1-70
19th Meeting 2023, 21 June 2023	Col 1-73
20th Meeting 2023, 28 June 2023	Col. 1-56
22nd Meeting 2023, 13 September 2023	In private
23rd Meeting 2023, 20 September 2023	In private
25th Meeting 2023, 4 October 2023	In private
26th Meeting 2023, 25 October 2023	In private
27th Meeting 2023, 1 November 2023	Col 2-36
28th Meeting 2023, 8 November 2023	Col. 27-72
28th Meeting 2023, 15 November 2023	In private
Stage 1 report on the Bill	Stage 1 report on the Wildlife Management and Muirburn (Scotland) Bill | Scottish Parliament
Delegated Powers and Law Reform Committee	
14th Meeting 2023, 02 May 2023	In private
20th Meeting 2023, 13 June 2023	In private

Proceedings and reports	***Reference***
Stage 1 report on the Bill, 15 June 2023	SP Paper 404, 40th Report, 2023 (Session 6)
Finance and Public Administration Committee	SP Bill 24 - FM scrutiny, Session 6 (2023)
Consideration by the Parliament	
Stage 1 debate on the Bill, 30 November 2023	Col. 1-102
Stage 2	
1st Meeting on Amendments, 4th Meeting 2024, 7 February 2024	Col. 1-80
1st Marshalled List of amendments for Stage 2	Revised Marshalled List of Amendments for Stage 2 (parliament.scot)
1st Groupings of amendments for Stage 2	Revised Groupings of Amendments for Stage 2 (parliament.scot)
2nd Meeting on amendments, 5th Meeting 2023, 21 February 2024	Col. 49-170
2nd Marshalled List of amendments for Stage 2	2nd Marshalled List of Amendments for Stage 2 (parliament.scot)
2nd Groupings of amendments for Stage 2	2nd Groupings of Amendments for Stage 2 (parliament.scot)
Bill as amended at Stage 2	Bill as amended (parliament.scot)
Revised Explanatory Notes	Revised Explanatory Notes (parliament.scot)
Revised Financial Memorandum	Revised Financial Memorandum (parliament.scot)
Revised Delegated Powers Memorandum	Supplementary Delegated Powers Memorandum (parliament.scot)
Stage 3	
Marshalled list of amendments for Stage 3	SP Bill 24A-ML Session 6 (2024)
Supplement to the Marshalled list of amendments for Stage 3	SP Bill 24A-ML (Supplement) Session 6 (2024)
Groupings of amendments for Stage 3	Timed Groupings of Amendments for Stage 3 (parliament.scot)
Bill as passed – 19 March 2024	Bill as passed
Stage 3 (consideration of amendments and debate) 19 March	19 March 2024: Col. 13-204 21 March 2024: Col. 69-92
Royal Assent	
Royal Assent – 30 April 2024	2024 asp 4

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