

Improving the Protection of Wild Mammals in Scotland

A Consultation

October 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

Ministerial foreword



The Protection of Wild Mammals (Scotland) Act 2002 represented a step change in the humane treatment of wild mammals to better reflect the outlook of civil society in 21st century Scotland. A key facet was to outlaw the pursuit of mammals by dogs, a practice which (in conjunction with the ensuing capture and killing) resulted in deeply felt ethical concerns.

The Act also, however, recognised the need for the continued deployment of dogs to stalk, search for and flush wild mammals in certain specified circumstances, for example to assist with pest control to protect livestock and provided that the target animal, once flushed by dogs, is shot (or killed by a bird of prey) once safe to do so. The Act achieved this by providing a number of exceptions to the offence of hunting, thus allowing much of the culture and infrastructure associated with hunting as it once was to remain, even if the practice changed markedly. Some would say it has not changed enough.

Since the Act came into force, we have continued to hear concerns from stakeholder organisations and the public about hunting with dogs. This led us to consider whether the 2002 Act was achieving its intended purpose and in late 2015, we appointed the Rt Hon. Lord Bonomy to conduct a review.

Lord Bonomy's report represents a significant milestone in the ongoing debate on the ethical use of dogs to stalk, search for and flush wild mammals. It is a considered, objective and comprehensive examination of a number of complex issues with a deliberate focus on an area of particular and sustained controversy in recent years: mounted fox hunting. His conclusions contain a number of potential improvements to the conduct of operations under the Act and to the interpretation and enforcement of the Act itself. We welcomed his report and are now taking action on each of his recommendations.

Our response is being progressed via two concurrent strands of work. The first was the establishment of a stakeholder group in June 2017 to develop a new Code of Practice for hunting and also to look into the viability of a new hunt monitoring scheme. That work continues apace. The second strand is to consider Lord Bonomy's recommendations for

legislative reform with particular regard to interpretation and enforcement.

This consultation therefore seeks to progress the second of these strands by exploring each of Lord Bonython's recommendations for improvements to the legislation. I anticipate that it will generate a high degree of interest. Indeed, some aspects are likely to be viewed by some as controversial and will require very careful thought before we commit to pursuing legislative change. Your contribution will therefore be of considerable value in informing our thinking and I am grateful for your participation.

A handwritten signature in black ink, appearing to read 'R. Cunningham', written in a cursive style.

Roseanna Cunningham
Cabinet Secretary for Environment, Climate Change and Land Reform
October 2017

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Introduction

On 26 December 2015, the Scottish Government announced the appointment of the Rt Hon. Lord Bonomy to undertake a review of the operation of the Protection of Wild Mammals (Scotland) Act 2002.

Some 300 written submissions to Lord Bonomy were received. These are available via the following web link:

<http://www.gov.scot/Publications/2016/10/4011>

In our response to Lord Bonomy's report, we undertook to consult on his recommendations for changes to the existing legislation. We recognise that some aspects are likely to be viewed by some as controversial and will require careful thought. Any ensuing proposals for change will also need to be subject to the scrutiny of Parliamentary draftsmen. At this stage however, we are interested in your views on Lord Bonomy's recommendations with particular regard to possible practical effect.

Familiarity with the provisions of the 2002 Act and Lord Bonomy's report will greatly assist in informing your contribution to this consultation.

The Act is available via the following web link:

<http://www.legislation.gov.uk/asp/2002/6/contents>

Lord Bonomy's report is available at:

<http://www.gov.scot/Publications/2016/11/9965>

CONSULTATION QUESTIONS

1. Features of Language in the Act

Please see section 5 of Lord Bonomy's report.

<http://www.gov.scot/Publications/2016/11/9965/5>

1.1. Do you think the definition of "to hunt" as provided in the 2002 Act should be more specifically defined?

Please answer Yes x or No

We believe that having clarity in the definition of terms used throughout is desirable and this includes clarifying the definition of hunting within the Act. The clear definition of "hunt" and other terms such as "flushing" and "cover" will also help to ensure that only permitted activities under the Act are conducted.

1.2. Do you agree with Lord Bonomy's suggestion that the word "deliberately" in section 1(1) serves no useful purpose?

Please answer Yes X or No

It is hard to see how hunting can be other than a deliberate activity. Again, this relies upon clear definitions of terms as in 1.1 to ensure that there are no loopholes in the aims of the legislation.

