

Q & A on the Hunng with Dogs (Scotland) Act

- **When did the new law come into force?**

The new law came into force at midnight on 2 October. This means that it is now illegal to hunt a wild mammal (which now includes rabbits) with more than two dogs in Scotland, unless under a licence issued by NatureScot.

- **What does this mean for the Protection of Wild Mammals (Scotland) Act 2002?**

The new Hunng with Dogs (Scotland) Act repealed the 2002 Act.

- **Who administers these licences?**

NatureScot is responsible for issuing licences. They have published guidance for those wishing to apply to use more than two dogs to flush to guns. In certain key respects we do not think the guidance implements the Act lawfully and are seeking legal advice.

- **Can I apply for a licence now?**

NatureScot has published application forms and guidance for applicants for licences. However, it is our view that the guidance is unlawful in certain key respects and legal advice is being sought. At this stage we would suggest that those wishing to be licensed to use more than two dogs should begin to collate the evidence needed for an application and decide the areas of land for which licences will be sought. Even if the guidance and licensing is amended to implement the legislation correctly, the application process will require considerable me and effort. Please contact a member of the Countryside Alliance Team for further guidance prior to submission.

- **What will change now the Hunng with Dogs (Scotland) Act is in force?**

It is illegal to use more than two dogs to flush to guns unless you have a licence from NatureScot. If you are searching, stalking or flushing from cover, and wish to use more than two dogs for the purpose of preventing serious damage to livestock woodland or crops, preventing the spread of disease or protecting human health, or for an environmental benefit as part of a scheme or plan, then a licence must be sought from NatureScot. The new law also includes rabbits but not rats and mice. It is unlawful to use dogs to kill rabbits, but dogs can all be used for rats and mice.

- **Vicarious liability – Landowners**

The Act does not introduce vicarious liability. The new Act makes only very limited changes to the liability of landowners and to the penalties and enforcement powers for offences. In summary the legal position is that:

- *“A landowner, whether or not they are a named licence holder, could be held to be criminally liable if they: (i) personally operated outside one of the exceptions, or (ii)*

knowingly caused or permitted someone else to operate outside one of the exceptions on their land. This is alongside the usual rules about aiding, abetting etc.

- *A licence holder who is not a landowner could be held to be criminally liable if they personally operated outside one of the exceptions. This would again be subject to the usual rules about aiding, abetting etc. (e.g. a licence holder who incites someone else to breach a condition themselves commits an offence).*
- *But neither a landowner, nor licence holder, is vicariously liable simply because someone else breaches a condition (or the general law) either while on their land, or purporting to operate under a licence for which they are the named licence holder. The offences in the 2023 Act do not criminalise a "failure to prevent" in the way the 1981 Act, in part, does."*

The Scottish Government has made clear that vicarious liability was deliberately not included in the Act. It is also worth noting that the vicarious liability introduced in the Wildlife and Natural Environment (Scotland) Act 2011 has not resulted in the end of keeping and management for shooting and there is no reason for landowners not to allow excepted activity under the 2023 Act as they have under the 2002 Act.

- **What about rough shooting?**

If dogs are being used in connection with rough shooting, rather than flushing to protect livestock, crops etc or for an environmental benefit, where the quarry might be birds and wild mammals, then if more than two dogs are involved in the activity, they must not be allowed to come together to form a pack of more than two dogs.

- **Can I flush with two dogs to guns under the new law?**

Yes – so long as it is for one of the purposes set out in the Act. There are two distinct sets of purposes and your flushing must be for one of these purposes. The first is for preventing serious damage to livestock, woodland or crops, or preventing the spread of disease, or protecting human health. The second is for what is classed as "environmental benefit" and must be undertaken as part of a "scheme or plan" for preserving, protecting or restoring a particular species (which may include controlling the number of a species for its welfare) for environmental benefit, preserving, protecting or restoring the diversity of animal or plant life, or eradicating an invasive non-native species of wild mammal from an area. In addition to flushing for a lawful purpose, the other conditions for the activity to remain lawful must be met, such as having landowner's permission. The conditions set out in the Act are broadly the same as in the 2002 Act but anyone flushing under the new law must familiarise themselves with the purposes and conditions and be clear as to what they are doing, for what purpose and ensure they are acting in accordance with the other conditions. The statutory conditions can be found at sections 3 and section 9 of the Act [Hunng with Dogs \(Scotland\) Act 2023 \(legislaon.gov.uk\)](https://www.legislation.gov.uk). There is a specific exemption for shooting, stalking and falconry where these are "for sport" but if more than two dogs are involved in one of these activities, they must not be allowed to come together to form a pack of more than two dogs.

- **Can I still use more than two dogs to flush to guns under the new law?**

Yes – But only if you have a licence to do so where you are flushing above ground to prevent serious damage to livestock, crops etc, or for an environmental benefit as part of a plan or scheme.

