

# **Grouse moor licensing in Scotland:**

## **Where next?**

**A report for RSPB Scotland.**

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## **Executive summary**

Grouse shooting, particularly management of moorland<sup>1</sup> to provide for intensive 'driven' grouse shooting, remains an issue with impacts of high conservation concern and one that is highly politically sensitive. These impacts are all of clear public interest and justify public policy interventions.

In Scotland, 2019 will be a crucial year as, following submission to the Scottish Government, in the spring, of the 'Werritty report', the Government will need to determine what, if any, action it will take. Analysis here suggests that the Scottish Government will, in effect, have five options, namely: -

1. Do nothing;
2. Piecemeal regulation-tightening;
3. Comprehensive regulation-tightening or a 'licensing scheme';
4. Comprehensive reform of the entire hunting culture/system; or
5. Some form of complete ban.

This report suggests that options 4 and 5 will not be chosen – as these are not a solution asked for by campaigners and the likely opposition would deter Government. Notwithstanding this, however, there may be long term benefits in seeking to stimulate debate about hunting systems/culture – both to better inform the delivery of the selected option and to seek to influence longer term decisions.

Option 1, on the other hand, while available should, in the circumstances, be politically untenable.

Thus, the 'real' decision is between options 2 and 3 – with option 2 being politically 'easier' but, in many ways, "more of the same"; while option 3 provides the opportunity for decisive and ground-breaking intervention.

Part 3 of this report suggests a legislative mechanism by which option 3 might be introduced.

This report has been commissioned by RSPB Scotland, and prepared by Lloyd Austin, as a freelance consultant. It therefore represents one person's perspective and, although welcome comments on a draft were received from RSPB Scotland, it does not represent RSPB Scotland policy. It is RSPB Scotland to determine whether and how to agree and/or publish any of its contents.

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<sup>1</sup> There is no consistent definition of a 'grouse moor' but we take the term to typically mean an unenclosed, usually upland area containing some mixture of peatland, grass and heathland habitats mostly dominated by heather



## **Part 1: Context and introduction**

Red grouse *Lagopus lagopus scoticus* is a medium sized gamebird living in heather-dominated habitat in Britain and Ireland<sup>2</sup>. It is a subspecies of the willow grouse or willow ptarmigan, which has the widest world distribution of any grouse, with a vast breeding range across more northerly parts of Eurasia and N America<sup>3</sup>. The species' global distribution and abundance result in an IUCN conservation status of 'Least Concern'<sup>4, 5</sup>. However, the *L. l. scoticus* subspecies, being confined Britain and Ireland, where thus more than 20% of its world breeding population occurs within the British Isles, is 'amber listed', under this ('B1') category<sup>6</sup>. It is there for considered (potentially) vulnerable.

Despite being a bird of formal conservation concern it continues to be hunted for both sport and human consumption. Indeed, management of its habitat for the purposes of enabling sport shooting has ensured that it is typically much more abundant in such managed areas than in any natural or semi-natural settings. Conservation legislation, at both EU and domestic (Scottish) levels, permits the killing/taking of this species<sup>7</sup>.

Grouse shooting and the management of land for grouse has, in recent years, begun to receive unprecedented levels of public scrutiny – and generated considerable public debate and some controversy<sup>8</sup>. There are several issues that lead to such, often heated, debate including: -

- The association of grouse moor management with legal and illegal killing of other wildlife, especially birds of prey and mountain hares<sup>9</sup>;
- The impact of drainage and muirburn, including at times on peatlands, on both carbon emissions contributing to climate change and water quality/costs of water treatment<sup>10</sup>;
- The construction of an increased number of 'hill tracks' to provide easier, mechanised access to moors for both land managers and recreational shooters – a 'development' barely regulated by traditional development control<sup>11</sup>;
- The continued use of lead ammunition for grouse shooting, resulting in raised lead levels in both the natural environment and meat consumed by people<sup>12</sup>;
- The widespread use of medication on wild birds, either using medicated grit in the natural environment or the capture, medication and release of birds<sup>13</sup>;
- The use of acaricides to kill ticks infesting sheep flocks grazed on grouse moors as 'tick mops' and intended to reduce the risk of tick-borne disease in grouse<sup>14</sup>; and

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<sup>2</sup> <https://www.rspb.org.uk/birds-and-wildlife/wildlife-guides/bird-a-z/red-grouse/>

<sup>3</sup> Watson & Moss, 2008. *Grouse*. Collins, London

<sup>4</sup> <https://www.iucnredlist.org/species/22679460/89520690>

<sup>5</sup> <http://datazone.birdlife.org/species/factsheet/willow-grouse-lagopus-lagopus>

<sup>6</sup> <https://britishbirds.co.uk/wp-content/uploads/2014/07/BoCC4.pdf>

<sup>7</sup> Section 2 and Schedule 2 of the Wildlife and Countryside Act 1981, as amended. While there are those, with an animal welfare/rights perspective, that may oppose shooting or killing of any wild bird or animal in principle, this is not the position of most conservation organisations, including the RSPB who are 'neutral' on the ethics/legality of field sports in principle.

<sup>8</sup> For example: <https://onlinelibrary.wiley.com/doi/full/10.1111/ibi.12356%4010.1111/%28ISSN%291474-919x.RSPB-conservation-science>

<sup>9</sup> For example: <https://www.scotsman.com/news/opinion/duncan-orr-ewing-game-estates-must-stop-preying-on-our-raptors-and-follow-the-law-1-4856639>; <https://www.nature.scot/sites/default/files/2018-10/Publication%202017%20-%20SNH%20Commissioned%20Report%20982%20-%20Analyses%20of%20the%20fates%20of%20satellite%20tracked%20golden%20eagles%20in%20Scotland.pdf>; and <http://jncc.defra.gov.uk/pdf/jncc441.pdf>.

