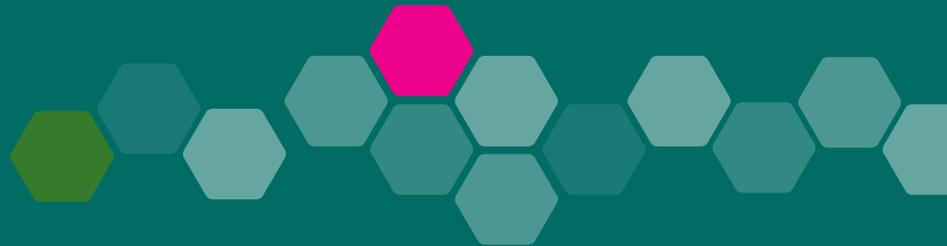




Consultation on improving the protection of wild mammals: Analysis of responses



AGRICULTURE, ENVIRONMENT AND MARINE

Consultation on improving the protection of wild mammals: Analysis of responses

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June 2018

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Executive summary

Introduction

1. Responding to concerns about fox hunting, the Scottish Government appointed the Right Honourable Lord Bonomy in December 2015 to carry out a review of the operation of the Protection of Wild Mammals (Scotland) Act 2002 (the 2002 Act). The main purpose of the 2002 Act is to ban the deployment of dogs to chase and kill wild mammals. However, it also provides a number of exceptions which allow the limited use of dogs for certain situations – as defined in the Act (sections 2-5). Lord Bonomy's report, published in November 2016, set out recommendations for (i) addressing inconsistencies and a lack of clarity in the language of the Act, and (ii) strengthening aspects of the Act to enable more effective detection, investigation and prosecution of alleged offences.
2. Between 6 October 2017 and 31 January 2018, the Scottish Government undertook a public consultation to gather views on Lord Bonomy's suggested reforms to the 2002 Act. The consultation paper contained 16 questions (Question 1 to Question 7, with Question 1 containing 10 sub-questions), comprising a mix of closed (tick-box) and open questions.
3. Frequency analysis was carried out on responses to all closed questions. Comments made in response to each open question were analysed qualitatively to identify the main themes and range of views expressed, together with areas of agreement and disagreement in the views of different types of respondent.

About the respondents

4. The consultation received 18,787 responses. Of these, the vast majority (n=18,497, 98%) were campaign responses submitted through five different campaigns. These campaigns generally supported the suggestions and recommendations made by Lord Bonomy and / or they called for a further strengthening of the law beyond the recommendations made. The remaining 290 'substantive' (i.e. personalised) responses were submitted by 25 organisations and 265 individuals. All but two of the organisational respondents fell into one of two categories: (i) those with an interest in countryside management and countryside sporting (n=13) and (ii) animal welfare charities and campaign groups (n=10).

Overall support for the review recommendations

5. Between 94% and 98% of respondents indicated support for or agreement with each of Lord Bonomy's proposals for reform (i.e. they ticked 'yes' to the closed questions). These figures reflect the very large campaign response. Among the organisational respondents (n=25), animal welfare charities and campaign groups indicated support, whereas countryside management and sporting groups generally indicated opposition.

Language of the Act (Qs 1.1 – 1.10) (Chapters 3 – 7)

6. Lord Bonomy identified areas where the language of the 2002 Act was unclear or inconsistent, and offered specific suggestions for improvement. Questions 1.1 to 1.9 invited views on these. Question 1.10 provided space for other comments or suggestions for improving the language in the Act.

7. Across all these questions, animal welfare charities and campaign groups, their supporters among the individual respondents, and campaign respondents expressed support for Lord Bony's suggestions (i.e. they answered 'yes' to Questions 1.1 to 1.9). These respondents thought a lack of clarity and inconsistency in the legislation were hindering enforcement and prosecution and they called for certain aspects of the Act to be strengthened to remove perceived loopholes and reduce the likelihood of a wild mammal being killed by dogs.

8. By contrast, countryside management and sporting groups and their supporters among individual respondents thought that the current legislation was already clear and working well. With few exceptions, this group generally answered 'no' to Questions 1.1 to 1.9 and were opposed to amending the 2002 Act.

9. Comments at Question 1.10 came mainly from animal welfare charities and campaign groups, individual respondents opposed to hunting, and campaign respondents. This group suggested the Act should: (i) provide a definition of 'cover'; (ii) specify a maximum number of dogs allowed to be used in flushing activities; (iii) introduce a requirement for dogs used in hunting to wear muzzles; and (iv) introduce a new offence of 'reckless hunting'.

Terriers (Q2) (Chapter 8)

10. Lord Bony suggested that, in line with the Code of Conduct of the National Working Terrier Federation (NWTf), the Act should specify that, wherever possible and practical, only one terrier should be entered below ground at a time to locate a fox. The consultation asked respondents if they agreed with this suggestion (Question 2).

11. Respondents expressing support for this proposal thought the current legislation needed to be strengthened in this area. This group of respondents repeatedly emphasised that this restriction should be 'on the face of the Act and not part of a code of conduct, binding or otherwise'. These respondents believed that this proposal would result in better protection of the welfare of foxes and terriers and would bring Scottish legislation in line with that in England and Wales on this issue. However, they also thought that the phrase 'wherever possible and practical' would create a loophole and should **not** be included in the legislation; rather the restriction to one terrier should be absolute. In addition, they wanted clarification that (i) several terriers cannot be entered in succession, as might be implied by the phrase 'one at a time', and (ii) dogs should not be used for any activity which might constitute an offence under other legislation (e.g. such as the digging of badger setts).

12. Respondents disagreeing with this proposal said they fully supported the principle of entering only one terrier to ground at a time whenever practical or possible, but they also argued that there are a wide range of circumstances where it may be necessary (for practical and welfare reasons) to enter more than one terrier to ground. This group were not in favour of legislation covering this issue; instead they thought the choice about the number of terriers to use in any given situation should be made by the terrier man.

13. Those disagreeing with the proposal also expressed concern about the phrase 'wherever possible and practical' being included in legislation. These respondents thought this phrase was open to interpretation, and that it would be difficult to legislate for what

constitutes the ‘possible and practical’. These respondents advocated leaving this issue to be covered by the new code of practice being drafted in Scotland.

Mental state required for illegal hunting (Qs 3 and 4) (Chapter 9)

Intention to hunt

14. One argument made to the review of the 2002 Act was that section 1(1) of the Act does not clearly express the element of intent (or *mens rea*) which is generally required within criminal law. Lord Bonomy made several suggestions about how a mental state test might be incorporated into the legislation to clarify when a person is illegally hunting a wild mammal with a dog. Question 3 asked if respondents agreed with these suggestions.

15. Among those who agreed, a key concern was that the existing legislation allowed a person to avoid prosecution by claiming that their dogs were out of control when they killed a wild mammal and, therefore, that the killing of that wild mammal was not deliberately intended. This group believed that this loophole should be removed, and that the legislation should require a hunter to be in control of their dogs at all times. This group supported Lord Bonomy’s suggestions to remove the word ‘deliberately’ from section 1(1) of the Act and to introduce an offence of ‘intentionally or recklessly hunting a wild mammal with a dog’.

16. Respondents who disagreed with Lord Bonomy’s suggestions made the following points: (i) that ‘hunting’ is a deliberate activity and therefore intention is already clear; (ii) that the definition of hunting within the 2002 Act includes the activity of ‘searching’, and therefore it cannot be difficult for the police and courts to establish when hunting has taken place; and (iii) the only question should be whether the hunting is lawful – because it falls within one of the exceptions and the conditions of the exception have been met. These respondents were opposed to removing the word ‘deliberately’ from section 1(1), as they considered this word was necessary to provide ‘fair justice and defence to a person accused of illegal hunting who finds themselves in circumstances outwith their reasonable control’. They also opposed the introduction of an offence of ‘reckless’ hunting.

Vicarious liability for landowners

17. The review report discussed the possibility of attributing vicarious liability to a landowner – whereby an owner who gives a hunt permission to hunt over his / her land would also be guilty of an offence if anyone involved in the hunt committed an offence. Respondents were asked if they agreed that a new vicarious liability provision should be explored (Question 4).

18. Respondents agreeing with this proposal thought it would have several benefits: (i) it would help define the responsibilities of those who permit hunting on their land and make them more aware of the legal implications of their decisions; (ii) it would ensure that landowners took more interest in activities taking place on their land – and therefore make illegal hunting less likely to occur; (iii) it would ensure that hunters took greater care to be in control of their dogs at all times; (iv) it would support landowners to dissent to an activity they would not necessarily support or engage in themselves; and (v) it would achieve consistency in the law (landowners can be held vicariously liable for the actions of a gamekeeper who kills a bird of prey).

19. Those opposing this proposal argued that the current law already makes it an offence for a landowner or occupier knowingly to permit another person to enter or use their land for the purpose of illegal hunting. These respondents thought it was unjust and impractical for a landowner to be prosecuted for an offence committed by someone else when permission for a legal hunt had been given in good faith. This group identified possible negative consequences, including increased predation by foxes and the related impacts on livestock, conservation, biodiversity and rural economies.

Burden of proof (Q5) (Chapter 10)

20. Question 5 asked whether the onus for establishing that conduct falls within one of the exceptions provided in the 2002 Act should rest with the person accused of an offence.

21. Those supporting this proposition argued that if an individual is carrying out what would otherwise be an illegal activity (hunting wild mammals with dogs) under the limited exceptions set out in the 2002 Act, then it was reasonable and proportionate to expect that individual to be able to demonstrate he (i) was fully entitled to claim that exception, and (ii) had taken steps to follow the conditions required by it.

22. Those opposing the proposition believed that the principle of a person being innocent until proven guilty should not be dispensed with lightly. This group considered that putting the burden of proof on the defendant was disproportionate, unreasonable and contrary to the Human Rights Act 1998, and that it would result in 'vexatious prosecutions'.

Time limit for prosecution (Q6) (Chapter 11)

23. Lord Bony recommended that the time limit for bringing prosecutions under the 2002 Act should be extended to three years after the offence has been committed, in line with other wildlife offences. Question 6 asked respondents for their views on this proposal.

24. Those in favour emphasised that extending the time limit would allow for adequate investigation and thorough implementation of the law. This group supported greater consistency between the 2002 Act and other wildlife offences.

25. Those opposed believed there was no need to extend the time limit for prosecution beyond the current six months since the new code of practice in Scotland will introduce changes to make it easier to investigate any allegations of illegal hunting with dogs.

Other comments (Q7) (Chapter 12)

26. The final question in the consultation (Question 7) invited other comments on the use of dogs to stalk, flush or search for wild mammals. The three main views expressed were: (i) that the management / control of foxes was necessary, and legislation should continue to enable this; (ii) that although the control of foxes may be necessary, the law should be strengthened to ensure the chasing and killing of foxes by dogs did not occur; and (iii) that there should be a complete ban on fox hunting.

1. Introduction

1.1 Between 6 October 2017 and 31 January 2018, the Scottish Government carried out a public consultation on proposed reforms to the Protection of Wild Mammals (Scotland) Act 2002. This report presents findings from an analysis of the written responses to the consultation.

Policy background

1.2 The Protection of Wild Mammals (Scotland) Act 2002 (the Act) primarily concerns the use of dogs to hunt wild mammals. The main purpose of the 2002 Act is to ban the deployment of dogs to chase and kill wild mammals such as foxes, hares, mink, etc. (Rabbits and rodents are excluded from the definition of ‘wild mammals’ for the purposes of the Act.) However, the Act also provides a number of exceptions which allow the limited use of dogs for certain situations – specifically:

- Pest control for specific purposes so long as target animals are shot (or killed by a bird of prey) as soon as possible once the target animal has been flushed from cover (section 2)
- Sport (i.e. falconry and shooting) (section 3)
- Searching by an authorised person with no intention of harming a wild animal (section 4)
- The retrieval and location of shot hares and escaped, released, seriously injured or orphaned mammals (section 5).

1.3 Thus the legislation does not entirely ban hunting with dogs, but places significant restrictions on doing so.¹

1.4 However, ongoing concerns about the effectiveness of the legislation, and about the use of packs of dogs for flushing foxes, led the Scottish Government to appoint the Right Honourable Lord Bonomy to undertake a review of the operation of the legislation. The review was announced on Boxing Day 2015, and the review report was published in November 2016.²

1.5 The review concluded, first, that ‘there are aspects and features of the legislation which complicate unduly the detection, investigation and prosecution of alleged offences’ under the Act; and, second, that there are reasons to believe ‘there may be occasions when hunting, which does not fall within one of the exceptions, does take place and that the grounds for that suspicion should be addressed’.³

1.6 The review contained several recommendations, namely that:

¹ Protection of Wild Mammals (Scotland) Act 2002 – See <https://www.legislation.gov.uk/asp/2002/6/contents>. Sections 2-5 set out the range of ‘exceptions’ in which dogs may be used in the hunting of wild mammals.

² Lord Bonomy (2016) *Report of the Review of the Protection of Wild Mammals (Scotland) Act 2002*. Scottish Government. See <http://www.gov.scot/Resource/0051/00510246.pdf>.

³ See review report, pages 9 and 10.

- The language of the Act should be improved and certain inconsistencies in language should be removed (including specific changes recommended to the wording of section 1 of the Act)
- Consideration should be given to appointing a part-time independent monitor to observe, on a random basis, the activities of hunts using packs of hounds
- The existing Scottish Mounted Foxhound Packs Fox Control Protocol should be used as the starting point to develop a separate code of practice for the conduct of hunt activities
- Consideration should be given to introducing the concept of ‘vicarious liability’ into the legislation – this would allow for the prosecution of landowners who have permitted a hunt to take place on their land if someone involved in that hunt commits an offence
- The burden of proof for establishing that hunting activities constitute one of the exceptions should lay with the person accused of an offence
- The time limit for bringing prosecutions under the Act should be extended.

1.7 Following publication of the review report, the Scottish Government committed to (i) working with key stakeholders to develop a code of practice for hunts and explore the potential for a new monitoring scheme, and (ii) consulting the public regarding Lord Bonomy’s other recommendations.

About the consultation

1.8 The consultation paper issued by the Scottish Government contained six sections with a total of 16 questions (Question 1 to Question 7, with Question 1 containing 10 sub-questions). The questions were a mix of closed (tick-box) questions and open questions. The consultation paper referred respondents directly to specific sections of Lord Bonomy’s review report and asked for their views on the conclusions and recommendations set out therein.

About the analysis

Quantitative analysis

1.9 Frequency analysis was undertaken in relation to all the closed (tick-box) questions in the consultation and the results have been reported in tables throughout this report. Most of the consultation’s closed questions were of the form: ‘Do you agree (or do you think that) X?’ Respondents were given the option to tick ‘yes’ or ‘no’ in response.

1.10 Some respondents made comments in relation to a question without ticking a response at the relevant closed question. If the respondent’s reply to the closed question could be inferred from their written comments (for example, if their comments began with the words ‘yes’ or ‘no’, or if their comments clearly indicated that they agreed or disagreed with a certain proposal), then the missing response to the tick-box question was input during the analysis – i.e. the response was imputed.

1.11 This consultation received a large number of ‘campaign responses’ from five different campaigns – see Chapter 2 for further details. The figures reported for the number of

responses received through each of the campaigns have been provided by the Scottish Government. No independent verification of this information has been undertaken as part of this analysis. Some of the campaign responses provided comments only, while others provided responses to tick-box questions as well as comments. Where an answer to a tick-box question was given by campaign respondents, this is shown as a separate line in the tables throughout this report.

1.12 Thus the tables show the percentage of organisations, individuals and campaign respondents who answered 'yes' or 'no' – and the percentage of **all** respondents who answered 'yes' or 'no' – to each question. Copies of all the tables in the report (Chapters 2 to 12) are provided in Annex 1.

Qualitative analysis

1.13 Comments made in response to each question were analysed qualitatively. The aim was to identify the main themes and the full range of views expressed in relation to each question or group of questions, together with areas of agreement and disagreement in the views of different types of respondent.

1.14 Comments from campaign responses have been incorporated in the qualitative analysis for relevant questions.

Comment on the generalisability of the consultation findings

1.15 As with all consultations, the views submitted in this consultation are not necessarily representative of the views of the wider public. Anyone can submit their views to a consultation, and individuals (and organisations) who have a keen interest in a topic – and the capacity to respond – are more likely to participate in a consultation than those who do not. This self-selection means that the views of consultation participants cannot be generalised to the wider population. For this reason, the main focus in analysing consultation responses is not to identify how many people held particular views, but rather to understand the range of views expressed and the reasons for these views.

Structure of this report

1.16 Chapter 2 presents a description of the respondents to the consultation. Then, the report follows the structure of the consultation questionnaire with findings presented on a question-by-question basis in Chapters 3 to 12. (Note that some chapters contain findings for two questions.) Three annexes at the end of the report contain (i) a list of organisational respondents; (ii) details of the campaign texts submitted to the consultation; and (iii) details of the number of responses to each question.