1.3. Do you think the Act would be clearer if "searching" was included alongside "stalking" and "flushing" in section 2(1)?

Please answer Yes X or No

It would improve consistency if "searching" was included in the bold section heading and in the main body of the text at (1) of this section. However, it is not clear how searching using a dog might need to be undertaken as an isolated legal activity in the absence of subsequent flushing and what would then happen to disturbed animals.

1.4. Is "searching" relevant to any other subsections?

Please answer Yes or No x

1.5. Do you think the Act would be improved if it included definitions of

"to stalk"

Please answer Yes X or No

"to search"

Please answer Yes X or No

“to flush”

Please answer Yes X or No

1.6. What elements would you wish to see included in these definitions?

As noted above, we believe that having clarity in the definition of terms used throughout is desirable, particularly to ensure compliance with the Act. However, the term “stalking” seems one that has limited application to pest control activities (including foxes).

1.7. Do you think section 2(3) should be framed more narrowly to remove any overlap with section 2(1) by removing reference to using a dog under control to flush a fox from an enclosed space within rocks or other secure cover above ground?

Please answer Yes X or No

WAWC recognises that there is overlap and section 2 would be clearer if this was remedied.

This question does not ask about mink (which are in fact covered in section 2(3)) and we are not aware of this activity occurring in Scotland.

Having any dog(s) under effective control is essential for the avoidance of and direct attack by the dog on the wild species. As will be noted later, as the number of dogs increases effective control is likely to decrease.

1.8. Do you think that the various areas of overlap and inconsistency between sections 2(1), 2(3), 3(a) and 5 of the Act should be addressed in the manner suggested?

Please answer Yes X or No

Section 2(1) could have a greater focus on an animal being rendered irreversibly insensible (unconscious)/killed (usually shot) as soon as possible once it is found or emerges from cover and all elements of a chase avoided.

Presumably section 2 (1) (d) has the intention of preventing the spread of disease in livestock or humans, rather than the hunted species themselves? The purpose could perhaps be made clearer.

1.9. Do you think the “lawful means” mentioned in section 2(2) should be specified?

Please answer Yes X or No

As noted above, the intentional despatch of a wild animal must focus on it being rendered irreversibly insensible (unconscious)/killed as soon as possible. “Lawful means” must cover methods that achieve this in compliance with the requirements of the Animal Health and Welfare (Scotland) Act 2006. In terms of this specific Act it

would be sensible to describe the permitted lawful methods since these will be limited. It is a moot point whether killing a wild mammal, particularly of the size of an adult fox, by a bird of prey is likely to be rapid. (That seems a permitted exception under section 3 but may be an unlikely event)

1.10. Do you think there are any other inconsistent, inappropriate or unnecessary features in the Act which could be improved, or do you think there are any terms in the Act which have not been covered above and should be addressed or have been omitted from the Act and should be included? Please identify them and suggest ways in which they might be addressed.

Number of dogs used:

As noted earlier, it is harder to exercise effective control over dogs as their numbers increase.

2. Terriers

Please see paragraphs 6.20 to 6.30 of Lord Bonomy's report.

<http://www.gov.scot/Publications/2016/11/9965/6>

2.1 Do you agree with Lord Bonomy's suggestion that the legislation should impose a restriction in line with the Code of Conduct of the National Working Terrier Federation that, wherever possible and practical, only one terrier should be entered to ground at a time?

Please answer Yes X or No

If terriers are to be used then their numbers should be kept to a minimum and specifically only one terrier should be used underground. The words 'possible and 'practical' are unnecessary in this statement as all dogs should be under control and therefore it should be specified clearly that only one dog should be used underground. WAWC believes that when the killing of a fox is absolutely necessary (and this should be infrequently), the most humane means should be used. It is very unlikely that such means would involve the use of one or more dogs and then only in exceptional circumstances where not to do so would have an adverse impact on the welfare of the fox.

3. Mental State Required for Illegal Hunting

Please see paragraphs 7.15 to 7.22 of Lord Bonomy's report.

<http://www.gov.scot/Publications/2016/11/9965/7>

3.1 Do you agree with Lord Bonomy's suggestions which seek to

provide greater clarity on the question of whether someone is hunting illegally (by finding ways to clarify the element of intent)?