<sup>10</sup> [http://ww2.rspb.org.uk/Images/grant\\_mallord\\_stephen\\_thompson\\_2012\\_tcm9-318973.pdf](http://ww2.rspb.org.uk/Images/grant_mallord_stephen_thompson_2012_tcm9-318973.pdf) (section 4) and <https://www.theccc.org.uk/wp-content/uploads/2016/01/CCC-Written-Submission-to-Environmental-Audit-Committee-Inquiry-into-Soil-Health.pdf> (relates to northern England but Scottish situation cannot be far different).

<sup>11</sup> <http://www.scotlink.org/workareas/hill-tracks/>

<sup>12</sup> For example, see <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5161761/> and

<http://www.leadammunitiongroup.org.uk/wp-content/uploads/2015/06/LAG-Report-June-2015-without-Appendices.pdf>

<sup>13</sup> See concerns expressed at: <https://raptorpersecutionscotland.wordpress.com/2015/10/06/the-red-grouse-and-medicated-grit-scandal-its-hard-to-swallow/>

<sup>14</sup> As described in [https://www.moreun.org.uk/sites/default/files/louping\\_ill\\_best\\_practice\\_booklet.pdf](https://www.moreun.org.uk/sites/default/files/louping_ill_best_practice_booklet.pdf); see concerns expressed in <https://onlinelibrary.wiley.com/doi/10.1111/ibi.12356>

- Recent changes, especially the increase/intensification of all the above activities, in moorland management in order to produce much higher yields ('bags') of birds available to be shot<sup>15</sup>.

All the above issues are matters of public interest – and, as a result, relate to stated Government policy objectives. For instance, the Government is committed to restoring biodiversity; reducing carbon emissions from land use, and minimising water treatment costs as well as reducing the incidence of toxic lead in both the environment and in foodstuffs. For all these reasons, there is a public interest justification for intervening – and, if necessary, regulating the management of grouse shooting.

Such public interest is also demonstrated by the range of NGOs and other campaigners who have, over the years, sought to address one or more of the above issues – usually by campaigning for additional or tighter regulation. Land management and shooting interests have, of course, always challenged the assertions made and either opposed more regulation or, on occasions, sought looser regulation.

Nevertheless, in relation to birds of prey and wildlife crime, the Scottish Government and Parliament have, over the last two decades, increasingly recognised the issue and gradually tightened the law and improved enforcement actions<sup>16</sup>. Over recent years, there have also been a number of campaigns (similar to those that led to these wildlife crime changes) seeking to address the issues of hill tracks, mountain hares, lead and muirburn.

In 2016, the Scottish Raptor Study Group (SRS) submitted a petition to the Scottish Parliament asking for it to: -

“urge the Scottish Government to implement urgent action to introduce a state regulated system of licensing of gamebird hunting, that addresses the potentially adverse environmental impact of gamebird hunting, provides for the revocation or amendment of licences where a licence-holder fails to comply with their terms and conditions, and to implement the recommendations of the Review of Wildlife Crime Penalties in Scotland.”<sup>17</sup>

This petition generated considerable discussion and evidence, both at the Public Petitions Committee and the Environment, Climate Change and Land Reform Committee. This petition is still, formally, open. Partly in response to this petition, last discussed in May 2017, but also in light of the publication of SNH’s assessment of the pattern of Golden Eagle ‘disappearances’ that same month<sup>18</sup>, the Scottish Government announced in May 2017 the establishment of a Grouse Moor Management Group<sup>19</sup> with a remit 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<sup>20</sup>.”

The group’s composition was announced in November 2017<sup>21</sup> and was expected to submit its final report to the Scottish Government by the end of March 2019. Due to various delays, it is now expected that the report will be submitted in late April/early May.

In addition to these ongoing wildlife-related campaigns for reform of, especially “driven”, grouse moor management, other interests have been – and continue to campaign for reform. A range of wildlife and landscape bodies have long sought greater controls over the unregulated development of hill

<sup>15</sup> For example, [http://www.andywightman.com/docs/LACS\\_Grouse\\_Report\\_2015.pdf](http://www.andywightman.com/docs/LACS_Grouse_Report_2015.pdf)

<sup>16</sup> This is evidenced, not least, by the number of amendments to Part 1 of the Wildlife and Countryside Act 1981 as it applies in Scotland: significant strengthening was made in 2003, 2004 and 2011.

<sup>17</sup> <http://www.parliament.scot/GettingInvolved/Petitions/PE01615>

<sup>18</sup> <https://www.nature.scot/sites/default/files/2018-10/Publication%202017%20-%20SNH%20Commissioned%20Report%20982%20-%20Analyses%20of%20the%20fates%20of%20satellite%20tracked%20golden%20eagles%20in%20Scotland.pdf>

<sup>19</sup> <https://news.gov.scot/news/golden-eagle-deaths>

<sup>20</sup> <https://www.gov.scot/groups/grouse-moor-management-group/>

<sup>21</sup> <https://news.gov.scot/news/moorland-management>

tracks, primarily used for grouse moor management<sup>22</sup>. More recently, a coalition of various interests launched a new campaign, *Revive*, directed at reform of grouse moor management<sup>23</sup>. This is notable as it involves not only animal welfare interests, but also those usually more concerned with social justice (Common Weal) or climate change (FoES); this indicates that the issue is now attracting the attention of those with a broader public interest remit than purely nature conservation.

All the above interest in these matters has prompted some political parties to develop policy and adopt positions on the matter (see Annex).

Debate and challenge will, no doubt, and rightly, take place, but the policies expressed by political parties together with the current make-up of the Scottish Parliament, suggest that any coherent licensing proposal should be well received.

However, the current Scottish Parliament term lasts until March 2021, as the next scheduled Scottish election is in May 2021. Thus, to ensure that any new primary legislation is passed by the current Parliament, it would need to be introduced by the summer of 2020 – and to provide sufficient preparatory, consultation and drafting time, the Scottish Government would need to decide in principle to proceed by the end of 2019<sup>24</sup>.