- **What are the two licensing regimes for using more than two dogs?**

Licences can only be granted for the purposes set out in the Act, which are the same as for someone using two dogs to flush to guns. As there are two sets of purposes, so there are two licensing systems under the Act. The first allows a licence for the purpose of: preventing serious damage to livestock, woodland or crops, or preventing the spread of disease, or protecting human health. The second is for what is classed as "environmental benefit" and is undertaken as part of a "scheme or plan" for preserving, protecting or restoring a particular species (which may include controlling the number of a species for its welfare) for environmental benefit, preserving, protecting or restoring the diversity of animal or plant life, or eradicating an invasive non-native species of wild mammal from an area.

- i) **For a licence to protect livestock etc**, the licensing authority (NatureScot) may only grant a licence if it is "satisfied that there is no other solution which would be effective in achieving the purpose" - e.g. protecting livestock. Licences will need to specify the area to which they apply, set a minimum number of guns that are required and the maximum number of dogs that can be used. A licence "may be granted for a maximum period of 14 days, which must fall within a period of six consecutive months".
- ii) **For a licence for "environmental benefit"** the licensing authority (NatureScot) must be satisfied that the use of more than two dogs "will contribute towards a significant or long-term environmental benefit" and "that there is no other solution which would be effective in achieving the purpose" – e.g. preserving, protecting or restoring a particular species etc. The activity must also be part of a "scheme or plan". The guidance does not define what amounts to a "scheme or plan", but the Minister was clear that a "scheme or plan" includes a design, plan or programme of action. Licences will need to specify the area to which they apply, set a minimum number of guns that are required and the maximum number of dogs that can be used. A licence "may be granted for a maximum period of two years, which must fall within a period of two consecutive years".

- **Who can apply for a licence?**

A licence can be granted to a person (which is not just an individual but can include a company or other legal entity etc) or to a category of persons. While there will always need to be a named person on the licence, the Minister repeatedly made clear that a licence could be granted to a group of persons and apply across land in different ownerships. The guidance published by NatureScot is not clear as to whether the minister's assurances will be honoured in practice. The guidance recognises that hunting under a licence can be carried out by a person other than the licence holder, but contrary to previous assurances that the person undertaking the activity will be the person responsible for compliance with the terms

of the licence, this now rests with the licence holder. It is also unclear as to whether it is possible to licence a business whose activity is to provide a pest control service, which ignores the fact that "a person" in law can include a company or other legal entity, a fact confirmed by the Scottish Government during the passage of the legislation through the Scottish Parliament. As elsewhere in the guidance NatureScot's approach to licensing seems not to allow what the law allows and contradicts the interpretation of the law and the assurances received from the Scottish Government.

- **What does the Act mean for the use of dogs below ground?**

The Act allows only one dog to be used below ground and only in respect of foxes. The 2002 Act also included mink. The Act requires that once flushed, the fox is shot or killed by a bird of prey. There are also further conditions that must be complied with for use of a dog below ground to be lawful. The explanatory notes to the legislation also clarify what is intended by a dog below ground being "under control" recognising that flushing from below ground is different from above ground.

- **What about falconry?**

The Act contains an explicit exception for falconry, subject to a two-dog limit. As with rough shooting, where more than two dogs are present in the course of falconry activity these must not come together to form a pack of more than two dogs. The use of a bird of prey as the means to kill flushed wild mammals is also lawful under the main exceptions in the Act. If dogs are not involved, then the Hunting with Dogs (Scotland) Act 2023 does not apply.

- **Can I still use dogs to control rabbits?**

The new law relates to the use of dogs in the management of wild mammals. If dogs are not involved, then the Act is not relevant. The new law now also covers rabbits, unlike the 2002 Act. This means that while two dogs, or more than two dogs under licence, may all be used to search for and flush rabbits for a legitimate purpose such as "preventing serious damage to livestock, woodland or crops" any rabbits flushed must now be shot dead or killed by a bird of prey as soon as reasonably possible. If in that process the rabbit is injured, then reasonable steps must be taken "to kill it in a way (other than by using a dog) that causes it the minimum possible suffering". This does not prevent a dog being used to find the injured rabbit to then be shot or despatched by hand. If a dog is to be used below ground to flush a

rabbit, then only one dog may be used subject to the additional conditions in section 5 of the Act. Again, the rabbit must be shot or killed by a bird of prey and the same requirement to follow up any rabbits injured applies as with flushing above ground.

- **How easy will it be to get a licence under the new Act?**

NatureScot has publicly stated that they have set a "high bar". It is our view that they have not only misapplied the legislation, but have imposed conditions and requirements with the clear intention of making the process as difficult as possible. This approach is at odds with the way all other comparable wildlife licensing is undertaken by NatureScot. We are taking legal advice.

If you have any questions, then please contact:

- [Jake Swindells, Director of Scottish Countryside Alliance](#)
- [James Legge, Director of Public Affairs](#)