2. Description of the respondents

2.1 This chapter provides information about the respondents to the consultation and the responses submitted.

Number of responses received, and number included in the analysis

2.2 The consultation received 18,792 submissions. This included 295 'substantive' (i.e. personalised) submissions and 18,497 responses submitted through five different campaigns (described in detail below.)⁴ Among the substantive submissions, it was found that five individual respondents had submitted two different (substantive) responses. These were combined into a single amalgamated response for each of the five individuals and the individuals have been counted only once for the purposes of the analysis. Thus, the analysis was based on **18,787 responses** – 98% of which comprised campaign responses.⁵ (See Table 2.1 below.)

Table 2.1 Responses included in the analysis

Response type	n	%
Substantive responses	290	2%
Campaign responses	18,497	98%
Total responses	18,787	100%

About the respondents (substantive responses only)

2.3 Substantive responses were received from 265 individuals and 25 organisations or groups. (See Table 2.2.)

Table 2.2: Types of respondent (substantive responses only)

Respondent type	n	%
Individuals	265	91%
Organisations	25	9%
Total	290	100%

2.4 All but two of the organisational respondents fell into one of two categories: (i) those with an interest in countryside management and countryside sporting (n=13) and (ii) animal welfare charities and campaign groups (n=10). (See Table 2.3.)

⁴ The total number of responses for each campaign was provided by the Scottish Government. No independent verification of these figures was undertaken as part of this analysis.

⁵ Published responses to the consultation are available at: https://consult.gov.scot/wildlife-management-and-protected-areas/improving-protection-for-wild-mammals/consultation/published_select_respondent.

Table 2.3: Organisational respondents (substantive responses only)

Organisation type	n	%
Countryside management and sporting organisations	13	52%
Animal welfare charities and campaign groups	10	40%
Other organisational respondents	2	8%
Total	25	100%

2.5 A complete list of organisational respondents is provided in Annex 2 of this report.

Campaign responses

2.6 As noted above, a number of organisations co-ordinated responses among their members and supporters. These ‘campaign responses’ were based on a standard text provided by the campaign organiser and were submitted to the Scottish Government either by email or through a download facility made available to the Scottish Government from the campaign organiser’s website. In each case, respondents could simply add their name and contact details to the standard response provided by the campaign organiser, and then submit their message. Such responses are referred to as ‘standard campaign responses’. Alternatively, respondents could edit the standard campaign response or add their own comments. These personalised responses, submitted via a campaign, are referred to as ‘non-standard campaign responses’, and are included among the other substantive responses received in the consultation (see paragraph 2.2).

2.7 This consultation received 18,497 responses submitted through five different campaigns. In general, campaign respondents supported the suggestions and recommendations made by Lord Bonomy in the review report and / or they called for a further strengthening of the law in Scotland beyond the recommendations made by Lord Bonomy. While some of these respondents directly addressed the consultation questions (both open and closed), others raised additional issues, calling for further changes to the legislation. These responses raised several common points which are discussed in **Chapter 12** of this report in relation to Question 7 (any other comments). See Table 2.4.

Table 2.4: Overview of campaigns

Campaign organiser	Submission method / format	Consultation questions addressed by standard campaign text	Number of standard submissions
International Fund for Animal Welfare (IFAW)	Downloaded from third-party website	Qs 1(1.1-10) to 6 (all closed and open questions)	2,059
OneKind and League Against Cruel Sports	Email	Qs 1.2, 1.10, 3, 7 (comments only)	5,655
OneKind and League Against Cruel Sports (members outside of Scotland)	Email	Qs 1.10, 7 (comments only)	9,063
Scottish Green Party	Email	Qs 1.1*, 1.2*, 1.3*, 1.10, 4*, 6*, 7 (some closed questions / comments)	1,705
Animal Concern	Email	Qs 1.10, 2, 7 (comments only)	15
Total campaign responses			18,497

* Indicates a response to the closed (tick-box) question only.

2.8 Full texts of the standard responses from all five campaigns are provided at Annex 3.

Response rates

2.9 As noted in Chapter 1, not all respondents answered all the consultation questions. In addition, some respondents answered the tick-box (closed) questions without providing further comments; others provided comments without answering the preceding tick-box questions. Annex 4 provides details of the number of substantive responses received for each question.

2.10 Among the substantive responses, response rates were lower for the open questions than the closed questions. For example, each of the closed questions was answered by between 62% and 73% of respondents, whereas the response rate for open questions generally varied between 42% and 59%.

2.11 The only exception to this was in relation to Question 7 – the final consultation question – which asked for any other comments. This open question had a response rate of 87%, the highest of all the questions in the consultation questionnaire. This is because the non-standard campaign responses received by the Scottish Government were entered into the online consultation response form in their entirety at Question 7. In fact, some of the material in these responses relates to earlier questions. Therefore, the response rates shown in Annex 4 should be treated as indicative only.

3. Language of the Act – defining the offence

3.1 Section 1 of the consultation paper concerned the language of the 2002 Act. In the review of the 2002 Act, Lord Bonomy recommended that inconsistencies and inappropriate and unnecessary expressions should be removed from the Act – with a view to introducing greater consistency and clarity of expression. (See Chapter 5 of the review report).

3.2 The consultation contained nine closed (yes / no) questions, numbered 1.1 to 1.9, which addressed specific aspects of the wording of the 2002 Act. Each question invited views on a specific recommendation / suggestion made in the review report. Space was also provided for respondents to give further comments. A tenth question (1.10) invited any other comments or suggestions about improving the language in the Act.

3.3 This chapter presents respondents' views in relation to Questions 1.1 and 1.2, which related to paragraphs 5.6 – 5.22 of the review report.

Definition of 'to hunt' (Q1.1)

3.4 Section 1(1) of the 2002 Act defines hunting with a dog as an offence: '*A person who deliberately hunts a wild mammal with a dog commits an offence.*' The term 'to hunt' is then defined in Section 10(1) of the Act: '*In this Act – 'to hunt' includes to search for or course.*'

3.5 In the review report (paragraph 5.7), Lord Bonomy commented that it is difficult to determine what is meant by the word 'hunt' in section 1(1) of the Act, and that this difficulty is compounded by the addition of the word 'deliberately'.⁶ He also noted that the lack of clarity in the definition of 'to hunt' is not helped by the definition provided in Section 10 of the Act, since 'coursing' (which is generally understood as chasing or pursuing an animal) will always be considered to be an offence under the Act. At the same time, the Act stipulates that in certain circumstances 'searching' for a mammal may **not** be considered to be an offence (and is defined in Section 2 of the Act as an 'exception' to the offences set out in Section 1).

3.6 Question 1.1 of the consultation asked for views about whether clarification was needed in relation to the definition of 'to hunt'.

Question 1.1: Do you think the definition of 'to hunt' as provided in the 2002 Act should be more specifically defined? [Yes / No] Please explain your answer.

3.7 There were 216 substantive responses to this question and 3,764 campaign responses. Views were divided among organisations and individuals: in both groups, 45% said 'yes' and 55% said 'no'. However, among the organisational respondents, animal welfare charities and campaign groups unanimously answered 'yes', while countryside management and sporting organisations nearly all answered 'no' to this question. The 3,764 respondents who submitted their views through the campaigns organised by the International Fund for Animal Welfare and the Scottish Greens answered 'yes' to this question. Thus, 97% of all respondents providing a tick-box response to Question 1.1

⁶ The use of the word 'deliberately' is discussed further in relation to Question 1.2 below.

thought that the definition of ‘to hunt’ in the 2002 Act should be more specifically defined. See Table 3.1.

Table 3.1: Q1.1 – Do you think the definition of ‘to hunt’ as provided in the 2002 Act should be more specifically defined?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	1	8%	12	92%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	10	45%	12	55%	22	100%
Individual respondents	88	45%	106	55%	194	100%
Total (organisations and individuals)	98	45%	118	55%	216	100%
Campaign respondents	3,764	100%	–	0%	3,764	100%
Total (all respondents)	3,862	97%	118	3%	3,980	100%

3.8 Altogether, 2,233 respondents (22 organisations, 152 individuals and 2,059 campaign respondents) submitted comments at Question 1.1.

3.9 Comments at Question 1.1 generally expressed diametrically opposed views. One group argued that the definition of ‘to hunt’ within the legislation was unclear; the other group argued that it was perfectly clear. One group suggested that the lack of clarity in the definition was hindering the enforcement of the law and had resulted in a **small** number of successful prosecutions; the other group argued that the **large** number of successful prosecutions brought forward under the legislation were proof that the definition is clear.

3.10 These opposing views are explored further below. At the same time, the two groups suggested largely similar definitions of ‘to hunt’.

Views in favour of clarifying the definition of ‘to hunt’

3.11 Respondents who answered ‘yes’ to Question 1.1 thought that there was a need for terminology in the 2002 Act to be made clearer and more consistent throughout. This group were concerned that certain aspects of the current legislation (i) were ‘open to interpretation’ and (ii) could provide ‘loopholes’ which may be exploited by those wishing to circumvent the law.

3.12 In relation to the definition of ‘to hunt’, specifically, respondents in this group described this term as ‘vague’ and ‘unclear’ and they argued that it has different meanings in different contexts. This group also pointed to evidence submitted to the review by Police Scotland which (in their view) suggested that different understandings (or misinterpretations) in relation to this term were acting as a barrier to effective enforcement.

Suggested definitions

3.13 Respondents who wanted to see greater clarification of the term ‘to hunt’ often made suggestions about how the definition could be improved. Some of these suggestions were general in nature. For example, it was suggested that any definition of ‘to hunt’ should encompass both the activity and the intent (*actus reus* and *mens reus*). Those who made

this suggestion often went on to say that ‘hunting’ should be defined as **both** the physical pursuit of an animal, **and also** the searching for an animal with the intention of pursuing once it is discovered. There were also suggestions that the language in the Act should recognise that the intention of hunting is to kill an animal. It was noted that in some countries of Europe it is common to use the term ‘hunt’ to refer to the pursuit of deer with a rifle (often referred to as ‘stalking’ in the UK).

3.14 Others within this group offered very specific suggestions. The two mentioned most frequently are discussed here.

3.15 The most common view was that hunting should be defined as follows: ‘to (deliberately) chase (or pursue) a wild mammal with dogs or to use dogs to search for a mammal in order to chase (or pursue) it’. A slight variation on this definition was submitted by respondents through the International Fund for Animal Welfare campaign: ‘those participating in the pursuit of a wild mammal with dogs or those searching for such a mammal with the intention of pursuing once found’. It was suggested that this definition would limit the unlawful behaviour to the element of ‘the chase’ or ‘pursuit’, while the non-chase activities (‘stalking’, ‘searching’ and ‘flushing’) would continue to be stated as exceptions.

3.16 Related to this latter point, there was also a relatively common view that the term ‘to hunt’ should be abandoned entirely. Respondents expressing this view argued that it would be simpler and more accurate to use the term ‘to chase’ since the main purpose of the legislation is to prevent the deliberate chasing of a wild mammal with dogs and since non-chase activities are permitted through exceptions. There was also a suggestion that ‘chasing’ should cover hunting underground – i.e. that the pursuit of a fox (or other mammal) underground should be considered an offence.

3.17 The second common view was that the definition of ‘to hunt’ should include all of the following: ‘to search for, stalk, flush, chase, pursue or course’.⁷ In some cases, respondents also stipulated that the offence of ‘hunting’ should incorporate all of these activities *‘when no guns are present to shoot any animal which may break cover’*. The point being made was that unless there are guns positioned correctly, within close range, to be able to shoot an animal flushed from cover, the activity should be regarded as illegal. (It should not be sufficient simply to have people with guns present.) There was also a suggestion that ‘stalk’ could be removed from this definition if the Act is amended to remove it from section 2.

3.18 Another significant theme in the comments from this group was an emphasis on the importance of dogs being ‘under control’. Respondents who wanted greater clarification of the language in the Act pointed out that searching for a wild mammal with a dog under control is distinctly different to searching and flushing with dogs out of control.

Other points

3.19 Finally, among those who answered ‘yes’ to Question 1.1, respondents occasionally described scenarios which (in their view) should **not** be considered to be illegal under any amended definition of ‘to hunt’. For example:

⁷ This definition was offered by Lord Bonomy in paragraph 5.15 of the review report.

- Clarification of the term ‘to hunt’ should ensure that the activity of using a dog to follow up a wounded deer (or other mammal) is not inadvertently treated as an illegal activity.
- There may be cases (for example during an organised shoot) where a number of dogs are used in a line to search for and flush pheasants. In such a situation, the dog may disturb and then chase after a hare or deer, but this would not necessarily be intentional on the owner’s part.

Views that it is unnecessary to clarify the definition of ‘to hunt’

3.20 Among the respondents who answered ‘no’ to Question 1.1 (i.e. they did not agree that the term ‘to hunt’ in the 2002 Act should be more specifically defined), it was common for people to simply state that, in their view, the definition of ‘to hunt’ was ‘perfectly clear’, ‘quite sufficient’, ‘fine’, or ‘appropriate’. Some in this group believed that ‘everyone knows what it means and entails’; these individuals saw ‘no reason to change the term’.

3.21 However, among those who gave reasons for their views, there were three main themes: (i) the current legislation has been sufficient to enable enforcement and prosecution; (ii) those who have opposing views on this subject are unlikely to agree on a more satisfactory definition; and (iii) there could be (a range of) negative consequences if the definition is changed. Each of these reasons is discussed briefly below.

3.22 Despite indicating that the current definition of ‘hunt’ was clear, respondents in this group also frequently expanded upon (or offered clarifications of) the current definition. These suggestions were (in most cases) very similar to the most common definition offered by those who answered ‘yes’ to this question. These comments are discussed at the end of this section.

Current legislation has been sufficient to enable enforcement and prosecution

3.23 Respondents in this group pointed to the number of successful prosecutions made under the 2002 Act, which (in their view) proved that the law – and in particular, the term ‘to hunt’ – has been understood and applied appropriately by enforcement authorities and the courts. They further argued that there is no evidence that any prosecution has been hindered by a lack of understanding of the term.

Stakeholders are unlikely to agree on a more satisfactory definition

3.24 Respondents highlighted the statement in the review report (paragraph 5.15) that ‘it is likely to be difficult, if not impossible, to fashion a satisfactory comprehensive definition’, and they argued that any change in the current definition of ‘to hunt’ is unlikely to lead to greater clarity. There was also a view that ‘playing with words’ will not persuade those who are fundamentally opposed to hunting with dogs in any form.

There may be negative consequences from changing the definition

3.25 Occasionally, respondents highlighted possible negative effects which could arise from changing the definition. These could include (i) confusion for those involved in hunting and / or for law enforcement authorities and (ii) a reduction in the court’s ability to exercise discretion. It was noted that the current legislation permits effective pest control, and there was concern about whether a change in the legislation might jeopardise this activity.

Defining ‘to hunt’

3.26 Respondents who thought there was no need to clarify the definition of ‘to hunt’ nevertheless frequently offered a definition, namely ‘to stalk, search, flush or course’ – four activities which they believed the 2002 Act specified as being included in the definition of hunting.

3.27 It should be noted that this definition overlapped to a large extent with the definition most commonly suggested by those calling for greater clarification of term – although it does not include ‘to chase’ or ‘to pursue’. (See paragraph 3.15 above.)

3.28 Respondents who defined ‘to hunt’ as ‘to stalk, search, flush or course’ generally also provided definitions of these additional terms. Definitions of the terms ‘stalk’, ‘search’ and ‘flush’ are discussed in Chapter 5 of this report; ‘to course’ was defined as ‘pursuit by a dog or dogs using their sense of sight’.

3.29 Some respondents noted that the definition of ‘to hunt’ currently given in the Act is ‘broad’ and ‘non-exhaustive’. Moreover, it does not distinguish between different types of hunting: it covers both a formal mounted hunt or a hunt on foot; or individuals / groups hunting informally. This aspect of the Act was seen to be well reflected in the range of prosecutions which had been brought forward.

Use of the word ‘deliberately’ (Q1.2)

3.30 Section 1(1) of the 2002 Act states: ‘A person who deliberately hunts a wild mammal with a dog commits an offence.’ In the review report (paragraph 5.16), Lord Bonomy comments that the use of the adverb ‘deliberately’ before ‘hunts’ is unusual since hunting is regarded as an activity which, by definition, can only be done intentionally. Thus, the use of the word ‘deliberately’ appears to address the person’s state of mind (i.e. the intention to hunt) twice, and in effect has set the test for proof of an offence under section 1(1) very high or, at the very least, it has complicated the interpretation of the test unduly. Furthermore, the scenario which the inclusion of this word was meant to address – i.e. a dog-walker on the moors whose dog ran off unexpectedly in pursuit of a wild mammal that suddenly appeared – could not be prosecuted even if the word ‘deliberately’ were not included, because this scenario does not involve the intention to hunt.