The Scottish Government's decision – upon receipt of the Werritty Report in the spring - will be to select one of 5 options, which may be summarised as: -

1. Do nothing;
2. Piecemeal regulation-tightening;
3. Comprehensive regulation-tightening or a 'licensing scheme';
4. Comprehensive reform of the entire hunting culture/system; or
5. Some form of complete ban

Part 2 of this report explore these options in more detail and suggests that the realistic and politically tenable choices should be limited to (2) and (3); although there is certainly merit in a longer-term debate about our wider hunting system/culture. To be properly effective, however, it is suggested that (3) is the best as well as most pragmatic choice. Part 3 then explores in depth how this option might be delivered.

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<sup>22</sup> [http://www.scotlink.org/wp/files/Changing-Tracks\\_LINK\\_Hilltracks\\_Report.pdf](http://www.scotlink.org/wp/files/Changing-Tracks_LINK_Hilltracks_Report.pdf)

<sup>23</sup> <https://revive.scot/>

<sup>24</sup> It should be noted that this is a similar timetable to the campaign for a Scottish Environment Act (<https://www.fightforscotlandsnature.scot/>) that will/should be needed in response to the Scottish Government's consultation on EU environmental principles and governance after EU exit (<https://consult.gov.scot/environment-forestry/environmental-principles-and-governance/>).

## **Part 2: The options for improved grouse moor management**

Part 1 of this report suggests that the Scottish Government's decision – upon receipt of the Werritty Report in the spring - will be to select one of 5 options to take forward. To summarise these again: -

1. Do nothing;
2. Piecemeal regulation-tightening;
3. Comprehensive regulation-tightening or a 'licensing scheme';
4. Comprehensive reform of the entire hunting culture/system; or
5. Some form of complete ban

In this section, each of these options is discussed in some more detail.

### **Option 1: Do nothing:**

This would amount to deciding to continue with the *status quo* – to determine that current regulations were sufficient and that, beyond those, 'voluntary initiatives' and various 'partnership workings' should be used to improve compliance and/or address concerns.

In the view of many conservationists and campaigners, further reliance on 'voluntary measures' without additional sanctions would constitute "more of the same" – and moreover, more of the same 'failed' approach.

Given the breadth of concerns, the scale of campaigns and the support for change expressed by, at least three out of four political parties at Holyrood (constituting a clear majority), this option also appears to be politically untenable. It could, moreover, result in simply delaying change and, possibly (as campaigns intensify) ensuring that such change, when it does come, is in fact more radical.

The one potential reason for this option being chosen (by design or default), however, would be the consequences of a 'chaotic Brexit' – either a 'no deal' or any form of political upheaval arising from Brexit (e.g. a UK general election, another EU referendum or a second independence referendum). Any of those events could, in practice, overshadow all other government activity, distract political attention and/or alter the electoral timescales.

### **Options 4 & 5: Comprehensive reform of the entire hunting culture/system or some form of complete ban.**

By contrast to the first option, the fourth and fifth options are, of course, the most radical, and are considered next.

Dealing first with some form of ban of grouse shooting or, at least, a ban on 'driven' grouse shooting. Such an approach would certainly be supported by many campaigners and has – in England – attracted much support in the form of petitions to the Westminster Parliament. However, despite the campaigns, no changes of any form have been introduced. By contrast, in Scotland, campaigners have deliberately NOT sought any form of 'ban' – the Revive coalition seeks 'reform', the SRSG petition sought 'state regulated system of licensing' and RSPB Scotland has consistently argued for a licensing approach. It thus seems unlikely that the Scottish Government or Parliament would consider, unprompted, any form of ban – at least, not in the short-term and/or until or unless other options were shown to have failed.

However, there may be good reasons to initiate a wider debate about wider hunting culture and the management of our uplands. At present, hunting and land management is primarily the responsibility of the landowner (mostly private, but increasingly community, state and/or charity). Such private/individual management decisions are, of course, subject to regulation, but those regulations are very sectoral – with deer, salmon, and grouse, for instance, all regulated by different statutes. Moreover, in Scots law wild animals are *res nullius* (i.e. belong to no-one) but laws govern the right to hunt, the method of hunting and the ownership/disposal of the dead animal(s) – usually through the rights and responsibilities of individual land owners/managers. Increasingly, these rights and responsibilities are being developed/reformed through the ongoing debate under the umbrella of land

reform. For instance, the new Scottish land rights and responsibilities statement<sup>25</sup>, as required as a result of the Land reform (Scotland) Act 2016, seeks a new ‘dynamic’ between land owners/managers and the communities on/around that land. The Scottish Land Commission is promoting this statement, as well as guidance to encourage land owners/managers to work with and engage better with local communities<sup>26</sup>. It is possible, or probable, that this direction of travel for land reform will enable communities (of place and interest) to raise public interest concerns, relating to grouse moor management – and expect them to be addressed.

It would be appropriate, in the longer term, for these ‘land reform’ debates to consider the ‘ownership’ of wild animals, the right to hunt some species and/or who benefits from those rights. Such a discussion would be continuation of recent developments – such as that leading up to the Wildlife and Natural Environment (Scotland) Act 2011, which repealed the ancient Game Acts (of e.g. 1772, 1831 and 1832) and introduced the current provisions under the Wildlife and Countryside Act 1981, as amended. This illustrates a “mindset change” with regard to public policy towards “game management” – so that it is now considered primarily as a matter of natural resource management, rather than primarily about the rights of landowners to exploit their assets.

Such a debate may lead to the development of more sustainable, lower intensity hunting systems, managed by and for communities, or land owners, communities and charities operating collaboratively. Such systems exist in other countries with a mature hunting culture and would contrast with the current arrangement where private owners manage land exclusively and intensively to generate large (and usually private) profit. While this report focuses on the issue of red grouse, a wider debate would also wish to address issues relating to “game” species that are of conservation concern (e.g. grey partridge and black grouse, both now red-listed<sup>27</sup>) as well as the impacts of non-native species (pheasant and red-legged partridge) on the natural environment.

Thus, if options (1) and (4/5) are politically untenable and/or unlikely to be selected, the choice for the Scottish Government – during the summer and autumn of 2019 – will be to pursue a form of piecemeal regulation tightening (option 2) or to agree and prepare legislation introducing a form of licensing (option 3). These two options are now considered in more detail.