Please answer Yes X or No

Can you suggest ways in which we might do this?

Clarity of language around the subject as in section 1.

4. Vicarious Liability

Please see paragraphs 7.23 to 7.25 of Lord Bonomy's report.

<http://www.gov.scot/Publications/2016/11/9965/7>

4.1 Do you agree that we should explore a new vicarious liability provision whereby a landowner who permits a person or persons to deploy dogs to stalk, search for and flush wild mammals over their land is guilty of an offence in the event that someone involved in such activity commits an offence?

Please answer Yes X or No

This would ensure greater awareness of activities undertaken on an owner's land.

5. Burden of Proof

Please see paragraphs 7.27 to 7.39 of Lord Bonomy's report.

<http://www.gov.scot/Publications/2016/11/9965/7>

5.1 Do you agree with the proposition that the onus should lie upon an accused to establish that their conduct falls within one of the exceptions provided in the 2002 Act?

Please answer Yes X or No

6. Time Limit for Prosecution

Please see paragraphs 7.42 to 7.43 of Lord Bonomy's report.

<http://www.gov.scot/Publications/2016/11/9965/7>

6.1 Do you agree with Lord Bonomy's recommendation that the time

limit for prosecution under the 2002 Act be extended and harmonised with other statutes which create wildlife offences?

Please answer Yes X or No

7. Any other comments

Please use this space to provide us with any other comments you wish to submit on the use of dogs to stalk, flush or search for wild mammals.

WAWC was disappointed to note that Lord Bonyon's remit excluded considering whether predator control is necessary to protect livestock or wildlife or any likely welfare impacts. While the means of killing predators has a profound effect on their welfare, it is WAWC's view that a consideration of the necessity of killing predators is essential. We refer you to a paper (Dubois et al 2017), published by international experts including WAWC members, which sets out seven *International Consensus Principles for Ethical Wildlife Management*. While all of these principles are relevant here, we draw your attention in particular to four, which are that control should: • be justified by evidence that significant harms are being caused to people, property, livelihoods, ecosystems, and/or other animals; • have measurable outcome-based objectives that are clear, achievable, monitored, and adaptive; • predictably minimize animal welfare harms to the fewest number of animals; • be based on the specifics of the situation rather than negative labels (pest, overabundant) applied to the target species. The routine killing of predators and other wildlife generally takes place out of public view and often in the absence of an evidence base to support it. It is WAWC's view that such activities may be incompatible with conservation, the maintenance of bio-diversity and animal welfare. WAWC believes that the practice of routine killing of predators, particularly where this has not been proven to protect livestock and other wildlife, urgently needs reviewing.

Number and control of dogs:

We have already noted that by reducing the number of dogs there should be enhanced welfare of the hunted animals through more effective control over them. (There seem various terms for the degree of control and what this means in practice and perhaps this could be made clearer.) A reduction in the number of dogs will reduce the possibility of direct physical injury and a reduced likelihood of a chase. Only two dogs are permitted to be used in legislation elsewhere in the UK and we would recommend this be the practice in Scotland. As we noted in the case of terriers, WAWC believes that when the killing of a fox is absolutely necessary (and this should be infrequently), the most humane means should be used. It is very unlikely that such means would involve the use of one or more dogs and then only in exceptional circumstances where not to do so would have an adverse impact on the welfare of the fox.

Number of guns:

There should be provision to ensure that the number of guns present is sufficient to ensure that any wildlife species emerging from cover can be shot instantly.

Improving the Protection of Wild Mammals in Scotland

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

Individual

Organisation

Full name or organisation's name

Wild Animal Welfare Committee (WAWC)

Phone number

c/o 0131 661 9734

Address

c/o 50 Montrose Terrace
Edinburgh

Postcode

EH7 5DL

Email

info@wawc.org

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Responding to this Consultation

We are inviting responses to this consultation by 31 January 2018.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/wildlife-management-and-protected-areas/improving-protection-for-wild-mammals>.

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 31 January 2018.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Improving the Protection of Wild Mammals in Scotland Consultation
Wildlife Management and Protected Areas Team
The Scottish Government
Area 3G-S
Victoria Quay
Edinburgh EH6 6QQ

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to 2002ActReview@gov.scot .

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk> . Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



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