3.31 Lord Bonomy thus suggested that the word ‘deliberately’ could be deleted from section 1(1), and respondents were asked for their views on this question.

Question 1.2: Do you agree with Lord Bonomy’s suggestion that the word ‘deliberately’ in section 1(1) serves no useful purpose? [Yes / No] Please explain your answer.

3.32 There were 213 substantive responses to this question and 3,764 campaign responses. Among the organisations and individuals, 40% answered ‘yes’ and 60% answered ‘no’. Countryside management and sporting organisations unanimously disagreed, while animal welfare charities and campaign groups unanimously agreed. The 3,764 respondents who submitted their views through the campaigns organised by the International Fund for Animal Welfare and the Scottish Greens answered ‘yes’ to this question. Thus, 97% of all respondents who answered the tick-box question at 1.2 agreed

with Lord Bomy that the word ‘deliberately in section 1(1) serves no useful purpose. See Table 3.2.

Table 3.2: Q1.2 – Do you agree with Lord Bomy’s suggestion that the word ‘deliberately’ in section 1(1) serves no useful purpose?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	–	0%	13	100%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	1	50%	1	50%	2	100%
Total organisations	8	36%	14	64%	23	100%
Individual respondents	77	40%	114	60%	191	100%
Total (organisations and individuals)	85	40%	128	60%	213	100%
Campaign respondents	3,764	100%	–	0%	3,764	100%
Total (all respondents)	3,849	97%	128	3%	3,977	100%

3.33 Altogether, 7,875 respondents (21 organisations, 140 individuals and 7,714 campaign respondents) made comments at (or which were relevant to) Question 1.2.

3.34 An analysis of these comments indicates that there may have been some confusion about what the question was asking, since a small number of individual respondents (less than 10) answered ‘no’ to this question, then made comments which indicated that they agreed with the question’s premise (e.g. ‘the word ‘deliberately in this context serves no purpose in this section and adds nothing to the meaning’; ‘I don’t think it serves any particular purpose.’; ‘The word deliberately is unnecessary.’). A smaller number (less than 5) answered ‘yes’ to this question, but then made comments indicating they disagreed (e.g. ‘The term deliberately in relation to this issue is an absolute essential due to the fact it prevents unjustified prosecution.’) Therefore, caution should be exercised in interpreting the figures for individual respondents in Table 3.2 above.

Views agreeing that the word ‘deliberately’ in section 1(1) serves no useful purpose

3.35 In general, those who answered ‘yes’ to Question 1.2 agreed with Lord Bomy that hunting is by its very nature a deliberate activity. This group believed that the use of the word ‘deliberately’ in the definition of the offence allows a person to claim, as a defence, that their dogs were out of control when they chased and killed a wild animal – thus, their actions were not deliberate but accidental. These respondents saw the use of this word as a loophole in the current legislation and called for this loophole to be removed. In their view, any individual in charge of a pack of dogs should be held accountable for the behaviour of those animals.

3.36 Within this group, there were three suggestions about how the language in section 1(1) of the Act could be improved. One group suggested that ‘intentionally or recklessly’ should be substituted for ‘deliberately’ in the definition of the offence as this form of words

would rule out a defence of ‘accidental hunting’ and outlaw the practice of ‘trail hunting’.⁸ They argued that this would also bring the wording of the 2002 Act into line with the wording of Wildlife and Countryside Act 1981. Furthermore, they noted that, with this form of words, the scenario in which a person’s dog runs off after a hare or fox unexpectedly would not be regarded as an offence because there was no intention by that person to hunt.

3.37 A second group simply advocated deletion of the word ‘deliberately’. This group argued that, ‘as with other offences, such as robbery and assault, hunting cannot be committed negligently or recklessly’. Removal of the word (it was suggested) would result in greater consistency with the (UK) Hunting Act 2004.

3.38 A third suggestion was to refer to terminology used in relation to vandalism – where there is reference to ‘without reasonable excuse’ and ‘wilfully or recklessly’ in relation to the destruction or damage of property belonging to another.⁹

Views that the word ‘deliberately’ in section 1(1) serves a useful purpose and / or should be retained

3.39 Those who answered ‘no’ to Question 1.2 (thus indicating a preference to retain the word ‘deliberately’ in the definition of the offence) repeatedly gave two reasons for their views: that the word is necessary (i) to emphasise the intention to hunt – that it is a ‘deliberate’ and not ‘accidental’ activity and (ii) to reassure the person whose dog unexpectedly ran off in pursuit of a wild animal whilst out walking.

3.40 The point was also made that the definition of ‘to hunt’ in the 2002 Act explicitly includes the activity of ‘searching’, unlike the law in England and Wales, where the activity of a dog searching for a wild mammal does not in itself constitute an offence. Given the broad scope of the definition of ‘hunting’ in Scotland, it was seen to be imperative that the legislation makes it clear that ‘a person’s dog sniffing in the undergrowth’ does not amount to an offence unless the dog was being used deliberately.

3.41 Some respondents acknowledged that hunting is a deliberate activity (‘this is not disputed’) but believed that the word ‘deliberately’ should be retained to cover any unfortunate and accidental events during a formal hunt, such as the temporary loss of control of hounds, which results in them chasing a wild mammal. The word ‘deliberately’ was seen to be important because it allowed a distinction to be made between someone who is ‘contemptuous’ of the law, and someone who is ‘demonstrably intending’ to comply with the law. These respondents thought that the test for proof of an offence under the Act should be – and should remain – high.

3.42 For this reason, this group also expressed opposition to the notion of ‘reckless’ hunting. They argued that an introduction of the concept of recklessness would not only put hunting practitioners at risk of prosecution for unintended events but would also set a ‘dangerous precedent’ for other wildlife legislation. (The latter statement was not further

⁸ Some campaign respondents stated that mounted hunts in England and Wales practise ‘trail hunting’ which involves using a pack of hounds to follow a fox-based scent. This then becomes the hunt of a live fox if one is ‘accidentally’ discovered, while being able to claim that the hunting was not intentional.

⁹ See section 52(1) of the Criminal Law (Consolidation)(Scotland) Act 1995.

elaborated.) This group emphasised that the 2002 Act was a practical piece of legislation which must be fit for practitioners (i.e. hunters).

3.43 Two other points made by some respondents in this group were that (i) if the word 'deliberately' serves no useful purpose, then it 'neither aids nor hinders the Act's enforcement and successful prosecutions'; thus, there is no reason to change it; and (ii) the courts may ignore the word if they choose.

Views in support of strengthening the language of the Act

3.44 It should be noted that a relatively small number of respondents (both individuals and organisations) answered 'no' to this question because they thought the word 'deliberately' **did** serve a purpose in that it enabled organised hunts to avoid prosecution by claiming the 'accidental' killing a fox. These respondents argued that the word 'deliberately' created a loophole for hunts, and they called for the wording of the 2002 Act to be strengthened. These views indicate, again, that care should be taken in interpreting the figures in Table 3.2 above.

4. Language of the Act – clarity of the exceptions

4.1 This chapter presents respondents' views in relation to Questions 1.3 and 1.4.

4.2 Section 2 of the 2002 Act sets out the exceptions to the offence defined in section 1 – that is, the circumstances in which a dog may lawfully be used to hunt a wild mammal. In paragraphs 5.23 – 5.38 of the review report, Lord Bonomy identifies a number of inconsistencies in the way in which the exceptions are expressed in the Act and states (in paragraph 5.37) that these expressions 'may be adding unnecessary complications into fairly detailed provisions'.

Use of 'searching' in section 2(1) (Q1.3)

4.3 One of the inconsistencies discussed in the review report relates to the use of 'searching' in section 2(1). Section 2(1) states:

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-f)

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.

4.4 Lord Bonomy noted that the term 'searching' is used in conjunction with the terms 'stalking' and 'flushing' once in this section. However, unlike 'stalking' and 'flushing', the term 'searching' is not specifically mentioned again. He suggested that it was likely inadvertently omitted the second time. The consultation questionnaire sought views about whether the 2002 Act would be clearer if 'searching' was included with 'stalking' and 'flushing' where they appear (for the second time) in section 2(1):

Question 1.3: Do you think the Act would be clearer if 'searching' was included alongside 'stalking' and 'flushing' in section 2(1)? [Yes / No] Please explain your answer.

4.5 There were 214 substantive responses to this question and 2,059 campaign responses. Views were almost equally divided among organisations and individuals with 48% of respondents answering 'yes' and 52% answering 'no'. However, among organisational respondents, most countryside management and sporting organisations answered 'no', while animal welfare charities and campaign groups unanimously answered 'yes'. The 3,764 respondents who submitted their views through the campaigns organised by the International Fund for Animal Welfare and the Scottish Greens answered 'yes' to this question. Thus, 97% of all respondents who provided a tick-box response at Question 1.3 thought it would be clearer if 'searching' was included alongside 'stalking' and 'flushing' in section 2(1). See Table 4.1.

Table 4.1: Q1.3 – Do you think the Act would be clearer if ‘searching’ was included alongside ‘stalking and ‘flushing’ in section 2(1)?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	2	15%	11	85%	13	100%
Animal welfare charities and campaign groups	6	100%	–	0%	6	100%
Other organisational respondents	1	50%	1	50%	2	100%
Total organisations	9	43%	12	57%	21	100%
Individual respondents	94	49%	99	51%	193	100%
Total (organisations and individuals)	103	48%	111	52%	214	100%
Campaign respondents	3,764	100%	–	0%	3,764	100%
Total (all respondents)	3,867	97%	111	3%	3,978	100%

4.6 A total of 2,227 respondents (21 organisations, 147 individuals and 2,059 campaign respondents) made further comments at Question 1.3.

4.7 As with Question 1.2, there may have been some confusion among respondents about what this question was asking. A small number of individual respondents who answered ‘no’ to this question called for a greater strengthening of the law in this area. Similarly, some individual respondents who answered ‘yes’ submitted comments that were identical to those expressed by the larger group of respondents who answered ‘no’. This suggests the figures shown for individual respondents in Table 4.1 should be treated with caution.

Views supporting the inclusion of ‘searching’ in section 2(1)

4.8 Respondents who answered ‘yes’ to Question 1.3 (including two countryside management and sporting organisations) commonly made the following points:

- It should be clear within the Act that ‘searching’ is part of hunting.
- ‘Searching’ should be included alongside ‘stalking’ and ‘flushing’ for the sake of consistency; it should also be included in the title of section 2 of the Act.
- The police have indicated that this addition would be helpful to them when investigating allegations of illegal hunting.
- The terms ‘stalking’ and ‘searching’ are inseparable in the context of field sports. It is clear that ‘searching’ is a lawful and integral part of wild mammal control using dogs, so the term should, for correctness, be included in the exceptions.

4.9 One animal welfare organisation suggested the legislation could be amended as follows: ‘[...] does not commit an offence under section 1(1) by using a dog under control to stalk or **search** for a wild mammal, or flush it from cover (including an enclosed space within rocks, or other secure cover) above ground [...]’

4.10 Among those who answered ‘yes’ to Question 1.3, a range of related points were also made (usually by just one or two respondents). These included, for example: (i) the function of searching is different to that of ‘stalking’ and ‘flushing’ and so it should be included and defined; and (ii) while adding ‘searching’ to section 2 in a consistent manner would aid

clarity, it should be questioned whether it is necessary or desirable to extend the exceptions – an alternative and equally clear approach would be to delete any exceptions for searching from section 2, while retaining the term in the definition [of hunting] at section 10.

Views opposed to the inclusion of ‘searching’ (a second time) in section 2(1)

4.11 In general, respondents who answered ‘no’ to Question 1.3 did not think that including the word ‘searching’ alongside ‘stalking’ and ‘flushing’ (for a second time) in section 2(1) would contribute any further clarity to the legislation and thought that this subsection should remain unchanged. This group repeatedly made three points:

- ‘Searching’ is already included alongside ‘stalking’ and ‘flushing’ in section 2(1) (however, it was also acknowledged that ‘searching’ was not repeated later in the clause where ‘stalking’ and ‘flushing’ are used again).
- ‘Searching’ is included within the definition of ‘to hunt’ (in section 10), so its omission (the second time) in section 2(1) is unlikely to affect either the understanding of the exception, or the Act’s enforcement.
- ‘Searching’ is simply a precursor to ‘stalking’ or ‘flushing’.

4.12 However, one organisational respondent expanded on this latter point, and expressed a slightly different view to those above. This respondent stated that the activity of searching is quite different to the activities of ‘stalking’ and ‘flushing’. Searching indicates the start of a hunt and the intention to hunt. Therefore, if a hunt searches for a fox without gunmen set up correctly, it should be considered illegal, and the law needs to make this clear. This respondent suggested that the term ‘to search’ should be in a separate section of the Act.

4.13 Occasionally respondents made other points on a wide range of disparate issues – however, in general, each of these was made by just one or two individuals. Examples included: ‘the use of the word [searching] may complicate the legislation’ and ‘searching would be very hard to prove in court’.

Relevance of ‘searching’ to other subsections in section 2 (Q1.4)

4.14 The consultation questionnaire asked whether the term ‘searching’ was relevant to any of the other (two) subsections in section 2 of the 2002 Act, both of which refer to ‘flushing’ a wild mammal (section 2(2)) or a fox or mink (section 2(3)).

Question 1.4: Is ‘searching’ relevant to any other subsections? [Yes / No] Please explain your answer.

4.15 There was a total of 184 substantive responses to this question and 2,059 campaign responses. Around two-thirds of organisational and individuals respondents (64%) answered ‘yes’ and around one-third (36%) answered ‘no’. This pattern of response was also the same among organisations and individuals separately. Note that there were differences of opinion on this question among the countryside management and sporting organisations (8 out of 13 said ‘yes’), and among the animal welfare charities and campaign groups (4 out of 7 said ‘yes’). The 2,059 respondents who submitted their views through the campaign organised by the International Fund for Animal Welfare answered ‘yes’ to this

question. Thus, 97% of all respondents who provided a tick-box response at Question 1.4 thought ‘searching’ was relevant to other subsections. See Table 4.2.

Table 4.2: Q1.4 – Is ‘searching’ relevant to any other subsections?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	8	62%	5	38%	13	100%
Animal welfare charities and campaign groups	4	57%	3	43%	7	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	14	64%	8	36%	22	100%
Individual respondents	103	64%	59	36%	162	100%
Total (organisations and individuals)	117	64%	67	36%	184	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,176	97%	67	3%	2,243	100%

4.16 Altogether, 2,172 respondents (19 organisations, 114 individuals and 2,059 campaign respondents) made comments at Question 1.4. Comments were generally very brief, and similar comments were often made by those who answered ‘yes’ and those who answered ‘no’ to the closed question. This may indicate some confusion among respondents about this question, and so the figures in Table 4.2 should be interpreted with caution.

Views that ‘searching’ was relevant to other subsections

4.17 As Table 4.2 suggests, there were two distinctive views among those who answered ‘yes’ to Question 1.4.

4.18 Animal welfare charities and campaign groups and their supporters among the individual respondents thought that:

- Sections 2(2) and 2(3) should make it clear that ‘searching’ does not include the provision for a chase of the wild mammal and they suggested that the following statement could be included: ‘providing no dogs are permitted to chase a wild mammal while searching for it’.
- It should be clarified that dogs must be under control during the searching process – it was noted that the Wildlife and Countryside Act 1981 deems that any dog must be ‘under human control’ to be legal.

4.19 Among countryside management and sporting organisations and their supporters, it was particularly common for respondents to simply refer to their comments at Question 1.3 (i.e. that searching is a precursor to stalking and flushing) without further explanation. Where fuller comments were provided, the following points were made repeatedly:

- ‘Searching’ is the precursor to stalking and flushing and so is relevant where those activities are mentioned.
- It must be clear that ‘searching’ is lawful with respect to all the Act’s exceptions.
- ‘Searching’ is included in the definition of ‘to hunt’.

4.20 Other views, expressed by just one or two respondents in this group, were that:

- ‘Searching’ is also relevant to section 2(2), but this is obvious from the subsection’s wording and therefore a change to this wording is not warranted.
- For consistency, ‘searching’ should be included in section 3 (in addition to stalking and flushing) and in section 5 (as a precursor to ‘locate’).

Views that ‘searching’ was not relevant (or should not be included) in other subsections

4.21 Animal welfare charities and campaign organisations answering ‘no’ to Question 1.4 made the following points:

- Sections 2(2) and 2(3) of the 2002 Act relate to the activity of ‘flushing’, and the term ‘searching’ is not relevant.
- There are no grounds for adding further exceptions or widening the scope of existing exceptions to include ‘searching’.
- Doing so could complicate the enforcement of the legislation.