**Option 2: Piecemeal regulation-tightening:**

The various issues of public concern arising from grouse moor management (see part 1) are, in most cases, governed by ‘sectoral’ regulations, specific to that issue. This option would involve addressing concerns by piecemeal tightening of some, or all, of those individual regulatory frameworks. The table below lists each of the issues considered in part 1 (issues that each have campaigners seeking better regulation), the regulatory framework involved and the possible means of exerting ‘tighter’ regulatory control with a view to securing more sustainable management of grouse moors.

Issue	Regulatory framework	Possible form(s) of ‘tightening’
Bird of prey persecution	WCA81, as amended	<ul style="list-style-type: none"> <li>• Illegal killing cannot be made “more illegal”.</li> <li>• Address some of the issues around the difficulty of collecting evidence and prosecuting individuals. For example, look at the admissibility of video evidence; or widen single witness provisions.</li> <li>• Possible further tightening of crow cage trap regulations and/or use of general licence restrictions. Greater proactivity</li> </ul>

<sup>25</sup> <https://www.gov.scot/publications/scottish-land-rights-responsibilities-statement/>

<sup>26</sup> <https://landcommission.gov.scot/2019/01/scottish-land-commission-champions-engagement-process-for-successful-land-management/>

<sup>27</sup> <https://www.rspb.org.uk/globalassets/downloads/documents/birds-and-wildlife/birds-of-conservation-concern-4--the-population-status-of-birds-in-the-united-kingdom-channel-islands-and-the-isle-of-man.pdf>

		<p>in the use of current OGL restriction powers may also be possible.</p> <ul style="list-style-type: none"> <li>• Vicarious liability provisions might be further tightened or more rigorously pursued.</li> <li>• Use of night sights and thermal imaging gear could be brought into line with deer management and Deer Scotland Act 1996; i.e. consent needed from SNH and need to be on “fit and competent” register. Consent for use would be withheld by SNH where evidence found - at the civil level of proof - of wildlife crimes being perpetrated.</li> <li>• Greater use of police powers to withhold firearms licences to individuals working in areas where wildlife crimes being perpetrated; could also be linked to a “fit and competent” register.</li> </ul>
Excessive culling of mountain hares	WCA81, as amended, and/or Habitats Regulations	<ul style="list-style-type: none"> <li>• Introduction of full protection, with general or specific licences, subject to limits/conditions, for killing in specified circumstances.</li> </ul>
Muirburn	Hill Farming Act 1946 and Muirburn Code.	<ul style="list-style-type: none"> <li>• Define and limit the purposes of muirburn (currently an unexplained right for any landowner in the 1946 Act) and/or the areas where muirburn may/may not be carried out;</li> <li>• Broaden the range of purposes for which Ministers may reduce/extend the burning season;</li> <li>• Widen the variations/conditions allowed to be imposed in such orders to include geographically-targeted<sup>28</sup> prohibitions; and/or</li> <li>• Further strengthening of the Muirburn Code, potentially underpinned by statute, and introduce power to remove right of muirburn if the Code is breached.</li> <li>•</li> </ul>
Grazing management and drainage	Agricultural legislation, including especially the requirements/conditions of grant schemes.	<p>Agricultural legislation and/or conditions for the receipt of subsidies could be amended to: -</p> <ul style="list-style-type: none"> <li>• Restrict or define the nature of grazing, including the use of sheep as ‘tick mops’ and/or limit the nature/frequency of sheep treatment.</li> <li>• Restrict or define the nature or scale of drainage works permitted on grouse moors also used for grazing, and/or require the restoration of peatland/wetlands in such areas.</li> <li>• Enforce the Muirburn Code</li> </ul>

<sup>28</sup> Either by reference to a map or by defining a ‘class of land’ (e.g. over 30cm peat depth).

Lead ammunition	<p>The Environmental Protection (Restriction on Use of Lead Shot) (Scotland) (No. 2) Regulations 2004</p> <p>No proper regulation covering the inspection of game meat for lead contamination</p>	<ul style="list-style-type: none"> <li>• Extend the types of area where lead shot should not be used – as well as ‘wetlands’ and ‘peatlands with visible water’, this could be expanded to cover defined moorlands or other definitions of natural/semi-natural habitat.</li> <li>• Make the ban on lead shot comprehensive for all forms of (outdoor) shooting or hunting.</li> <li>• Ensure that lead does not enter the human food chain</li> </ul>
Medication	<p>Veterinary regulations<sup>29</sup> in relation to licensing chemicals for use and/or residues in meat for human consumption; WCA81, as amended, in relation to ‘catching up’ for treatment;</p> <p>Appears to be no regulations governing the deployment of medicated grit in the open environment, although it is understood that <i>Flubendazole</i> (the active ingredient in medicated grit) has to be prescribed by a veterinary surgeon.</p>	<ul style="list-style-type: none"> <li>• Regulations on the type and/or use of medication may be tightened – to, for instance, prevent its use in an open environment and limit the levels of active ingredient excreted by birds.</li> </ul>
Hilltracks/Grouse butts	<p>Town and Country Planning legislation; in particular, the inclusion of development for ‘agriculture and forestry’ as permitted development.</p>	<ul style="list-style-type: none"> <li>• Tighter definition of agricultural and forestry purposes, such that tracks primarily for the purpose of enabling shooting activity are excluded and require consent.</li> <li>• Remove hilltracks entirely from the permitted development order and require planning consent whatever their purpose.</li> <li>• Recognise grouse butts as permanent structures requiring consent</li> </ul>

<sup>29</sup> e.g. The Animal and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015 and The Animal and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 as amended. NB Some matters related to medicine licensing and use may be reserved and a matter for Westminster.

