



Protection of Wild Mammals (Scotland) Act 2002

2002 asp 6

2 Exception: stalking and flushing from cover

- (1) A person who is, or who has the permission of, the owner or lawful occupier of the land on which the stalking, searching or flushing referred to in this subsection takes place does not commit an offence under section 1(1) by using a dog under control to stalk a wild mammal, or flush it from cover (including an enclosed space within rocks, or other secure cover) above ground for the purpose of—
- (a) protecting livestock, ground-nesting birds, timber, fowl (including wild fowl), game birds or crops from attack by wild mammals;
 - (b) providing food for consumption by a living creature, including a person;
 - (c) protecting human health;
 - (d) preventing the spread of disease;
 - (e) controlling the number of a pest species; or
 - (f) controlling the number of a particular species to safeguard the welfare of that species,
- but only if that person acts to ensure that, once the target wild mammal is found or emerges from cover, it is shot, or killed by a bird of prey, once it is safe to do so.
- (2) Where a person is using a dog in connection with the despatch of a wild mammal, being of a pest species, with the intention of flushing the wild mammal from cover or from below ground in order that it may be shot or killed by lawful means, that person does not commit an offence under section 1(1) by virtue of the dog killing that wild mammal in the course of that activity.
- (3) A person does not commit an offence under section 1(1) by using a dog under control to flush a fox or mink from below ground or by using a dog under control to flush a fox from an enclosed space within rocks or other secure cover above ground, but only if that person—
- (a) does so for one or more of the purposes specified in paragraphs (a) to (f) of subsection (1);
 - (b) takes reasonable steps to ensure that the fox or mink is flushed as soon as reasonably possible after it is located and shot as soon as possible after it is flushed;

Status: This is the original version (as it was originally enacted).

- (c) takes all reasonable steps to prevent injury to the dog including steps to prevent the dog becoming trapped underground and, if it does become trapped underground, steps to ensure it is rescued as soon as is practicable;
- (d) is in possession of a firearm for which the person holds a valid firearms or shotgun certificate; and
- (e) either—
 - (i) is the owner or lawful occupier of the land on which the activity takes place; or
 - (ii) has the permission of the owner or lawful occupier of that land to undertake that activity.