4.22 The latter point was repeated by some individual respondents who answered ‘no’ to Question 1.4.

4.23 Countryside management and sporting organisations answering ‘no’ generally echoed the points made by those who answered ‘yes’: (i) that ‘searching’ is included in the definition of ‘to hunt’ and (ii) that it precedes the activities of flushing or stalking. This group saw ‘searching’ as relevant to other subsections but did not see a need to state the word explicitly, since it is already understood to be part of these other activities. Both these points were also repeated by some individual reports who answered ‘no’.

4.24 Other points made by (one or two) respondents were that:

- ‘Searching’ does not seem relevant to the specific circumstances of either subsection 2(2) or 2(3), and Lord Bony had made no suggestion for adding ‘searching’ to these other subsections.
- ‘Searching’ is not relevant to other subsections in section 2 but should be included elsewhere in the Act wherever the terms ‘stalking’ and ‘flushing’ are used.

5. Language of the Act – clarifying ‘stalk’, ‘search’, ‘flush’

5.1 This chapter presents respondents’ views on Questions 1.5 and 1.6, which relate to paragraphs 5.23 – 5.26 of the review report. These paragraphs discussed the meaning (and the lack of clarity in the meaning) of three key terms from section 2 of the 2002 Act – ‘stalking’, ‘searching’ and ‘flushing’.

5.2 Section 2 of the 2002 Act refers to the activities of ‘stalking’ and ‘flushing’ (as well as ‘searching’), and the circumstances in which these activities may be considered as exceptions to the offence defined in section 1.

5.3 Lord Bonomy suggested (paragraph 5.26 of the review report) that further definition of the terms ‘to stalk’ and ‘to flush’ may be helpful in determining whether an offence has been committed.

5.4 The consultation included three questions, inviting views about whether respondents thought the 2002 Act would be improved if it included definitions of all three of these terms. If respondents agreed, they were asked to make suggestions about what these definitions should include.

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

- (a) ‘to stalk’ [Yes / No]
- (b) ‘to search’ [Yes / No]
- (c) ‘to flush’ [Yes / No]

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

5.5 Respondents across all groups expressed the view that greater clarification of the language within the Act would (i) make for stronger legislation which is easier to enforce, (ii) ensure better compliance, and (iii) help those who may not understand the practical aspects of hunting with dogs (e.g. the police, investigating officers and courts). Some respondents commented that the definitions proposed by Lord Bonomy in the review report (5.25-5.27) were appropriate, and that his detailed analysis (5.23-5.36) should be considered in the drafting of any new definitions.

5.6 Although Question 1.6 was intended for people answering ‘yes’ to Questions 1.5(a-c), some respondents answering ‘no’ also offered comments. These are summarised at the end of this chapter.

5.7 Note that many respondents provided the same comments across all three of these questions. To avoid repetition, these views are discussed only once below.

'To stalk' (Q1.5a / Q1.6c)

5.8 There were 198 substantive responses and 2,059 campaign responses to Question 1.5a. Among organisations and individuals, nearly three-quarters (71%) thought it would be helpful if a definition of 'to stalk' was included in the 2002 Act. This pattern of response was the same for organisational and individual respondents separately. However, among organisations, countryside management and sporting organisations were divided in their views with half answering 'yes' and half 'no'. The 2,059 respondents who submitted their views through the International Fund for Animal Welfare answered 'yes' to this question. Thus, of those who provided a tick-box response to Question 1.5a, 97% thought the Act would be improved if it included a definition of 'to stalk'. See Table 5.1.

Table 5.1: Q1.5(a) – Do you think the Act would be improved if it included a definition of 'to stalk'?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	6	50%	6	50%	12	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	15	71%	6	29%	21	100%
Individual respondents	125	71%	52	29%	177	100%
Total (organisations and individuals)	140	71%	58	29%	198	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,199	97%	58	3%	2,257	100%

5.9 Altogether, 2,187 respondents (16 organisations, 112 individuals and 2,059 campaign respondents) commented at Question 1.6(a).

5.10 Respondents made both specific suggestions about elements to include in the definition of 'to stalk', and more general comments. Their specific suggestions generally included the concept of 'stealth'. The most common suggestion was *'pursuing by stealth'*. Other examples were similar: *'actively look for (or hunt) something by stealth'*, *'following very stealthily'*. Some respondents specifically endorsed the definition given in the review report (paragraph 5.26): *'to follow or track a quarry stealthily'*. Less commonly, respondents used the term 'covert' – *'using covert methods to hunt quarry'*. Two respondents suggested that the practice of 'lamping' (defined by one as *'use of stealth and concealment to achieve an advantageous position over a quarry'*) could also be included within the definition of 'stalking'.

5.11 Animal welfare charities and campaign organisations, and some individual respondents made the following general points:

- The term 'stalking' involves stealth which is not seen in pest control activities, terrier work or hunting with a pack of hounds. Thus, it is not clear why it is included in the exceptions set out in section 2 of the 2002 Act. If stalking is to continue to be used in section 2, then a clear definition, setting out its application to fox hunting should be included.

- Any new definitions included in the 2002 Act should (i) be confined to terms that are specific to the hunting of wild mammals; (ii) not create any loopholes which make it legal for a dog to chase a wild mammal in any circumstance; and (iii) rely as far as possible on dictionary definitions and the ordinary meanings of words – as proposed by Lord Bonomy.

5.12 Countryside management and countryside sporting organisations, and some individual respondents made the following general points:

- The working group developing a new code of practice for mounted hunts will clarify certain terminology so that it is workable in a practical pest control setting.
- Any changes to definitions in the legislation would have to be agreed by all relevant practitioners’ representatives.
- It is important that the legitimate use of a dog to accompany a deer stalker is not deliberately or unwittingly affected by any changes to Act.

‘To search’ (Q1.5b / Q1.6c)

5.13 There were 196 substantive responses to Question 1.5b and 2,059 campaign responses. Among organisations and individuals, just over three-fifths (62%) thought it would be helpful to include a definition of ‘to search’ in the 2002 Act and 38% thought it would not. This pattern of response was consistent for organisations and individuals separately. However, among organisational respondents, half of countryside management and sporting organisations, and two out of seven animal welfare charities and campaign groups answered ‘no’. A further 2,059 respondents who submitted their views through the International Fund for Animal Welfare answered ‘yes’ to this question. Thus, among those who replied to Question 1.5b, 97% thought the 2002 Act would be improved if it included a definition of ‘to search’. See Table 5.2.

Table 5.2: Q1.5(b) – Do you think the Act would be improved if it included a definition of ‘to search’?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	6	50%	6	50%	12	100%
Animal welfare charities and campaign groups	5	71%	2	29%	7	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	13	62%	8	38%	21	100%
Individual respondents	109	62%	66	38%	175	100%
Total (organisations and individuals)	122	62%	74	38%	196	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,181	97%	74	3%	2,255	100%

5.14 A total of 2,179 respondents (15 organisations, 105 individuals and 2,059 campaign respondents) provided further comments at Question 1.6b.

5.15 Respondents made a range of specific suggestions about elements to include in the definition of ‘to search’. The suggestion made most often was: *‘(going about) to ascertain the presence of a quarry’*. Others (offered less often) included: *‘actively seek’*, *‘look for’*, *‘using dogs to fan out and pick up a scent either above or below ground’*, *‘the precursor to stalk (or flush)’*, *‘with the intention of killing’*.

5.16 Additional (new) points made regarding ‘to search’ (all by individuals) were that:

- There are many reasons why a person or persons may search for an animal (e.g. to monitor species numbers, to study the movement and range of animals, for a vet (or similar) to find a wounded animal, etc.). The legislation needs to be very clear what is and what is not permissible.
- It is important that the definition of searching makes clear that this activity is an intrinsic part of hunting and that full control of dogs must be exercised at all times.

‘To flush’ (Q1.5c / Q1.6c)

5.17 There were 196 substantive responses and 2,059 campaign responses at Question 1.5c. Among organisations and individuals, nearly three-quarters (72%) thought that the 2002 Act would be improved if it included a definition of ‘to flush’ while 28% thought it would not. This pattern of response was similar for organisations and individuals separately. However, among organisations, countryside management and sporting organisations were divided in their views, with half answering ‘yes’ and half answering ‘no’. A further 2,059 respondents who submitted their views through the International Fund for Animal Welfare also answered ‘yes’ to this question. Thus, among those who replied to Question 1.5(c), 98% thought the 2002 Act would be improved if it included a definition of ‘to flush’. See Table 5.3.

Table 5.3: Q1.5(c) – Do you think the Act would be improved if it included a definition of ‘to flush’?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	6	50%	6	50%	12	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	15	71%	6	29%	21	100%
Individual respondents	126	72%	49	28%	175	100%
Total (organisations and individuals)	141	72%	55	28%	196	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,200	98%	55	2%	2,255	100%

5.18 A total of 2,185 respondents (17 organisations, 109 individuals and 2,059 campaign respondents) provided further comments at Question 1.6c.

5.19 Respondents made specific suggestions about elements to include in the definition of ‘to flush’. The most common of these was: *‘to drive (the target animal) into the open (from*

cover) to be shot'. Other suggestions included: *'to drive to guns'*, *'to move something to open ground'*, *'with the intention of killing'*.

5.20 Animal welfare charities, a range of individual respondents and all campaign respondents made a number of inter-related points about the definition of 'to flush'. These had the aims of (i) ensuring that a chase does not develop during flushing operations and (ii) preventing unnecessary suffering to wild mammals. This group of respondents thought the legislation should:

- Make clear that 'flushing' does not permit chasing: If a chase develops after a wild mammal has been flushed, the huntsman should be required to stop this immediately.
- Specify the minimum number of guns to be used in 'flushing' operations: The point was made that there are often a small (and inadequate) number of guns available – particularly with mounted hunts – to ensure that an animal flushed from cover can be shot as soon as possible. These circumstances are more likely to give rise to an illegal chase when the animal breaks from cover. It was suggested that the legislation should include a 'formula for determining the number of guns that should be deployed over an area of land'.
- Specify that guns must be positioned correctly outside of the cover: The legislation should not permit 'flushing' to take place unless / until guns are in position to shoot the animal as it is flushed from cover. If there are no guns in position to shoot the animal being flushed, then flushing should not be permitted.
- Introduce a limit on the number of dogs that can be used to 'flush to guns': It was suggested that this would remove an impediment to hunts which claim that the large number of dogs present within the cover can make it unsafe to shoot a fox when it is flushed. This change would also bring Scottish legislation in line with the law in England and Wales which limits, to two, the number of dogs that can be used to flush from cover.
- Place a time limit on the flushing activity: There should not be an indefinite amount of time spent doing this. Lengthy flushing operations will result in the wild mammal becoming increasingly tired and stressed. After a specified period of time, the hounds should be called out of the cover and moved on.

5.21 There was also a suggestion that further clarification of the definition of 'cover' would be helpful alongside a definition of 'to flush', as a previous court case had shown this definition to be contested. Some respondents suggested a definition, and this is discussed in relation to Question 1.10 in Chapter 7.

Views that no further definition of terms is necessary

5.22 Respondents who answered 'no' to Questions 1.5(a-c) included half of the countryside management and sporting organisations (six out of 12) and, depending on the question, between 28% and 38% of individual respondents.

5.23 In general, those who answered 'no' to these questions thought that further definition of these terms would not improve the 2002 Act, which they considered to be working well

already. The point was made that no prosecution brought under Act 'has succeeded or failed as a result of there being no definition of' these three terms'.

5.24 While some in this group expressed the view that no further definition of terms was necessary (because they were 'self-explanatory'), others suggested that the definitions might change with circumstances and topography.

5.25 A third view was that adding definitions could complicate what is already a complex piece of legislation, that the interpretation of these terms should be left to the courts. It was suggested that there was a risk that adding definitions could make successful prosecutions less likely.

5.26 At the same time, respondents in this group sometimes also offered definitions of the terms (or discussed elements that the definitions should include), and these were similar to those described above.

5.27 Two of the seven animal welfare charities and campaign groups answered 'no' to Question 1.5(b) indicating that they did not think the Act would be improved by including a definition of 'to search'. These organisations (and some individual respondents) believed it was unnecessary to define "searching" as this is a word in common usage that the Scottish courts would be well able to interpret.

6. Language of the Act – areas of overlap and inconsistency

6.1 This chapter presents respondents' views on Questions 1.7 and 1.8, which related to paragraphs 5.27 – 5.33 of the review report. These paragraphs discussed areas of overlap and inconsistency in different sections of the 2002 Act.

Using a dog under control to flush (an animal) from cover above ground (Q1.7)

6.2 The review report, paragraphs 5.27 – 5.29, discussed an apparent overlap in the provisions between sections 2(1) and 2(3) of the 2002 Act. Section 2(1) states that:

*A person... 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...***

6.3 Section 2(3) includes a similar provision:

*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...***

6.4 Although section 2(3) specifically mentions fox or mink, Lord Bonomy concluded that section 2(1) also applies where the quarry is a fox or mink. He noted that those who have to interpret the Act in their daily work regard section 2(3) as applying to the use of terriers to flush a fox or mink that is below ground (or 'goes to ground'). However, in that case, there was a question about why section 2(3) also refers to flushing a fox 'from an enclosed space within rocks or other secure cover **above ground**'. Lord Bonomy surmised that section 2(3) may have been intended to be restricted to flushing from below ground, and he suggested that consideration should be given to framing section 2(3) more narrowly by removing the reference to 'using a dog under control to flush a fox from an enclosed space within rocks or other secure cover above ground'.

6.5 The consultation questionnaire asked for views on this point.

Question 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? [Yes / No] Please explain your answer.

6.6 There were 194 substantive responses and 2,059 campaign responses at Question 1.7. Among organisations and individuals, nearly three-fifths (59%) answered 'yes' and 41% answered no. Organisational respondents were divided in their views on this question, with half answering 'yes' and half 'no'. However, countryside management and sporting organisations were more likely to answer 'no', while animal welfare charities and campaign

groups were more likely to answer ‘yes’. A further 2,059 respondents who submitted their views through the campaign organised by the International Fund for Animal Welfare also answered ‘yes’ to this question. Thus, 96% of respondents who provided a tick-box response at Question 1.7 thought section 2(3) should be framed more narrowly to remove the overlap with section 2(1). See Table 6.1.

Table 6.1: Q1.7 – 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?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	4	31%	9	69%	13	100%
Animal welfare charities and campaign groups	6	86%	1	14%	7	100%
Other organisational respondents	1	50%	1	50%	2	100%
Total organisations	11	50%	11	50%	22	100%
Individual respondents	103	60%	69	40%	172	100%
Total (organisations and individuals)	114	59%	80	41%	194	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,173	96%	80	4%	2,253	100%

6.7 Altogether, 2,204 respondents (19 organisations, 126 individuals and 2,059 campaign respondents) made comments at Question 1.7. Note that there was substantial overlap in the comments made by those who answered ‘yes’ and those who answered ‘no’ to this question – among both organisations and individuals. Furthermore, some who answered ‘no’ called for a further strengthening of the legislation, without specifically addressing the question. This may suggest there was some confusion among respondents about this question and therefore, the figures shown in Table 6.1 above should be treated with caution.

Views in favour of a narrower framing of section 2(3)

6.8 Respondents advocating a narrower framing of section 2(3) commented that they could not see a difference between the scenario described in section 2(3) and the one covered by section 2(1). This group often simply endorsed Lord Bonomy’s suggestion that ‘the language in subsection 2(3) could be tightened to make clear that this exception is ONLY applicable to situations when the fox or mink is below ground’. One respondent suggested that sections 2(1) and 2(3) should be amalgamated; another suggested that section 2(3) should be deleted.

6.9 Respondents who answered ‘yes’ to Question 1.7 repeatedly made three further points about the language in sections 2(1) and 2(3).

6.10 First, they called for both these subsections to continue to include explicit references to using a dog ‘under control’. They argued that this would close a loophole which allows hunting to continue if dogs are deemed out of control. In relation to this point, some respondents wanted the Act to specify what constitutes a ‘dog under control’ and suggested that a full definition of ‘flushing’ should address this. One respondent also commented on

the use of the singular 'a dog' in these subsections, rather than 'a dog or dogs' (allowing for the plural). Another suggested that it would be helpful if this section acknowledged that a terrier may be used, and there was a query about how it was possible to have control over a dog below ground – where the dog may not be able to hear its handler, or the handler hear the dog.

6.11 The second point commonly made by this group was that the reference to flushing 'a fox **or mink** from below ground' is odd, as mink hunting is not generally practised in Scotland. (Respondents also noted that the consultation question only asked about flushing 'a fox' and did not include 'mink'.)

6.12 Other views among this group, expressed less often, were that:

- The caveats listed in section 2(3)(a) to (e) are essential, in particular the requirement for a firearm or shotgun to be carried by the individuals who are responsible for shooting the wild mammal as soon as possible.
- The specific requirement for all these individuals to possess a valid firearms certificate is also important.
- There is scope for further rationalising the wording of Subsections 2(1) and 2(3). For example, the provisions in Subsection 2(3)(e) simply repeat the first line and a half of Subsection 2(1); the wording of the last three lines of Subsection 2(1) and that of Subsection 2(3)(b) should be more closely aligned.