Community rights and engagement	Scottish land rights and responsibilities statement <sup>30</sup> , as required as a result of the Land reform (Scotland) Act 2016. Community engagement guidance from Scottish Government and Scottish Land Commission.	<ul style="list-style-type: none"> <li>• Regulations and/or guidance may be strengthened to involve adjacent or affected communities in grouse moor management decisions.</li> <li>• In some cases, e.g. where communities experience increased flood risk or effects from smoke, it may be that regulatory bodies could be required to intervene to reduce or remove such impacts adjacent or affected communities.</li> </ul>
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The ideas in the proposals column above may all be worthwhile pursuing – either individually or ‘as a package’. However, while regulations affecting grouse moors would be tightened – it does not amount to the regulation of grouse shooting. Moreover, this approach would, in practice, be a continuation of the status quo (although not strictly ‘do nothing’) as many of these regulations have, in any case, been incrementally adjusted/tightened over the past few decades.

For instance, the WCA81 has seen numerous small changes since the start of the Scottish Parliament, while efforts to improve enforcement (e.g. *Natural Justice*<sup>31</sup>) and innovations such as general licence revocations<sup>32</sup> or vicarious liability<sup>33</sup> have all been used to “crackdown” on bird of prey persecution. Similarly, other issues have been debated at length – sometimes with modest regulation tightening, sometimes with no further action.

Thus, while it would be unfair to describe this option as “do nothing”, it would merely amount to “more of the same”. This, therefore, is an option that should be avoided – as there is a strong case for something new, decisive and innovative.

**Option 3: Comprehensive regulation-tightening or a ‘licensing scheme’:**

This option – one that has been advanced by various campaigners – is based on the argument that gamebird shooting (including grouse shooting) is one of the few – if not, only – “natural resource harvesting system” not to be subject to specific, sectoral legislative oversight. All other forms of harvesting wild animals for food or sport are, in some way regulated directly and specifically to ensure the sustainability of that harvest. Whether the legislation or its implementation achieves such sustainability is, of course, another question – but it undoubtedly exists for all other groups. It also exists for non-animal natural resources – such as forests and woodland, water, minerals, etc.

So, for instance, deer management and culling are controlled by statute and administered by SNH<sup>34</sup>; sea fishing by the Inshore Fisheries legislation<sup>35</sup> and, offshore, by the CFP regulations; freshwater fisheries, especially salmon by its own act<sup>36</sup>. Meanwhile, forestry and tree/woodland management is governed by the Forestry Acts<sup>37</sup>, water abstraction, impoundment or use as for effluent by legislation enacting the Water Framework Directive<sup>38</sup>.

As a result of the above, any private interest seeking to benefit from the management or exploitation of common natural resources (wild animals, water, etc) are subject to public policy interventions to control the nature and extent of that exploitation. This is equivalent to the public policy intervention of “nationalising” development rights via the Town and Country Planning system and, although agriculture and forestry are excluded from the definition of development in that legislation, they are

<sup>30</sup> <https://www.gov.scot/publications/scottish-land-rights-responsibilities-statement/>

<sup>31</sup> <https://www2.gov.scot/Resource/Doc/218661/0058716.pdf>

<sup>32</sup> <https://www.nature.scot/professional-advice/safeguarding-protected-areas-and-species/licensing/species-licensing-z-guide/birds-and-licensing/general-licences-birds>

<sup>33</sup> Introduced by the Wildlife and Natural Environment (Scotland) Act 2011.

<sup>34</sup> Deer (Scotland) Act 1996

<sup>35</sup> Inshore Fishing (Scotland) Act 1984

<sup>36</sup> Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

<sup>37</sup> Forestry Act 1967 and, when implemented, Forestry and Land Management (Scotland) Act 2018

<sup>38</sup> Water Environment and Water Services (Scotland) Act 2003

governed by parallel, separate processes under the Forestry legislation and EU/domestic agriculture grants/regulations.

By contrast, game shooting and especially gamebird shooting has remained free of any overall or sector-wide regulation<sup>39</sup>. Indeed, public policy interventions to promote sustainable management have been relatively few – and often limited to voluntary or partnership projects, such as the ECMP. Rather, issues have been considered on a piecemeal basis as described above.

Such freedom from public policy intervention is unusual from an international perspective. In countries outwith the UK, regulation of the game shooting sector is more common and widely accepted. This was demonstrated in SNH's recent review of gamebird law and licensing in other European countries<sup>40</sup>. This review looked at fourteen countries (Germany, Norway, Sweden, Spain, France, Poland, Hungary, Latvia, Slovakia, Finland, Romania, Estonia, Bulgaria, and Denmark) all of which have a legislative framework for the regulation of hunting and all of which attempt to implement sustainable hunting and wise use of bird species. Interestingly, all fourteen also use a system of licensing of individual hunters.

This latter aspect may be the area where any system for Scotland (and/or other parts of the UK) would differ. To date, methods of hunting are often limited in legislation (by the creation of offences that apply to the individual hunter). So, for instance, the fisheries legislation limits salmon fisheries to rod and line etc, while the deer acts specify the types of firearm allowable or times of day/year for deer shooting and the WCA81 defines the types of hunting/trapping that are allowable.

By contrast, to the overseas systems described above, the Scottish (and other UK) regulations affecting the management of hunting are 'aimed at' the owners of the rights to exploit those resources. Those owners then, in turn, 'license' or agree with individual hunters the terms of which that hunting may take place. Thus, for instance, deer management is regulated by SNH's oversight and application of the legislation – but whether shooting is conducted by the owner themselves, by paying guests or by paid stalkers is a matter for each landowner (although SNH then have powers to intervene if shooting is insufficient). Likewise, the management of salmon fisheries is the responsibility of salmon fishery proprietors.

So, if the public interest issues associated with grouse shooting are to be addressed comprehensively, therefore, then the public policy intervention needs to be sector-wide and comprehensive – with a clear objective of ensuring the system moves towards sustainability – where public disbenefits are minimised or eliminated. This, therefore, needs to be a regulatory system 'aimed at' those with the control of the management of grouse shooting (not individual shooters).