Views opposed to a narrower framing of section 2(3)

6.13 Respondents opposing a narrower framing of section 2(3) often stated that the 'current law is fine', 'there is no need to change it', and the 'overlap is acceptable'. Moreover, this group repeatedly argued that any overlap that may exist would not hinder either the enforcement of the Act or successful prosecution. There was also some concern expressed that a change in the wording (i.e. removing the reference in section 2(3) to flushing above ground) would complicate the issue and make legal debate more difficult.

6.14 Among those who gave a reason for their view, the main reason given was that the current wording allows for situations where the cover may be viewed as being both above and below ground – for example, where there is a hole under a number of fallen trees or in a bramble patch, or in an above ground cairn. Thus, the wording in section 2(3) removes any confusion about the legality of the flushing activity – whether it is above ground, or below.

6.15 Moreover, the point was made that sections 2(1) and 2(3) are intended to address different activities. Section 2(3) is intended to cover the activity of a terrier working below ground, while 2(1) relates to the use of other dogs to flush above ground including in connection with use of a bird of prey. Section 2(1) would also allow a person with a terrier to enter the terrier into an enclosed space above ground, where a larger dog may not be able to enter, but not below ground which he could only do under 2(3). Moreover, the exception for falconry and shooting (section 3 of the Act) only covers stalking or flushing above ground.

6.16 Thus, respondents making this point argued that the overlap is necessary because it accounts for different scenarios.

Other views regarding section 2(3) – using a dog to flush above and below ground

6.17 One further issue raised both by respondents answering ‘yes’ and those answering ‘no’ to Question 1.7 was that the wording of section 2(3)(d) suggests that the person working the terrier should be the person with the firearm. Respondents argued that this is not always practical, and it was suggested that subsection (d) should be removed, as the requirement for firearms has already been established in section 2(3)(b). This suggested change would read as: ‘...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’.

Overlaps and inconsistencies in sections 2, 3 and 5 of the Act (Q1.8)

6.18 The review report, paragraphs 5.30 – 5.34, discussed the provisions within the Act which entail after a wild mammal is flushed from cover. Lord Bonomy noted that there are several differences in the way (i) the timing of the shooting and (ii) the responsibility and requirements of the person doing the flushing are expressed in sections 2(1), 2(3), 3(a) and 5(3).

6.19 Section 2(1) requires the person flushing to ‘**act... to ensure**’ that, ‘once the target mammal is found or emerges from cover’ it is shot or killed by a bird of prey ‘**once it is safe to do so**’. Section 2(3)(b) requires the person flushing to ‘**take 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’. Section 3(a) relates to the use of a dog in connection with falconry and shooting and requires that the person using a dog to stalk a wild mammal or flush it from cover above ground for the purpose of providing quarry for sport must ‘**act... to ensure**’ that, once a wild mammal is found or emerges from cover, it is shot, or killed by a bird of prey ‘**as soon as possible**’. In section 5(3), the requirement is to ‘**take... reasonable steps to ensure that**’ an orphaned fox once located is despatched by a single dog.

6.20 Section 2(1) does not mention that a person involved in flushing, or shooting, is required to hold a firearms or shotgun certificate, whereas in both section 2(3) and section 3, reference is made to the person using the dog holding a firearms or shotgun certificate.

6.21 Lord Bonomy suggested options for bringing greater consistency to these sections, and the consultation asked for views about whether these different areas of overlap and inconsistency should be addressed in the manner suggested.

Question 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?

6.22 There were 185 substantive responses and 2,059 campaign responses to Question 1.8. Among organisations and individuals, just over a third (34%) answered ‘yes’ and two-thirds (66%) answered ‘no’. Among organisational respondents, most countryside

management and sporting organisations answered ‘no’ (11 out of 13), while most animal welfare charities and campaign groups answered ‘yes’ (6 out of 7). A further 2,059 respondents who submitted views through the campaign organised by the International Fund for Animal Welfare answered ‘yes’ to Question 1.8. Thus, among the respondents who provided a tick-box response at Question 1.8, 95% thought the other areas of overlap and inconsistency in the specified sections should be addressed. See Table 6.2.

Table 6.2: Q1.8 – 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?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	2	15%	11	85%	13	100%
Animal welfare charities and campaign groups	6	86%	1	14%	7	100%
Other organisational respondents	1	50%	1	50%	2	100%
Total organisations	9	41%	13	59%	22	100%
Individual respondents	53	33%	110	67%	163	100%
Total (organisations and individuals)	62	34%	123	66%	185	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,121	95%	123	5%	2,244	100%

6.23 Altogether, 2,204 respondents (19 organisations, 126 individuals and 2,059 campaign respondents) provided further comments.

Views in favour of addressing overlaps and inconsistencies

6.24 Respondents answering ‘yes’ to Question 1.8 generally thought that greater consistency between sections 2(1), 2(3), 3(a) and 5(3) would help bring about a better understanding of the law by practitioners and law enforcement officers. This group supported Lord Bony’s recommendations, so long as they do not create additional inconsistencies that would prevent enforcement.

6.25 Various respondents answering ‘yes’ made three more specific points regarding the requirement to carry a licensed firearm:

- It should be clear that the requirement to carry a licensed firearm and to have the landowner’s permission to carry out the activity apply to **all** the excepted activities listed in section 2.
- Regarding the reference to ‘firearms certificates’, provisions in the 2002 Act should be consistent to other firearm and shotgun regulations. It was suggested that section 2(3)(d) and 3(b) are incorrectly worded.
- Respondents in this group also repeatedly called for the expression in section 2(1) – ‘once it is safe to do so’ – to be changed to ‘as soon as possible’ as this phrase is less subjective and would help to reduce the risk of a chase taking place. In addition, any court would see this requirement as being subject to it being safe to shoot. At the same time, one respondent suggested that, if the wording ‘once it is safe to do so’ is

retained, then the alternative wording proposed by Lord Bonomy in paragraph 5.33 of the review report would be supported.¹⁰

Views that it is unnecessary to address overlaps and inconsistencies

6.26 Those answering 'no' to Question 1.8 generally did not believe that the overlaps and inconsistencies identified by Lord Bonomy were of sufficient importance to require amendment of the legislation. The point was made again, repeatedly by this group, that none of these issues have been shown to prevent enforcement or hinder the courts in applying the law where there is sufficient evidence of an offence. Concern was expressed about the potential for changes to the Act to curtail or make impractical pest control using dogs. These respondents called for any amendment or redrafting to the 2002 Act to be made only with full stakeholder engagement and agreement.

6.27 The following additional points were made less often (usually by just one or two respondents):

- Section 2(3) is the section of the law that fundamentally describes lawful fox control with a dog in Scotland. It should not be amended.
- Apparent overlap in the sections addressed by Question 1.8 exist because these sections cover separate activities. The overlap ensures that there is clarity about how these activities should be conducted lawfully by practitioners.
- Lord Bonomy suggests that the phrase 'once it is safe to do so' in section 2(1) leaves scope for a chase to begin. However, this section stipulates that the person hunting 'acts to ensure' that the mammal is shot. Having hounds in pursuit of that mammal would make that impossible. As such the law requires the person to act to remove any impediment to the shooting of the mammal found or flushed as soon as possible once it is safe to do so. For a chase to begin or continue out of cover there would be a clear failure to act to ensure that the animal was shot.

¹⁰ '...but only if that person acts to ensure that, once the target wild mammal is found or emerges from cover, the dog does not continue to hunt the wild mammal and the wild mammal is shot, or killed by a bird of prey, once it is safe to do so.'

7. Language of the Act – other areas requiring clarification

7.1 This chapter presents respondents' views on Questions 1.9 and 1.10. Question 1.9 related to paragraph 5.35 of the review report. This paragraph discusses the phrase 'by lawful means' in section 2(2) of the 2002 Act:

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.

7.2 Lord Bonomy commented that it is not specified in this section what these 'lawful means' are, and this should be clarified. Question 1.9 invited views about this issue.

Question 1.9: Do you think the 'lawful means' mentioned in section 2(2) should be specified? [Yes / No] Please explain your answer.

Clarification of 'by lawful means' (Q1.9)

7.3 There were 174 substantive responses and 2,059 campaign responses to Question 1.9. Among organisations and individuals, one-third (33%) answered 'yes' and two-thirds (67%) answered 'no'. Countryside management and sporting organisations were unanimously opposed while animal welfare charities and campaign groups were unanimously in favour. A further 2,059 respondents who submitted their views through the International Fund for Animal Welfare campaign answered 'yes' to this question. Thus, 94% of respondents who provided a tick-box response at Question 1.9 thought the 'lawful means' mentioned in section 2(2) should be specified. See Table 7.1.

Table 7.1: Q1.9 – Do you think the 'lawful means' mentioned in section 2(2) should be specified?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	–	0%	13	100%	13	100%
Animal welfare charities and campaign groups	6	100%	–	0%	6	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	8	38%	13	62%	21	100%
Individual respondents	57	33%	117	67%	174	100%
Total (organisations and individuals)	65	33%	130	67%	195	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,124	94%	130	6%	2,254	100%

7.4 Altogether, 2,208 respondents (20 organisations, 129 individuals and 2,059 campaign respondents) provided further comments at Question 1.9.

Views in favour of specifying the meaning of ‘by lawful means’

7.5 Among respondents who answered ‘yes’ to Question 1.9, there were two main views about the phrase ‘by lawful means’.

7.6 The first view was that any method used for dispatching a wild mammal must be swift and humane, in compliance with the Animal Health and Welfare (Scotland) Act 2006. Humane despatch must ensure an instant kill or rapid onset of unconsciousness. Respondents who held this view generally thought that the Act should specify the permitted lawful methods (other than being shot, which is already permitted by section 2(2)), since these will be limited. Furthermore, these methods should not include permitting a dog to kill a wild mammal; nor should they include drowning or stoning. In addition, some respondents questioned whether the killing of a wild mammal with a bird of prey could meet the standard of being ‘swift’ and ‘humane’; these respondents called for the exception for falconry at section 3 to be removed.

7.7 The second view was that specification of ‘by lawful means’ was not required in section 2(2). This group called for this phrase to be deleted entirely since it is the Act itself which defines the legality of excepted activities. Those who held this view also reiterated that the legislation should contain explicit references to the need to shoot a wild mammal as soon as possible after it has been flushed from cover.

7.8 One respondent in this group pointed out that this phrase (‘by lawful means’) is not used elsewhere in section 2 of the Act.

Views that it is unnecessary to specify the meaning of ‘by lawful means’

7.9 Respondents who answered ‘no’ to Question 1.9 made a wide range of comments. While some simply stated that ‘I think everyone understands what is meant’ or ‘it is already obvious (or clear enough)’ without further comment, other respondents explained what they understood the phrase to mean, and there were differences of opinion about this.

7.10 Some thought this phrase referred specifically to the use of a bird of prey, since section 2(2) relates to activities under 2(1) and 2(3) and only mentions shooting.

7.11 Others pointed out that the only lawful means would be shooting, snaring or killed by a bird of prey, but that snaring is not relevant in this context.

7.12 A third view was that this phrase indicates that it is for the practitioner, on whom the burden of lawful behaviour rests, to satisfy themselves that they are operating within the law. Those with this view indicated that this allows for a wild mammal to be dispatched by either a gun or bird of prey, and a fox or mink to be dispatched by a gun. However, it should be up to the practitioner to choose their own gun and cartridge / shot-size combination, ensuring compliance with other relevant legislation.

7.13 A fourth view was that this phrase allows for the means of killing to change over time (‘the natural evolution of the legislation’) without having to amend the Act. A similar view to this was that, having a list of ‘lawful means’ might mistakenly exclude methods that would otherwise be considered as lawful, thus resulting in an offence being created unintentionally.

7.14 One organisational respondent commented that section 2(2) was designed to protect those operating under either 2(1) or 2(3) from 'malicious prosecution' given that a proportion of foxes are (inadvertently) killed by dogs under the exemptions.

7.15 It was common for respondents who answered 'no' to Question 1.9 to reiterate – as they did in relation to previous questions – that the current wording of this phrase has no impact on the ability to enforce the law or prosecute offenders. Thus, there was no reason to specify it further.

Other views on the language in the Act (Q1.10)

7.16 The final question in Section 1 of the consultation paper – Question 1.10 – was an open question which asked respondents for any other views on inconsistencies, inappropriate or unnecessary features, or omissions or possible improvements regarding the 2002 Act, or the terminology used in the legislation.

Question 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 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?

7.17 Altogether, 18,666 respondents commented at Question 1.10. This comprised 21 organisations, 148 individuals and 18,497 campaign respondents.

7.18 Around two thirds of organisations and individuals answering Question 10.1 did not offer specific points for consideration but offered general views about the current legislation, or on hunting more broadly. These views will be discussed in Chapter 12 of this report. In addition, most countryside management and sporting organisations and around half of individual respondents simply stated that the current legislation was working well and required no further clarification.

7.19 Thus, specific comments at Question 1.10 came mainly from animal welfare charities and campaign groups, individual respondents opposed to hunting and campaign respondents.

7.20 Those who made specific suggestions focused on four main issues: (i) providing a definition of 'cover'; (ii) the inclusion of a specific limit on the number of dogs used in hunting activities; (iii) introducing a requirement for dogs used in hunting to wear muzzles; and (iv) the introduction of a new offence of 'reckless hunting'. The fourth point has already been discussed briefly in relation to Question 1.2 (see Chapter 3) and will be discussed again in more detail in relation to Question 3 (Chapter 9). Therefore, this section focuses on the first three points.

Definition of 'cover'

7.21 Respondents noted that the definition of 'cover' is crucial to the understanding and implementation of the exception of 'flushing from cover' (at section 2 of the Act), given that this exception can no longer be invoked once an animal is **not** 'in cover' and can be seen.

7.22 One animal welfare group described how the current undefined term was open to interpretation in applying the Act – they cited a court case involving the Jedburgh Hunt (Jedburgh PF v Riley and Richardson), and the slightly different definitions of the term ‘covert’ (a variation on ‘cover’) used by the Scottish Mounted Foxhound Packs voluntary protocol and the Masters of Foxhounds Association (MFHA).

7.23 Respondents suggested that, for the purposes of the legislation, a definition of cover should be added to section 10 of the Act and should incorporate the following:

- When an animal is in cover, it is not visible.
- Once the animal becomes visible, it is not in cover and from that point onwards, the exceptions for flushing from cover can no longer be invoked.
- Cover is wood, thicket, area of gorse or other vegetation above ground where a wild mammal cannot be seen.

7.24 The animal welfare group referred to in paragraph 7.22 above suggested the legislation should be amended to include the definition as follows: ‘Cover’ means ‘a wood, thicket, area of gorse or other vegetation above ground where a wild mammal cannot be seen but may be flushed by dogs up to the point that it becomes visible to the waiting guns.’

Limiting the number of dogs used in flushing activities

7.25 In paragraph 7.26 of the review report, Lord Bonython states that, on the basis of the submissions and other evidence available, he was persuaded that ‘searching and flushing by two dogs would not be as effective as that done by a full pack of hounds’, and that ‘imposing such a restriction could seriously compromise effective pest control’ – particularly on rough and hilly ground and in extensive areas of dense cover such as conifer woodlands.

7.26 Nevertheless, respondents to the consultation called for section 10(1) of the Act to be amended to limit, to two, the number of dogs that can be used to flush a mammal from cover. This view was expressed by all five campaigns taking part in the consultation – thus, by nearly 18,500 respondents. Some respondents suggested that this could be achieved by removing the phrase ‘or more’ from the current wording in section 10(1).

7.27 Respondents thought this change was required to stop hunts operating with full packs and claiming that the exception outlined in section 2(1) for flushing applied – some made the point that allowing an unlimited number of dogs to be used to flush from cover undermined the purpose of flushing from cover, which was to allow the wild mammal to be identified clearly and swiftly shot. It was also noted that the introduction of such a limit would be in line with the equivalent legislation in England and Wales.

Require dogs used for flushing to wear muzzles

7.28 The campaign from Animal Concern (15 respondents) called for it to be made mandatory for dogs used for flushing foxes from cover to be fitted with safe muzzles.

Other points raised

7.29 Respondents made a wide range of other points in response to Question 10.1 relating to specific sections of the 2002 Act. These were all raised by only a few respondents in each case. Only those points which have not previously been covered (in relation to Questions 1.1 to 1.9) are listed here:

- The requirement to have the dog under control is essential – all references to the use of a dog within the exceptions provided by the Act should be amended to read ‘a dog under control’. The relevant sections for this would be 2(2), 3 (section title) and 4(1).
- Section 2(1)(d) states that hunting with a dog may be carried out for the purpose of preventing the spread of disease. It should be clarified whether the intention here is to prevent the spread of disease in livestock or humans, or in the hunted species.
- There was a query about the use of the term ‘pest species’ in section 2(2) and its application to hunting foxes. The point was made that foxes have never been classed as a pest species by the Ministry of Agriculture, Fisheries and Food (MAAF), the Department of Environment, Food and Rural Affairs (DEFRA) or any government agricultural department in Scotland or Wales.
- The current drafting of sections 2(3) suggests that all terrier men are required to be in possession of a firearm, although it was thought that this was not the intention of Act. (This point is discussed further in Chapter 8.)
- The exceptions covered by section 5(1)(b), 5(1)(c) and 5(3) should not apply as the killing of the wild mammals is not necessary in the circumstances covered.
- The option of ‘disposal’ in relation to disqualification orders relating to the care or disposal of a dog (section 9(1)(a)) was deemed ‘inappropriate and unnecessary’ on the basis that every effort should be made to rehome a dog.

8. Terriers (Q2)

8.1 Section 2 of the consultation questionnaire concerned the use of terriers to flush foxes from below ground or from an enclosed space within rocks or other secure cover above ground. This chapter presents an analysis of respondents' views about Question 2 in this section, which relates to paragraphs 6.20 to 6.30 of the review report.

8.2 Section 2(3) of the 2002 Act states that:

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....

8.3 The Act then goes on to list five conditions which must be met in order for this activity **not** to be classed as an offence.

8.4 Lord Bonomy's report (paragraph 6.20 and 6.29) suggested that, in line with the Code of Conduct of the National Working Terrier Federation (NWTF), it should be specified clearly in the Act that, wherever possible and practical, only one terrier should be used below ground at a time to locate a fox. The consultation asked respondents if they agreed with this suggestion.

Question 2: 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? [Yes / No] Please explain your answer.

8.5 There were 196 substantive responses to this question and 2,059 campaign responses. Among organisations and individuals, just over one-third (36%) answered 'yes' and nearly two-thirds (64%) answered 'no'. Among organisational respondents, animal welfare charities and campaign groups unanimously agreed. By contrast, countryside management and sporting organisations mainly disagreed (11 out of 13 answered 'no'). The 2,059 respondents whose views were submitted through the campaign organised by the International Fund for Animal Welfare answered 'yes'. Thus, 94% of those who replied to this tick-box question agreed with Lord Bonomy's suggestion. See Table 8.1.

Table 8.1: Q2 – Do you agree with Lord Bonomy’s suggestion that the legislation should impose a restriction in line with the Code of Conduct of the NWTF that, wherever possible and practical, only one terrier should be entered to ground at a time?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	2	15%	11	85%	13	100%
Animal welfare charities and campaign groups	6	100%	–	0%	6	100%
Other organisational respondents	–	0%	1	100%	1	100%
Total organisations	8	40%	12	60%	20	100%
Individual respondents	62	35%	114	65%	176	100%
Total (organisations and individuals)	70	36%	126	64%	196	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,129	94%	126	6%	2,255	100%

8.6 Altogether, 2,245 respondents (21 organisations, 150 individuals and 2,074 campaign respondents) provided further comment at (or relevant to) to Question 2. Some individual respondents answering ‘no’ to this question were entirely opposed to terriers being entered underground and wanted the law to be changed to make this practice illegal. Thus, caution should be used when interpreting the figures for individuals in Table 8.1.

Views in favour of restricting, in law, the number of terriers entered to ground

8.7 Some respondents answering ‘yes’ to Question 2 commented that they were opposed to entering terriers to ground in principle and would like to see the practice banned; however, if it continues to be permitted, then the current legislation should be strengthened to protect the welfare of both the fox and the terrier. Other respondents accepted that the use of terriers underground is a necessary aspect of fox control but, again, for welfare reasons, they saw the value of having legislation include the specific provision in the Code of Conduct that: ‘wherever possible and practical, only one terrier should be entered to ground at a time’.

8.8 This group of respondents repeatedly emphasised that they wanted this restriction to be ‘on the face of the Act and not part of a code of conduct, binding or otherwise’.

8.9 Respondents who answered ‘yes’ to Question 2 thought the proposed restriction to one terrier would have several benefits:

- It would give a fox more opportunity to find an escape route from the ground and then be humanely dispatched rather than risk being cornered and / or killed by more than one terrier.
- It would give the terrier greater freedom of movement below ground to retreat – thus allowing the fox to bolt more easily and / or to prevent injury to the dog from an oncoming fox.

- It will help ensure terriers are only used to flush from cover, not to fight with the fox, by limiting the amount of time they spend underground.
- It would bring Scottish legislation in line with that in England and Wales on this issue.

8.10 However, this group of respondents thought that the phrase, ‘wherever possible and practical’ would create a loophole and should **not** be included in the legislation; rather the restriction to one terrier should be absolute.

8.11 They also wanted it to be clarified that (i) several terriers cannot be entered in succession which may be implied by the phrase ‘one at a time’ and (ii) it should not be permitted to use dogs for activity which might constitute an offence under other legislation (e.g. such as the digging of badger setts).

8.12 Some respondents explicitly stated that they supported the recommendation to incorporate the NWTF Code of Conduct into legislation. However, others (including two countryside management and sporting organisations who answered ‘yes’ to Question 2) referred to, and in some cases preferred, the British Association for Shooting and Conservation (BASC) Code of Practice for the Use of a Dog Below Ground in England and Wales, which has the force of law under the Hunting Act 2004.¹¹ Some respondents specifically noted that the BASC Code requires only terriers that are ‘soft’ (i.e. habitually stand off and bark at the wild mammal), rather than ‘hard’ (those that habitually fight) to be used for underground work.

8.13 Some respondents suggested that the legislation should also stipulate that, once a terrier is entered to ground, all hounds should be removed from the area so that they do not prevent the fox from being shot immediately when it bolts from cover, and to reduce the risk of a chase occurring.

8.14 Finally, some respondents answering ‘yes’ to Question 2 also commented on the suggestion by Lord Bonomy that a purse net be attached to any hole from which a fox might bolt – to restrain the fox and enable it to be immediately shot (paragraph 6.30 of the review report). Some supported this suggestion; however, one respondent disagreed for three reasons: (i) it would be difficult to find, and net, every possible hole that a fox might bolt from; (ii) it could result in the terrier being inadvertently shot as it followed a bolting fox from a hole; and (iii) nets may deter a fox from bolting, thus increasing the possibility of a fight with the terrier underground.

Views opposed to restricting, in law, the number of terriers entered to ground

8.15 Most respondents who answered ‘no’ to Question 2 were not in favour of legislation imposing a restriction on the number of terriers that may be entered to ground at one time to flush a fox.

8.16 Respondents in this group stated that they supported and endorsed the principle of entering only one terrier to ground at a time whenever practical or possible, but they also

¹¹ BASC Code of Practice on the Use of a Dog Below Ground in England and Wales. See <https://basc.org.uk/cop/use-of-a-dog-below-ground-in-england-and-wales/>

argued that there are a wide range of circumstances where it may be necessary (for practical and welfare reasons) to enter more than one terrier to ground. Examples included where a den is large and has multiple sections, in a rabbit warren, in large cairns, in large areas of windblown forestry, etc. In such situations, a fox may be able to elude one terrier, while two would put greater pressure on the fox to bolt. Thus, the use of two terriers will reduce the amount of time the fox and dog(s) are underground and will enable the fox to be dispatched more quickly and humanely. In addition, a second terrier may be needed to help locate the first terrier if it becomes trapped underground and its location transmitter malfunctions. Some respondents also noted that it is common, when training a younger terrier, to let it follow an older more experienced terrier so that the younger dog may learn from the older one. This group thought that the choice about the number of terriers to use in any given situation should be made by the terrier man who has the necessary expertise and who adheres to the NWTF Code of Conduct.

8.17 Respondents who answered 'no' to Question 2 also expressed concern about the phrase 'wherever possible and practical' being included in legislation. These respondents thought this phrase was open to interpretation, and that it would be extremely difficult to legislate for what constitutes the 'possible and practical'; the implications would mean having to prove in court that an additional terrier was (or was not) necessary at the time.

8.18 These respondents instead advocated leaving this issue to be covered by the new code of practice currently being drafted in Scotland.

Alternative views opposing the use of one terrier underground

8.19 It should be noted that around one-tenth of respondents who answered 'no' to Question 2 said that they were entirely opposed to terriers being entered underground, or the practise of hunting with dogs in any way. Similarly, 15 respondents who submitted their views through the campaign organised by Animal Concern called for the law to be changed to make it 'illegal to put terriers or other dogs into any hole in the ground to force any animal to the surface'.

9. Mental state required for illegal hunting

9.1 Section 3, Questions 3 and 4, of the consultation questionnaire addressed issues covered in paragraphs 7.15 – 7.25 of Lord Bonomy’s report. These sections discussed (i) the mental state required for illegal hunting and (ii) the subject of vicarious liability. This chapter presents an analysis of responses to these two questions.

Intention to hunt (Q3)

9.2 One argument made to the review of the 2002 Act was that section 1(1) of the Act does not clearly express the element of intent (or *mens rea*) which is generally required within criminal law. There was also a view that it should be an offence to hunt ‘recklessly’ – in cases where a huntsman does not exercise sufficient control over the hounds while hunting a wild mammal. Lord Bonomy made several suggestions about how a mental state test (i.e. the concept of *mens rea*) might be incorporated into the legislation to clarify when a person is illegally hunting a wild mammal with a dog (see paragraphs 7.16 – 7.20 of the review report); some of these have already been discussed briefly in relation to the language of the Act. (See Chapter 3.) These suggestions were:

- To state clearly that an offence is committed when a person ‘intentionally or recklessly’ hunts a wild mammal with a dog
- To remove the word ‘deliberately’ from section 1(1), as this word has the effect of creating an additional hurdle when trying to prove that an offence has been committed
- To amend section 1(1) to state that an offence is committed when an individual ‘knowingly causes or permits a dog to hunt a wild mammal’ – which would mirror the offences in other wildlife protection legislation
- To amend section 1(1) to state that an offence is committed when an individual ‘uses or causes or permits a dog to hunt a wild mammal’ – which separates the actions of the hunter from the actions of the dog.

9.3 The consultation asked for views about whether respondents agreed with Lord Bonomy’s suggestions for providing greater clarity about the intention of an individual to hunt illegally.

Question 3: 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)? [Yes / No] Can you suggest ways in which we might do this?

9.4 There were 196 substantive responses and 2,059 campaign responses at Question 3. Among organisations and individuals, two-fifths (39%) answered ‘yes’ to indicate that they agreed with Lord Bonomy’s suggestions, and three-fifths (61%) answered ‘no’. Among the organisations, animal welfare charities and campaign groups unanimously agreed, while countryside management and sporting organisations nearly all disagreed. In addition, 2,059 respondents who submitted their views through the campaign organised by the International Fund for Animal Welfare agreed in response to this question. Thus, among

those who answered the tick-box question at Question 3, 95% agreed that the Act should provide greater clarity regarding the element of intent. See Table 9.1.

Table 9.1: Q3 – 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)?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	1	8%	12	92%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	9	43%	12	57%	21	100%
Individual respondents	68	39%	107	61%	175	100%
Total (organisations and individuals)	77	39%	119	61%	196	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,136	95%	119	5%	2,255	100%

9.5 Altogether, 9,571 respondents (21 organisations, 131 individuals and 9,419 campaign respondents) made comments at Question 3, or comments (in campaign responses) that discussed the issue of ‘reckless hunting’ and so were relevant to Question 3.

Views in favour of greater clarity in the legislation about intention to hunt

9.6 The key concern for respondents answering ‘yes’ to Question 3 was that the existing legislation provides what they saw as a ‘loophole’ – essentially allowing a person to avoid prosecution by claiming that their dogs were out of control when they killed a wild mammal, and therefore, that the killing of that wild mammal was not deliberately intended. This group believed that this loophole should be removed, and that the legislation should require a hunter to be in control of their dogs at all times or be prosecuted for ‘gross failure to exercise the appropriate degree of care to control the hounds’.

9.7 Given this perspective, these respondents were generally supportive of Lord Bonomy’s suggestion to amend the 2002 Act to remove the word ‘deliberately’ from section 1(1) and to introduce an offence of ‘intentionally or recklessly hunting a wild mammal with a dog’. This group commented that the phrase ‘intentionally or recklessly’ (like the phrase ‘knowingly causes or permits...’) is familiar to the Scottish courts as it is used in a variety of contexts in other wildlife legislation¹²; thus there would be no difficulties for the courts in interpreting this terminology or understanding what constitutes reckless behaviour.

9.8 Some within this group wanted further clarification (and perhaps a more stringent test) and called for the introduction of an offence of ‘intentionally or recklessly allowing a fox [wild mammal] to be killed, taken, injured or harassed by dogs’.

9.9 Some respondents also made the more general point that there would be benefits in having consistency in the way offences are defined across different wildlife policy areas.

¹² The Protection of Badgers Act 1992 and the Wildlife and Countryside Act 1981 were specifically referred to.

9.10 Less often, respondents suggested other ways of clarifying the intent to hunt illegally – although it was not always clear if those who made these suggestions wanted them to be set out in the legislation, or whether they were proposing that certain types of evidence should be regarded as proof of illegal hunting. For example, suggestions included: ‘by stating how many guns were present when hunting a particular area’; ‘the level of control the huntsman has over the hounds’; ‘how the hunt escalates / progresses through the various stages’; ‘how the wild mammal is killed (whether it has been shot or mauled)’; etc. One respondent commented that, if hounds are actively searching an area of cover and there are no guns in position outside that area, illegal hunting is taking place. Such comments were sometimes linked to an alternative view that ‘the legislation needs to look at outcomes not intentions’.

9.11 Some respondents noted that none of Lord Bonomy’s suggestions would create difficulties for an ordinary dog-walker whose dog runs off after a wild mammal. At worst, such a situation would be seen as carelessness, rather than recklessness.

Alternative views in favour of clarifying the element of intent

9.12 Among those who answered ‘yes’ to Question 3 were a small number of individual respondents who agreed that the element of intent was important. These respondents suggested it would be helpful for a huntsman to be able to prove intent to hunt within the law in cases where the huntsman’s dogs behave in a way he had not intended.

Views that greater clarity in the legislation about intention to hunt is unnecessary

9.13 Respondents who answered ‘no’ to Question 3 commonly made the following points: (i) that ‘hunting’ is a deliberate activity and therefore intention is already clear; (ii) that the definition of hunting within the 2002 Act includes the activity of ‘searching’, and therefore it cannot be difficult for the police and courts to establish when hunting has taken place; and (iii) the only question should be whether the hunting is lawful – because it falls within one of the exceptions and the conditions of the exception have been met. Respondents making these points were generally opposed to removing the word ‘deliberately’ from section 1(1), as they considered this word was necessary to provide ‘fair justice and defence to a person accused of illegal hunting who finds themselves in circumstances outwith their reasonable control’.

9.14 One organisational respondent commented on Lord Bonomy’s analysis, and particularly the point made in paragraphs 7.21 and 5.21 of the review report that a moorland dog-walker would not have to fear prosecution if their dog unexpectedly sets off in pursuit of a wild mammal. This respondent pointed out that this comment only relates to the proposal to replace ‘deliberately’ with ‘intentionally or recklessly’ in the definition of the offence; it would not apply equally to Lord Bonomy’s other suggested formulations for a mental state test. Moreover, given that hunting in Scotland includes the activity of searching, this respondent believed it was essential that any offence should require a higher standard of proof than ‘recklessness’, or merely ‘permitting’ a dog to hunt a wild mammal.

9.15 Another organisational respondent advocated changing the definition of hunting to: ‘to deliberately chase a wild mammal with dogs’. This suggestion was also made in response to Question 1.1 (see Chapter 3).

9.16 Some respondents noted that the code of practice currently being drafted in Scotland will help to provide clarity on the element of intent in the legislation.

Vicarious liability for landowners (Q4)

9.17 The review report (paragraphs 7.23 – 7.25) discussed the issue of ‘vicarious liability’ – whereby one individual ‘in charge’ of a hunt is held responsible for any breach of the legislation. The report also discussed the possibility of attributing vicarious liability to a landowner – whereby an owner who gives a hunt permission to hunt over his / her land would also be guilty of an offence if anyone involved in the hunt committed an offence. The consultation invited views about this latter proposal.

Question 4: 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? [Yes / No] Please explain your answer.

9.18 There were 216 substantive responses and 3,764 campaign responses to the tick-box part of Question 4. Among organisations and individuals, just over a third (36%) agreed and just under two-thirds (64%) disagreed. Among organisations, countryside management and sporting organisations unanimously disagreed, and animal welfare charities and campaign groups unanimously agreed. In addition, a further 3,764 respondents who submitted their views through the campaigns organised by the International Fund for Animal Welfare and the Scottish Greens answered ‘yes’ to this question. Thus, among all the respondents who answered Question 4, 97% were in favour of exploring a new vicarious liability provision in relation to landowners. See Table 9.2.