One option may be to expose grouse shooting, and the management of grouse moors, to a system akin to that which operates for deer management. Potentially, the owners/managers of a grouse moor may be required to produce and abide by a "grouse moor management plan" to be approved by a regulator (akin to SNH's approval of deer management plans). Were such a plan not followed, the regulator should have powers to intervene. However, there is one clear distinction between the deer and grouse situations. This is that "unsustainable deer management" is usually seen as a failure to shoot enough deer (and SNH's remedies include ordering higher culls or, *in extremis*, entering land and conducting culls themselves). By contrast, "unsustainable grouse moor management" is usually seen as seeking to produce too many grouse for shooting – often by the carrying out of illegal or undesirable acts considered in parts 1 and 2. Were a regulator, in such a situation to be empowered to intervene, it would usually be unable to 'undo' the undesirable acts or, without a permanent presence on the ground, repeat a repetition. This contrasts with the deer management situation where the regulators *in extremis* power is to carry out an undone act.

However, were there to be a need, in the public interest, to intervene in the case of "unsustainable grouse moor management", the most obvious intervention would be a suspension or removal of the right to shoot grouse. This suspension or removal might be ended when the management is shown to

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<sup>39</sup> Other than those related to close seasons and 'poaching'.

<sup>40</sup> <https://www.nature.scot/sites/default/files/Publication%202017%20-%20SNH%20Commissioned%20Report%20942%20-%20A%20Review%20of%20Game%20Bird%20Law%20and%20Licensing%20in%20Selected%20European%20Countries.pdf>

have returned to a sustainable basis. This would remove the incentive for the unsustainable management (including illegal or undesirable acts) and create an incentive for sustainable or alternative land management. This is, in effect a form of licensing, as promoted by various NGOs and sought in the SRS petition to the Scottish Parliament.

Under such a system, grouse shooting would only be permitted on land that is appropriately licensed, as it is the rights-holder (landowner/manager) who has control of the rights to shoot and of the management measures taken pursuant to exercising those rights. The holding of such a licence would be conditional on management that was in the public interest – with those activities that were/were not in that interest being defined in an appropriately clear and transparent manner.

While this raises several questions of detail (discussed further in part 3), the principle is straightforward – and one that builds on other forms of licencing and/or control and regulation of the management/harvesting of natural resources. Further, the actual implementation of a licensing scheme might learn from the administration of those other schemes. In particular, the general licence approach that is already used for the control of named 'pest' species<sup>41</sup>. These general licences allow the capture and taking ("hunting") of specific species, subject to various conditions. Were such an approach to be applied to the hunting of grouse (and/or other gamebirds), this would amount to a form of grouse moor licensing, although a potentially weak one. Nevertheless, if well applied, with appropriate conditions that addressed the issues of concern described above, this would allow the public authorities to revoke or limit such licences where there was evidence of illegal or unsustainable practices.

The limitation or/and revocation of such general licenses is a policy that is already in operation<sup>42</sup> and one that has been upheld on Judicial Review<sup>43</sup>. In particular, this judicial review concluded, *inter alia*, that: -

*"it is reasonable to infer that the policy has been developed to deal with situations in which the evidence pointing to criminality is less than sufficient to merit criminal proceedings."*

This underlines the benefit of a licencing approach – where compliance with conditions can be assessed on the "balance of probabilities" rather than the high (and difficult in such cases) criminal test of "beyond reasonable doubt". This is the appropriate test given that matters likely to be under consideration would either be similar matters to those considered in the above case (i.e. the prevalence of wildlife crime) and/or those related to the implementation or non-implementation of management measures (which may not be attributable to a particular individual, but would be inferred by e.g. the state of the land).

### **Conclusion**

This part of the report has considered the four available options from which the Scottish Government must, in 2019, determine a course of action in relation to the management of grouse moors. They may be summarised as: -

1. Do nothing;
2. Piecemeal regulation-tightening;
3. Comprehensive regulation-tightening or a 'licensing scheme';
4. Comprehensive reform of the entire hunting culture/system; or
5. Some form of complete ban.

Each of these has been discussed in some detail above, and the balance of the benefits and disadvantages discussed. In summary, each of the options may be viewed as: -

1. Politically untenable (unless Brexit/other political chaos overshadows everything else);
2. "More of the same" which has not yet addressed the issues raised;

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<sup>41</sup> S.16 Wildlife and Countryside Act, as amended.

<sup>42</sup> <https://www.nature.scot/professional-advice/safeguarding-protected-areas-and-species/licensing/species-licensing-z-guide/birds-and-licensing/general-licences-birds>

<sup>43</sup> <https://www.scotcourts.gov.uk/search-judgments/judgment?id=80782ea7-8980-69d2-b500-ff0000d74aa7>

3. Comprehensive – a clear, decisive and deliverable option – which would not rule out, in the longer term a move towards (4);
4. Potentially ideal, but not deliverable in the timescale required; although some initial research and debate would inform longer-term policy changes, if and when these were appropriate;
5. Politically contentious and therefore also difficult to deliver in a workable timescale; lacks the advantages of a more comprehensive approach to reform.

Thus, part 3 of this report (below) considers how a general licence scheme as discussed under option (3) above might be formulated and delivered.

### **Part 3: What a comprehensive but pragmatic licensing scheme may look like**

To deliver a comprehensive, but pragmatic, licensing scheme would, given the current statutory basis for grouse shooting, in Part 1 of the Wildlife and Countryside Act 1981 (as amended in Scotland), require new primary legislation. This, however, may be relatively straightforward – and, in some ways, simple enabling legislation to provide the powers for subsequent secondary legislation and administrative implementation.

As mentioned above, the design of a licensing system does raise several questions of detail. These are considered below, with some suggested answers – which have been used to guide the subsequent parts of this section. If, however, other answers were arrived at, appropriate adjustments to the detailed proposals could be made.