Table 9.2: Q4 – 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?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	–	0%	13	100%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	8	38%	13	62%	21	100%
Individual respondents	70	36%	125	64%	195	100%
Total (organisations and individuals)	78	36%	138	64%	216	100%
Campaign respondents	3,764	100%	–	0%	3,764	100%
Total (all respondents)	3,842	97%	138	3%	3,980	100%

9.19 Altogether, 2,236 respondents (21 organisations, 156 individuals and 2,059 campaign respondents) made further comments at Question 4.

Views in support of vicarious liability for landowners

9.20 Respondents answering 'yes' to Question 4 identified what they saw as a range of possible benefits of this proposal:

- It would help to define the responsibilities of those who permit hunting on their land and make them more aware of the legal implications of their decisions.
- It would ensure that landowners took more interest in activities taking place on their land – and therefore make illegal hunting less likely to occur.
- It would ensure that hunters took greater care to be in control of their dogs at all times.
- It would support landowners and occupiers to dissent to an activity they would not necessarily support or engage in themselves.
- It would achieve consistency in the law (just as landowners may be held vicariously liable for the actions of a gamekeeper who kills a bird of prey).

9.21 Some within this group also called for hunt masters to be prosecuted through vicarious liability where their employees are convicted of illegal hunting. There was a further suggestion that anyone who wishes to hunt should be required to obtain a licence – with the licence specifying details of the hunt.

9.22 A small number of respondents who answered 'yes' to Question 4 queried whether someone who was not present could be held accountable for the illegal actions of someone else. One individual thought this proposal should be restricted to landowners who were negligent or reckless, who did not exercise due caution in granting permission, or who knew or ought to have known that an offence occurred.

9.23 There was also a query about how it could be proven, beyond all reasonable doubt, that a landowner had permitted a hunt to take place. One suggestion was that anyone wishing to hunt should be required to obtain written consent from the landowner.

Views opposed to vicarious liability for landowners

9.24 Respondents answering 'no' to Question 4 repeatedly made the point that the current law (section 1(2)) already makes it an offence for an owner or occupier knowingly to permit another person to enter or use their land for the purpose of illegal hunting. This group of respondents thought it was both unjust and impractical for a landowner to be prosecuted for an offence committed by someone else when permission for a legal hunt had been given in good faith.

9.25 Some respondents equated this proposal to 'bullying'. Others compared it to a range of other scenarios, e.g.: 'would be tantamount to a landowner being held liable where a tenant of one of his properties was found to be dealing drugs from the property'; 'just because someone assaults you on a property, it does not mean the property owner is vicariously liable'; 'is the Queen vicariously liable if foreign vessels fish illegally in UK waters?'

9.26 The main argument against this proposal was that the relationship between a landowner and a hunt is not the same as in other situations where vicarious liability operates – in particular, the landowner is not the employer of those involved in the hunt.

Thus, the relationship between a landowner and a hunt, is not equivalent to the relationship between a landowner and a gamekeeper. The proposal was, in effect, suggesting that the landowner should be held liable for the actions of a third party, regardless of any care or attention the land owner had taken. It was suggested this could be an infringement of the land owner's human rights.

9.27 This group of respondents raised what they saw as a number of other difficulties with this proposal:

- Fox control can be granted permission by shooting rights holders rather than the land owner / occupier directly.
- Some land is owned by corporate bodies / trusts where no one individual is responsible. Even with reforms to land registration, it may not be straightforward to identify the owner of a piece of land where an alleged offence was committed.
- If an offence takes place near the boundary of lands owned by different individuals / organisations, it may be difficult to determine on whose land the offence was committed.
- Landowners do not always know who is on their land. Or they may simply deny knowledge of the hunt. How can it be proven that a landowner had given permission?

9.28 Some respondents identified possible unintended consequences, suggesting that, rather than risk unfounded prosecution, landowners may require dogs to no longer be used for hunting foxes on their land, and instead would suffer increased predation by foxes and the related impacts on livestock, conservation, biodiversity and rural economies.

9.29 Finally, one organisational respondent pointed out that the review report refers to various forms of vicarious liability within hunts and queried why the consultation asks only about attributing vicarious liability to landowners.

Other issues for consideration in relation to vicarious liability

9.30 One organisational respondent answered neither 'yes' nor 'no' to this question, but suggested there may be merit in considering the creation of such an offence if it can be shown that any conviction of a landowner would achieve the policy intentions of the 2002 Act with regard to protecting wild mammals. However, this respondent raised the following issues for consideration:

- Would this proposal be workable in practice? How many prosecutions have been undertaken in relation to vicarious liability provisions in other wildlife legislation? Have these provisions made employers more accountable?
- The extent to which it would be possible to institute proceedings against the landowner will depend on the normal employment type relationships between the parties. Would it be possible to establish the necessary close connection between the landowner and the accused? If the connection and duties between the accused and landowner cannot be established, any landowner will be able to claim a defence of due diligence.

10. Burden of proof (Q5)

10.1 Section 4 of the consultation paper referred to paragraph 7.27 to 7.39 of Lord Bonyon's report. This section of the report discussed the issue of 'burden of proof'.

10.2 As noted elsewhere in this report, hunting wild mammals with dogs is permitted in certain specific circumstances as set out in Section 2 of the 2002 Act. These circumstances may be used as a defence by an individual who may be charged under the Act. These exceptions are 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 pest species; or*
- (f) Controlling the number of a particular species to safeguard the welfare of that species.*

10.3 During the review, it was proposed that the burden of proving the application of one of the exceptions should fall upon the accused. The review report considers this proposal, examines relevant court decisions, and concludes that there may be sufficient justification, given the circumstances and public interest in the hunting debate, for Parliament to provide specifically in the Act that the onus of proof of compliance with an exception lies on the accused. The consultation invited views on this issue.

Question 5: Do you agree with the proposition that the onus should lie upon the accused to establish that their conduct falls within one of the exceptions provided in the 2002 Act? [Yes / No] Please explain your answer.

10.4 There were 198 substantive responses and 2,059 campaign responses to Question 5. Among organisations and individuals, one-third (34%) agreed and two-thirds (66%) disagreed with this proposition. However, among the organisations, countryside management and sporting organisations were unanimously opposed, and animal welfare charities and campaign groups unanimously in favour. The 2,059 respondents whose views were submitted through the International Fund for Animal Welfare campaign answered 'yes' to this question. Thus, among those who replied to the tick-box part of Question 5, 94% agreed with the proposition that the onus should lie with the accused to establish that their conduct falls within one of the exceptions provided in the 2002 Act. See Table 10.1.

Table 10.1: Q5 – 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?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	–	0%	13	100%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	8	38%	13	62%	21	100%
Individual respondents	60	34%	117	66%	177	100%
Total (organisations and individuals)	68	34%	130	66%	198	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,127	94%	130	6%	2,257	100%

10.5 Altogether, 2,230 respondents (20 organisations, 151 individuals and 2,059 campaign respondents) commented at Question 5.

Views agreeing that the burden of proof should lie with the accused

10.6 Respondents answering ‘yes’ to Question 5 expressed concern that (in their view) illegal hunting was continuing to take place under the guise of flushing from cover for pest control purposes. In addition, they highlighted the difficulties of gathering evidence in fox hunting cases, which they believed was acting as a deterrent to prosecution and even enforcement. This group argued that if an individual is carrying out what would otherwise be an illegal activity (hunting wild mammals with dogs) under the limited exceptions set out in the 2002 Act, then it was reasonable and proportionate to expect that individual to be able to demonstrate he (i) was fully entitled to claim that exception, and (ii) had taken steps to follow the conditions required by it.

10.7 Some respondents commented on Lord Bonyon’s analysis set out in the review report. These respondents acknowledged that the proposition to place the burden of proof on the accused may appear at first glance to be contrary to Article 6 of the European Convention on Human Rights (ECHR) which provides for the right to a fair trial, and the right of everyone charged with an offence to be presumed innocent until proved guilty. However, one respondent noted that the proposition is consistent with other aspects of criminal procedure in Scotland and recent case law. Moreover, the prosecution would still be required to prove beyond reasonable doubt that the accused had committed the offence, while the accused would only have to prove ‘on the balance of probabilities’ that the alleged offence fell within one of the statutory exemptions. This respondent suggested that these factors ‘serve to ameliorate the perceived incompatibility with the ECHR’.

Views disagreeing that the burden of proof should lie with the accused

10.8 Respondents answering ‘no’ to Question 5 repeatedly stated that the principle of a person being innocent until proven guilty should not be dispensed with lightly. These respondents suggested that for a prosecution to succeed it is only necessary to prove

beyond reasonable doubt that any one of the conditions of an exception has not been met, whereas if the burden of proof was reversed, a defendant would have to prove on the balance of probabilities that **all** conditions were met. This group considered that putting the onus on the defendant was disproportionate, unreasonable and contrary to the Human Rights Act 1998. Some respondents also expressed concern that this proposal could result in 'vexatious prosecutions'.

10.9 One respondent in this group commented on Lord Bonyon's analysis in the review report and discussed the decision by Justice and Home Affairs Committee (when the original Bill was going through Parliament) not to require the onus of proof to be put into the accused. This respondent pointed out that cases where the burden of proof lies with the defendant are cases where that burden can be easily discharged. In the view of this respondent, that was not the case under the 2002 Act.

Other considerations

10.10 One organisational respondent with expertise in Scottish law answered neither 'yes' nor 'no' but commented on the requirement for the accused to provide evidence that his conduct falls within one of the exceptions permitted by the 2002 Act. This respondent stated that:

'This should only impose an evidential as compared to a legal burden on the accused'. Much of the behaviour falling into the category of one of the exceptions will tend to be led as part of the Crown case. It will be the accused's explanation of his conduct that will fall within one of the exceptions that will be pertinent to the defence. Such evidence should require to be uncorroborated and the standard of proof to be on the balance of probabilities. We do not consider that the onus should present a legal burden on the accused. The burden of proving the case remains with the Crown. This position seems to be supported in the case of Fraser....'

11. Time limit for prosecution (Q6)

11.1 Section 6 of the consultation paper referred to paragraphs 7.42 and 7.43 of Lord Bonomy’s report. These paragraphs discussed the challenges of completing an investigation into an alleged offence and commencing a prosecution within the timescales required by Section 136 of the Criminal Procedure (Scotland) Act 1995. This legislation sets the general limit for bringing summary prosecutions as ‘within six months after the contravention occurred or in the case of a continuous contravention, within six months after the last date of such contravention’. This time limit does not apply in cases where the legislation creating the offence fixes a different time limit.

11.2 Lord Bonomy recommended that the time limit for bringing prosecutions under the 2002 Act should be extended in line with other wildlife offences which allow for prosecution to take place up to three years after the offence has been committed.

11.3 Respondents were asked for their views on this proposal.

Question 6: 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? [Yes / No] Please explain your answer.

11.4 There were 215 substantive responses to Question 6 and 3,764 campaign responses. Among organisations and individuals, views were divided with 44% answering ‘yes’ and 56% answering ‘no. This pattern of response was similar for organisations and individuals separately. However, among the organisational respondents, all but one of the countryside management and sporting organisations disagreed with Lord Bonomy’s recommendation whilst animal welfare charities and campaign groups unanimously agreed. The 3,764 respondents submitting their views through campaigns organised by the International Fund for Animal Welfare the Scottish Greens also agreed. Thus, of the respondents who answered this tick-box question, 97% agreed that the time limit for prosecution under the 2002 Act should be extended and harmonised with other wildlife legislation. See Table 11.1.

Table 11.1: Q6 – 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?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	1	8%	12	92%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	9	43%	12	57%	21	100%
Individual respondents	85	44%	109	56%	194	100%
Total (organisations and individuals)	94	44%	121	56%	215	100%
Campaign respondents	3,764	100%	–	0%	3,764	100%
Total (all respondents)	3,858	97%	121	3%	3,979	100%

11.5 Altogether, 2,217 respondents (19 organisations, 139 individuals and 2,059 campaign respondents) commented at Question 6.

Views in favour of extending the time limit for prosecution

11.6 Respondents who answered 'yes' to Question 6 agreed it can be difficult to bring summary prosecutions within the current six-month time limit – for the following reasons:

- Hunting cases are often complicated and may involve multiple witnesses and suspects.
- Time may be needed for veterinary examinations, post-mortems and forensic reports.
- Where witnesses refuse to give statements, the investigation process may be prolonged.
- Prosecutions may also involve charges related to other statutes.

11.7 These respondents emphasised that an extension to the time limit for prosecution would allow for adequate investigation and thorough implementation of the law. They were also in favour of bringing about greater consistency between the 2002 Act and other wildlife offences in relation to the time limit for prosecution. There was, however, a concern that an extended time limit should not result in 'cases being kicked into the long grass' and ignored.

11.8 Occasionally, respondents who answered 'yes' to Question 6 expressed alternative views about the time limit for prosecution – for example, there should be **no** time limit, or that there should be a two-year minimum timescale.

Views opposed to extending the time limit for prosecution

11.9 Respondents answering 'no' to Question 6 believed there was no need to extend the time limit for prosecution beyond the current six months. This group frequently highlighted that the new code of practice currently being drafted will require Police Scotland to be given advance notice of any fox hunting activity. In addition, information will be routinely recorded by foxhound packs (i.e. the names of those involved in the activity, and any outcomes) and this information will be made available to the police in the event of an allegation of illegal hunting. This group believed that these steps would make the investigation of any allegations easier.

11.10 Some in this group were concerned that the proposal to extend the time limit for prosecution seemed (to them) to be driven by a mistaken belief that the 2002 Act must not be working because so few mounted hunts have been successfully prosecuted for illegal hunting.

11.11 There was a view that 'justice should be expeditious', and the current six-month time limit is sufficient if there is a case to answer. Occasionally, respondents in this group acknowledged the difficulties with the current time limit, but felt three years was too long. These respondents did not agree with 'harmonising' wildlife crime legislation for what seemed (to them) to be an arbitrary reason. There was also a view that an extension to the time limit could only be acceptable if it were not coupled with a requirement for the accused to prove that their conduct falls within one of the exceptions in the 2002 Act (as discussed

in the previous chapter). A third view was that any extension should be granted on a case-by-case basis by the courts.

11.12 This group of respondents repeatedly expressed the view that three years is too long for an innocent individual to endure the threat of prosecution from (what may be) an unfounded allegation. They also highlighted a range of potential implications if the time limit is extended for up to three years:

- People employed as gamekeepers, or in similar roles, may face dismissal (if they are convicted), an inability to change employment (if they are accused), the loss of their firearms licence (it was suggested the police would seize the firearms of an accused), and significant personal strain.
- There is the potential for the accused not to receive a fair trial given the lapse in time between the events and the prosecution.
- Witnesses will have a less accurate recollection of what took place.
- Extended legal actions have the potential to result in an increased burden on police and courts.

12. Other comments (Q7)

12.1 The final question in the consultation invited respondents to provide any other relevant comments.

Question 7: 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.

12.2 A total of 23 organisations and 233 individuals provided additional comments at Question 7. In addition, four out of five of the campaigns (involving 16,438 respondents) included statements in their standard responses which have been analysed together with other views expressed at Question 7.

12.3 There were three main views expressed: (i) that the management / control of foxes was necessary, and legislation should continue to enable this; (ii) that although the control of foxes may be necessary, the law should be strengthened to ensure the chasing and killing of foxes by dogs did not occur; and (iii) that there should be a complete ban on fox hunting. Within these broad themes, respondents made a number of points, and these are briefly summarised below. Note that some respondents reiterated comments made previously in response to other questions (for example, calls for introducing an offence of 'intentional or reckless hunting'; requiring a sufficient number of guns to be available during flushing activities; making it illegal to put terriers or other dogs underground to force a wild animal to the surface; etc.) and such views are not repeated here.

12.4 Other more general issues for consideration – raised by a small number of respondents – are discussed at the end of this chapter.

Management / control of foxes is necessary

12.5 Respondents arguing in support of the management and control of foxes generally highlighted the importance of this activity for farming and conservation. Some in this group said they were directly involved in providing a pest control service, and these individuals highlighted the important role played by dogs in helping them do their work efficiently and effectively.

12.6 These respondents frequently reiterated Lord Bonomy's conclusions (paragraph 7.26 of the review report) that (i) 'the use of packs of hounds to flush out foxes to be shot remains a significant pest control measure'; (ii) 'searching and flushing by two dogs would not be as effective as that done by a full pack of hounds' and (iii) 'imposing such a restriction could seriously compromise effective pest control in the country'.

12.7 Respondents in this group generally thought that the current legislation was working well and did not need further clarification. Some within this group expressed the opinion that review of the 2002 Act was 'a waste of public money' and an attempt at 'ideological oppression' of practitioners of fox control and argued that the efforts of government should be directed to areas of genuine need.