Should the system apply to just red grouse shooting or all quarry species?	The approach taken here is limited to red grouse; but a similar approach could be adopted, with different licence conditions etc, for other grouse, pheasants/partridges and/or wildfowl.
How should the conditions for ‘sustainability’ or public acceptability be determined?	The scheme below suggests that the state should, following appropriate consultation/discussion, develop a Code of Practice in the <u>Management</u> of Grouse Shooting. This Code would guide the various conditions applied to the licence and/or could guide the development of a Management Plan (and the adherence to the plan would become the condition to the licence).
Who should administer such a system of licensing?	Logically, this should be SNH. Not only are they already responsible for deer management, they are also responsible for much else under the WCA81 and Nature Conservation (Scotland) Act 2004. Moreover, in other countries, similar hunting legislation is administered by the (near) equivalents of SNH.
How should the system be funded?	The administration of the system, including monitoring, should be funded by licence fees; a scheme for such charges should be developed in the same manner as applies to CAR licences which has a legal ‘cost-recovery’ element.
How would this system be publicly transparent?	SNH should be required to publish all information via a website. This would be similar to their existing functions regarding deer culling, and to the Forestry Commission’s Public Register regarding woodland management.

While this report does not seek to propose draft legislation, new provisions (as further amendments to the 1981 Act) that delivered the following would be appropriate to enable a licensing scheme of the type suggested: -

- Remove red grouse from Schedule 2, Part I;
- Delete red grouse from s.2(4)(cb);
- Delete s.2(3C) relating to the taking and medicating of red grouse;
- Add new section 16B (“Licencing of grouse shooting”) that would state, either in the statute itself, the policy memorandum or the Minister’s explanation, that the purpose of sections 16B, 16C and 16D is to secure the sustainable management of Scotland’s grouse moors and address the incidental public disbenefits of poor management;
- And, then provide: -
  - a. that section 1 does not apply to anything done, in relation to red grouse if it is done under and in accordance with a licence granted by the appropriate authority.
  - b. that any such licence: -
    - i. must define an ‘open’ season<sup>44</sup>,
    - ii. may be, to any degree, general or specific,
    - iii. may be granted to a particular person or to persons of a particular class,
    - iv. may be subject to any specified conditions,
    - v. may be modified or revoked, and
    - vi. shall be valid for any time period stated in the licence<sup>45</sup>.
  - c. that, in the case of a general licence, those wishing to exercise rights under such a licence should register their intention to do so;
  - d. that the appropriate authority may charge such sums as necessary for those holding a specific licence or registering to exercise rights under a general licence;
  - e. that Ministers must make regulations in relation to the operation of a registration scheme for the purposes of (c) above; and
  - f. a definition of appropriate authority<sup>46</sup>.
- Add a new section 16C (“Licenced grouse shooting: conditions”) that would provide: -
  - a. that, before the new provisions come into effect that Scottish Ministers have developed (including with appropriate consultation) and published a Code of Practice in the Management of Grouse Shooting;
  - b. that this Code should be clear as what forms of management would be required to comply with a general licence (the “conditions”) and what other, additional measure may be undertaken voluntarily as best practice;
  - c. that any licence issued under section 16B must be subject to the conditions, based on the Code above, that ensure that activities undertaken under the licence, or to enable or improve the undertaking of those activities, are carried out in a sustainable manner<sup>47</sup>;
  - d. that this Code and conditions must provide for the taking and medicating of red grouse under circumstances and in such a manner as the Code and/or conditions may define<sup>48</sup>; and

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<sup>44</sup> to replace the provisions of s.2(4)(cb) – what this season should be may be specified in the primary legislation as at present or determined by the licensing authority in issuing the licence.

<sup>45</sup> *cf* s.16(5) of 1981 Act in relation to other such specific or general licences.

<sup>46</sup> as per s.16(9) of the 1981 Act

<sup>47</sup> These conditions may be a series of individual conditions specifying the actions (or inactions) necessary to comply with the Code, or a single condition specifying compliance with a Management Plan that has been produced (and approved) to be in accordance with the Code.

<sup>48</sup> to replace the provisions of s.2(3C).

- e. that any licence issued under s.16B must be subject to those exercising rights reporting to the appropriate authority the number of birds killed in each year, and any other returns that the licence may specify.
- Add a new section 16D (“Licensed grouse shooting: additional provisions”) that would provide that: -
    - a. Scottish Ministers must, by regulations, make provision for the circumstances where they (or any person to whom they have delegated licensing power) shall modify or revoke such a licence and the extent to which it may be modified or revoked;
    - b. These regulations may make provision for revocation to be temporary or of a ‘suspended nature’, pending the carrying out of remedial action, which may be in the form of the production and implementation of a management plan.
    - c. Scottish Ministers must by regulations make such provision for or in connection with the fixing of charges referred to s.16B(d). Such regulations should include such principles, objectives or other matters on which a charging scheme should be based, but, in making such regulations, Ministers should require that they (or their delegate) have to secure that the amounts recovered by way of charges prescribed by the charging scheme meet the costs and expenses which they incur in carrying out, or having others carry out, those functions<sup>49</sup>.
    - d. Scottish Ministers must, by regulation, make provision that the licensing authority must, each year, publish the returns, required under s.16C, along with an assessment of the impact of the activities undertaken, under such licences, on the status of the red grouse population as well as other matters of public interest addressed in the Code published under s.16D.
  - The act of killing or attempting to kill a red grouse in circumstances or by means not permitted by the above licensing system would (automatically as a result from its deletion from Schedule 2, Part I) become an offence under s.1 of the 1981 Act. However, many of the issues arising from poor practice in the management of grouse shooting and those likely to form part of a Code of Practice in the Management of Grouse Shooting, and thus be subject to the conditions of a licence, may be undertaken independently of any shooting activities. It would therefore be appropriate to introduce a new offence or offences related to the failure to comply with the terms and conditions of a licence issued under s.16B. This should include failure to submit returns by the specified deadline.
  - Any alleged action that may be an offence under the ‘new’ s.1 [that is, killing a red grouse except under the provisions of a licence] or any offence created by the provision above would be investigated, reported and if appropriate prosecuted under the existing provisions of Part 1 of the WCA81.
  - Insert new section to Hill Farming Act 1946 to ensure that any muirburn must be conducted in a manner that is both in accordance with that Act but also any conditions applied to any licence issued, in relation to the land being burned, under s.16B of the WCA81.
  - Any other ‘consequential amendments’ to other parts of WCA81 or other statutes.

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<sup>49</sup> cf s.23 of WEWS Act 2003 and Para 6, Schedule 5 of Controlled Activities Regulations 2011 or the charging, by Police Scotland, to register as a snare operator (<https://www.scotland.police.uk/about-us/firearms-and-explosives-licensing/snare-and-weapon-transfers/>).

Based on the above proposal for primary legislation, and the consequential work needed to deliver secondary legislation and establish administrative procedures, the sequence of events over the next few years, may be: -

1. Government announce (and consult on) new policy and legislative intent or draft legislation (late 2019-early 2020);
2. Legislation introduced and passed by Parliament (mid 2020-March 2021);
3. Government and/or SNH develop and consult on: -
  - a. Code of Best Practice in the Management of Grouse Shooting;
  - b. charging scheme and administrative mechanisms, including system for online registering, as well as scheme for submission and publication of annual returns;
  - c. 'model' conditions for the new general licence;
  - d. regulations and appropriate guidance relating to revocations/modifications, and the use of temporary/suspended revocations, including to contents of any necessary management plan;(3a-d to take place consecutively or in parallel during 2021-23)
4. Government set 'introduction date' and bring legislation into effect (potentially spring 2023), thus allowing time for registrations etc before the season begins on 12<sup>th</sup> August 2023;
5. From 12<sup>th</sup> August 2023, all grouse shooting in Scotland to be subject to licencing arrangements.



## **The positions of Scottish political parties regarding grouse moor management, especially licensing.**

### Scottish National Party

On 5<sup>th</sup> December 2017, Holyrood magazine reported that: -

“The SNP has thrown its weight behind plans to introduce licensing measures on shooting estates, after delegates at the party’s National Council meeting backed the policy. Delegates backed a motion calling for the SNP to come out in support of establishing a licensing system for driven grouse estates as part of efforts to tackle wildlife crime.”<sup>50</sup>

### Scottish Labour

In a statement provided to the author, Labour’s Shadow Cabinet Secretary for the Environment, Claudia Beamish MSP, indicated that: -

“Scottish Labour supports the development of licencing of driven grouse moors and a consultation on the criteria for this. Scottish Labour agreed grouse moor management should be reviewed by the Scottish Government.

Grouse moors account for 1/5 of Scotland’s land mass, and their regulation needs reassessment with an ecosystems-based approach in order to improve Scotland’s biodiversity, environment, and animal welfare standards, as well as to improve our land justice, and support rural economies in sustainability. We await with interest the conclusions of the Grouse Moor Management Review.

Scottish Labour recognises mountain hares are a vital part of the heritage of the Highlands. There is no evidence to support the rationale for a cull, and Scottish Labour would ban large-scale culls of mountain hares.

Lead can be highly toxic to nature, habitats, and to people, and Scottish Labour believes it is time to move to a total ban on the use of lead shot.

There are numerous disturbing counts of raptor persecution. These iconic birds must be protected, and their illegal persecution must end.

Scottish Labour is giving further consideration to issues of muir burning on peatlands and the use of medicated grit.

Scottish Labour recognises the work of Revive in relation to the reform of Scotland’s driven grouse moors, and the need to have a dialogue with the Scottish Gamekeepers Association and others employed on driven grouse moors as polices and licensing criteria are developed.”

This position was recently confirmed publicly at the 2019 Scottish Labour Party conference in Dundee<sup>51</sup>.

### Scottish Green Party

Mark Ruskell, Environment spokesperson for the Scottish Greens and MSP for Mid Scotland and Fife, said<sup>52</sup>:

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<sup>50</sup> <https://www.holyrood.com/articles/news/snp-backs-plans-introduce-licensing-shooting-estates>

<sup>51</sup> <https://www.heraldscotland.com/news/17487652.eagles-are-being-slaughtered-as-part-of-serious-organised-crime-campaigners-say/> and <https://www.pressandjournal.co.uk/fp/news/politics/holyrood/1694966/labour-calls-for-robust-licencing-of-grouse-shooting/>

<sup>52</sup> <https://greens.scot/news/ruskell-welcomes-steps-towards-a-licensing-scheme-for-game-bird-hunting>

“Bird of prey populations have been decimated by decades of persecution while a voluntary approach has had limited success in tackling wildlife crime. The burden of proof remains far too high to bring about successful convictions and we have seen a string of cases abandoned by the Crown Office Prosecution Service. That’s why we need a licensing regime backed up by civil law.

“I’m very pleased our committee agreed the next step towards licensing for driven grouse shoots and urge the Scottish Government to immediately bring interests together to look at a trial introduction in an area where persecution is rife. Sporting estates that do not have raptor persecution as part of their business model should have nothing to fear from a licencing regime designed to enforce existing law.”

### Scottish Conservatives

The conservative manifesto for the 2016 Holyrood election indicated that:

“We would also explore reintroducing business rate relief to sporting estates which manage their environment and wildlife to a high standard.”<sup>53</sup>

### Scottish Liberal Democrats

The party are committed to:

“Take stronger action on wildlife crime using the recommendations on prosecution and penalties from the recent review group, together with the proposals from Scottish Environment Link in its report Natural Injustice to tackle failings in reporting and investigation of wildlife crime.”<sup>54</sup>

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<sup>53</sup> [http://www.scottishconservatives.com/wordpress/wp-content/uploads/2016/04/Scottish-Conservative-Manifesto\\_2016-DIGITAL-SINGLE-PAGES.pdf](http://www.scottishconservatives.com/wordpress/wp-content/uploads/2016/04/Scottish-Conservative-Manifesto_2016-DIGITAL-SINGLE-PAGES.pdf)

<sup>54</sup> [http://www.scotlibdems.org.uk/manifesto\\_naturalenvironment](http://www.scotlibdems.org.uk/manifesto_naturalenvironment)