Views supporting a strengthening of the law

12.8 The second main view expressed in the comments at Question 7 was that, while the recommendations of the review would result in some improvements to the 2002 Act, these changes do not go far enough. These respondents welcomed the changes that had already begun to take place (i.e. drafting of a code of conduct for hunts; appointment of independent hunt monitors; etc.). However, they noted that the 2002 Act was intended by Parliament to put an end to hunting with dogs, and it had not delivered this aim.

12.9 While respondents in this group often said they would prefer a ‘real ban’ on hunting with dogs, they also made a variety of suggestions for compromise which would fall short of a complete ban. The most common suggestions, made by organisations, individuals and campaign respondents, were:

- To amend the legislation to make **mounted** fox hunting with dogs illegal (this suggestion was often phrased as ‘remove the ‘flush to guns’ exemption that mounted hunts use to continue hunting’)
- To introduce a limit of two on the number of dogs that can be used to ‘flush to guns’, thus bringing Scottish legislation in line with that in England and Wales and reducing the risk of a fox being killed by dogs
- To introduce a licensing scheme for all forms of hunting
- To require pest control services to be carried out only by registered, regulated and trained professionals.

12.10 Respondents making such suggestions often also argued that public opinion was opposed to fox hunting.

Views calling for a ban on fox hunting

12.11 Finally, the third main view expressed in the comments at Question 7 was that the current legislation should ensure a complete ban on fox hunting. These respondents expressed disappointment that the review of the 2002 Act appeared to suggest only minor amendments to the current legislation. This group called for the chasing of a wild animal on horseback with a pack of dogs to be illegal in all circumstances.

12.12 Other points made by this group included that: (i) there is no place in a civilised country for blood sports; (ii) there is little justification for regarding foxes as pests; and (iii) legislation should treat wild mammals as ‘sentient’ beings.

12.13 Occasionally, respondents within this group recognised the importance of controlling the numbers of certain animals for conservation / farming purposes but believed hunting should be carried out only where it has been proven necessary to combat damage to livestock or land. There was a suggestion that, in this case, records of livestock damage and local fox populations should be routinely kept and monitored (and made public) as evidence of this.

Other issues for consideration

12.14 One organisational respondent commented that a constant theme throughout Lord Bonomy's review of the 2002 Act was that there is uncertainty about whether and when exactly an offence is committed under the 2002 Act. This is compounded by difficulties in being able to obtain sufficient corroborated, reliable and admissible evidence that a crime has been committed, given the remoteness of the location of such offences and the type of evidence that may be required. This respondent agreed with Lord Bonomy's view that uncertainty in the legislation is not desirable. Furthermore, although opportunities for clarification through judicial case decisions may arise if there are problems in interpreting specific aspects of the 2002 Act, this is not the best approach to adopt, since any interpretation would be case-specific and would not help in relation to the future consideration of other (future) cases.

12.15 The following additional issues were generally raised by a relatively small number of respondents (in some cases, just one or two):

- Some form of redress for distress and damage caused by packs of hounds running out of control should be provided.
- The use of bagged foxes (i.e. a fox trapped and brought to an area purely for hunting) and the rearing or feeding of cubs or foxes for hunting purposes should be banned.
- The activity of 'coursing' (releasing and chasing an animal) should be defined and treated separately to hunting.

12.16 Some respondents also raised wider animal welfare issues. For example, it was pointed out that hunting dogs are not currently covered by the same public health requirements that cover other working dogs and that they can be fed 'fallen stock' which can lead to the spread of disease. It was also noted that the hunt season overlaps with the breeding season for foxes, meaning that pregnant foxes might be killed, or that cubs might be left orphaned.

Annex 1: Tables

Chapter 2: Description of the respondents

Table 2.1 Responses included in the analysis

Response type	n	%
Substantive responses	290	2%
Campaign responses	18,497	98%
Total responses	18,787	100%

Table 2.2: Types of respondent (substantive responses only)

Respondent type	n	%
Individuals	265	91%
Organisations	25	9%
Total	290	100%

Table 2.3: Organisational respondents (substantive responses only)

Organisation type	n	%
Countryside management and sporting organisations	13	52%
Animal welfare charities and campaign groups	10	40%
Other organisational respondents	2	8%
Total	25	100%

Table 2.4: Overview of campaigns

Campaign organiser	Submission method / format	Consultation questions addressed by standard campaign text	Number of standard submissions
International Fund for Animal Welfare (IFAW)	Downloaded from third-party website	Qs 1(1.1-10) to 6 (all closed and open questions)	2,059
OneKind and League Against Cruel Sports	Email	Qs 1.2, 1.10, 3, 7 (comments only)	5,655
OneKind and League Against Cruel Sports (members outside of Scotland)	Email	Qs 1.10, 7 (comments only)	9,063
Scottish Green Party	Email	Qs 1.1*, 1.2*, 1.3*, 1.10, 4*, 6*, 7 (some closed questions / comments)	1,705
Animal Concern	Email	Qs 1.10, 2, 7 (comments only)	15
Total campaign responses			18,497

* Indicates a response to the closed (tick-box) question only.

Chapter 3: Language of the Act – defining the offence

Table 3.1: Q1.1 – Do you think the definition of ‘to hunt’ as provided in the 2002 Act should be more specifically defined?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	1	8%	12	92%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	10	45%	12	55%	22	100%
Individual respondents	88	45%	106	55%	194	100%
Total (organisations and individuals)	98	45%	118	55%	216	100%
Campaign respondents	3,764	100%	–	0%	3,764	100%
Total (all respondents)	3,862	97%	118	3%	3,980	100%

Table 3.2: Q1.2 – Do you agree with Lord Bonomy’s suggestion that the word ‘deliberately’ in section 1(1) serves no useful purpose?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	–	0%	13	100%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	1	50%	1	50%	2	100%
Total organisations	8	36%	14	64%	23	100%
Individual respondents	77	40%	114	60%	191	100%
Total (organisations and individuals)	85	40%	128	60%	213	100%
Campaign respondents	3,764	100%	–	0%	3,764	100%
Total (all respondents)	3,849	97%	128	3%	3,977	100%

Figures shown for individual respondents should be interpreted with caution.

Chapter 4: Language of the Act – clarity of the exceptions

Table 4.1: Q1.3 – Do you think the Act would be clearer if ‘searching’ was included alongside ‘stalking and ‘flushing’ in section 2(1)?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	2	15%	11	85%	13	100%
Animal welfare charities and campaign groups	6	100%	–	0%	6	100%
Other organisational respondents	1	50%	1	50%	2	100%
Total organisations	9	43%	12	57%	21	100%
Individual respondents	94	49%	99	51%	193	100%
Total (organisations and individuals)	103	48%	111	52%	214	100%
Campaign respondents	3,764	100%	–	0%	3,764	100%
Total (all respondents)	3,867	97%	111	3%	3,978	100%

Figures shown for individual respondents should be interpreted with caution.

Table 4.2: Q1.4 – Is ‘searching’ relevant to any other subsections?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	8	62%	5	38%	13	100%
Animal welfare charities and campaign groups	4	57%	3	43%	7	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	14	64%	8	36%	22	100%
Individual respondents	103	64%	59	36%	162	100%
Total (organisations and individuals)	117	64%	67	36%	184	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,176	97%	67	3%	2,243	100%

Figures shown for individual respondents should be interpreted with caution.

Chapter 5: Language of the Act – clarifying ‘stalk’, ‘search’, ‘flush’

Table 5.1: Q1.5(a) – Do you think the Act would be improved if it included a definition of ‘to stalk’?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	6	50%	6	50%	12	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	15	71%	6	29%	21	100%
Individual respondents	125	71%	52	29%	177	100%
Total (organisations and individuals)	140	71%	58	29%	198	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,199	97%	58	3%	2,257	100%

Table 5.2: Q1.5(b) – Do you think the Act would be improved if it included a definition of ‘to search’?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	6	50%	6	50%	12	100%
Animal welfare charities and campaign groups	5	71%	2	29%	7	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	13	62%	8	38%	21	100%
Individual respondents	109	62%	66	38%	175	100%
Total (organisations and individuals)	122	62%	74	38%	196	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,181	97%	74	3%	2,255	100%

Table 5.3: Q1.5(c) – Do you think the Act would be improved if it included a definition of ‘to flush’?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	6	50%	6	50%	12	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	15	71%	6	29%	21	100%
Individual respondents	126	72%	49	28%	175	100%
Total (organisations and individuals)	141	72%	55	28%	196	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,200	98%	55	2%	2,255	100%

Chapter 6: Language of the Act – areas of overlap and inconsistency

Table 6.1: Q1.7 – 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?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	4	31%	9	69%	13	100%
Animal welfare charities and campaign groups	6	86%	1	14%	7	100%
Other organisational respondents	1	50%	1	50%	2	100%
Total organisations	11	50%	11	50%	22	100%
Individual respondents	103	60%	69	40%	172	100%
Total (organisations and individuals)	114	59%	80	41%	194	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,173	96%	80	4%	2,253	100%

Figures for organisations and individuals should be interpreted with caution.

Table 6.2: Q1.8 – 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?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	2	15%	11	85%	13	100%
Animal welfare charities and campaign groups	6	86%	1	14%	7	100%
Other organisational respondents	1	50%	1	50%	2	100%
Total organisations	9	41%	13	59%	22	100%
Individual respondents	53	33%	110	67%	163	100%
Total (organisations and individuals)	62	34%	123	66%	185	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,121	95%	123	5%	2,244	100%

Chapter 7: Language of Act – other areas requiring clarification

Table 7.1: Q1.9 – Do you think the ‘lawful means’ mentioned in section 2(2) should be specified?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	–	0%	13	100%	13	100%
Animal welfare charities and campaign groups	6	100%	–	0%	6	100%
Other organisational respondents	2	100%	–	0%	2	100%
Total organisations	8	38%	13	62%	21	100%
Individual respondents	57	33%	117	67%	174	100%
Total (organisations and individuals)	65	33%	130	67%	195	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,124	94%	130	6%	2,254	100%

Chapter 8: Terriers

Table 8.1: Q2 – Do you agree with Lord Bonomy’s suggestion that the legislation should impose a restriction in line with the Code of Conduct of the NWTF that, wherever possible and practical, only one terrier should be entered to ground at a time?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	2	15%	11	85%	13	100%
Animal welfare charities and campaign groups	6	100%	–	0%	6	100%
Other organisational respondents	–	0%	1	100%	1	100%
Total organisations	8	40%	12	60%	20	100%
Individual respondents	62	35%	114	65%	176	100%
Total (organisations and individuals)	70	36%	126	64%	196	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,129	94%	126	6%	2,255	100%

Figures for individual respondents should be interpreted with caution.

Chapter 9: Mental state required for illegal hunting

Table 9.1: Q3 – 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)?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	1	8%	12	92%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	9	43%	12	57%	21	100%
Individual respondents	68	39%	107	61%	175	100%
Total (organisations and individuals)	77	39%	119	61%	196	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,136	95%	119	5%	2,255	100%

Table 9.2: Q4 – 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?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	–	0%	13	100%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	8	38%	13	62%	21	100%
Individual respondents	70	36%	125	64%	195	100%
Total (organisations and individuals)	78	36%	138	64%	216	100%
Campaign respondents	3,764	100%	–	0%	3,764	100%
Total (all respondents)	3,842	97%	138	3%	3,980	100%

Chapter 10: Burden of proof

Table 10.1: Q5 – 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?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	–	0%	13	100%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	8	38%	13	62%	21	100%
Individual respondents	60	34%	117	66%	177	100%
Total (organisations and individuals)	68	34%	130	66%	198	100%
Campaign respondents	2,059	100%	–	0%	2,059	100%
Total (all respondents)	2,127	94%	130	6%	2,257	100%

Chapter 11: Time limit for prosecution

Table 11.1: Q6 – Do you agree with Lord Bonyon's recommendation that the time limit for prosecution under the 2002 Act be extended and harmonised with other statutes which create wildlife offences?

Respondent type	Yes		No		Total	
	n	%	n	%	n	%
Countryside management and sporting organisations	1	8%	12	92%	13	100%
Animal welfare charities and campaign groups	7	100%	–	0%	7	100%
Other organisational respondents	1	100%	–	0%	1	100%
Total organisations	9	43%	12	57%	21	100%
Individual respondents	85	44%	109	56%	194	100%
Total (organisations and individuals)	94	44%	121	56%	215	100%
Campaign respondents	3,764	100%	–	0%	3,764	100%
Total (all respondents)	3,858	97%	121	3%	3,979	100%

Annex 2: List of organisational respondents

Countryside management, sporting organisations and representative bodies (13)

- British Association for Shooting and Conservation – Scotland
- Council for Hunting Associations
- Dumfriesshire and Stewartry Foxhounds
- Fife Foxhounds (Registered pack)
- Kelvin Valley Lurcher and Terrier Club
- Kincardineshire Foxhounds
- Lanarkshire and Renfrewshire Foxhounds
- Lauderdale Hunt
- National Working Terrier Federation
- Scottish Association for Country Sports (SACS)
- Scottish Countryside Alliance
- Scottish Gamekeepers Association
- Scottish Land & Estates

Animal welfare charities and campaign groups (10)

- Animal Concern
- Animal Interfaith Alliance
- British Deer Society
- Conservatives Against Fox Hunting
- International Fund for Animal Welfare (IFAW)
- League Against Cruel Sports
- OneKind
- Scotland for Animals
- Scottish Badgers
- Wild Animal Welfare Committee (WAWC)

Other (2)

- Humane Wildlife Solutions
- Law Society of Scotland

Annex 3: Campaign response texts

Campaign 1: International Fund for Animal Welfare

Responses submitted by 2,059 respondents

Question 1.1: Do you think the definition of “to hunt” as provided in the 2002 Act should be more specifically defined? [Yes / No] Please explain your answer.

Yes. There are several changes that ought to be made to this piece of legislation in order to make it more effective; and adding a clear-cut definition of hunting is certainly one important aspect that must be addressed.

Any definition included within the Act needs to encompass both the physical activity and the intent. We would suggest a form of words which covers ‘those participating in the pursuit of a wild mammal with dogs or those searching for such a mammal with the intention of pursuing once found’.

Question 1.2: Do you agree with Lord Bonomy’s suggestion that the word “deliberately” in section 1(1) serves no useful purpose? [Yes / No] Please explain your answer.

Yes. The current use of the word deliberately offers illegal hunters a loophole to exploit by claiming dogs were out of control when they chased and killed a wild animal. It is important that if this word continues to be employed in the Act that it is used in conjunction with language that closes this loophole. We would suggest including a form of words that covers both ‘accidental’ hunting and ‘deliberate’ hunting, such as ‘recklessly or deliberately’. This should ensure those in charge of a pack of dogs are held accountable for the behaviour of those animals, regardless of whether the dogs are out of control or not.

Question 1.3: Do you think the Act would be clearer if “searching” was included alongside “stalking” and “flushing” in section 2(1)? [Yes / No] Please explain your answer.

Yes. As per our answer to question 1.1, the definition of hunting must contain both the physical act of hunting as well as the intent to hunt. Therefore searching is a vital addition which should be made, to ensure those who are actively searching for an animal to hunt are included within the parameters of the Act. The police have also previously indicated that it would be a useful addition to assist them with investigations and securing convictions for illegal hunting.

Question 1.4: Is “searching” relevant to any other subsections? [Yes / No] Please explain your answer.

Yes. The circumstances under which a person does not commit an offence are detailed in subsections 2(2) and 2 (3). These subsections would both benefit from a clarification through the addition of the word ‘searching’, for example ‘on condition that they do not let any of the dogs under their responsibility to actively chase a wild mammal whilst searching for it.’

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

'To stalk?' [Yes / No] Yes

'To search' [Yes / No] Yes

'To flush' [Yes / No] Yes

Question 1.6: What elements would you wish to see included in this definition?

'To stalk': Greater clarification overall within the Act would make for stronger legislation which is easier to enforce, therefore definitions of key phrases such as these would be most useful. However; none of the definitions should allow for the creation of any loopholes through any interpretation that allowing a dog to chase a wild mammal is legal under any circumstances.

'To search': Greater clarification overall within the Act would make for stronger legislation which is easier to enforce, therefore definitions of key phrases such as these would be most useful. However; none of the definitions should allow for the creation of any loopholes through any interpretation that allowing a dog to chase a wild mammal is legal under any circumstances.

'To flush': Greater clarification overall within the Act would make for stronger legislation which is easier to enforce, therefore definitions of key phrases such as these would be most useful. However; none of the definitions should allow for the creation of any loopholes through any interpretation that allowing a dog to chase a wild mammal is legal under any circumstances.

A clearer definition of 'to flush' could, for example, define a minimum number of guns that must be present. Currently the Act does not specify such details, leaving the legislation open to abuse by those who have previously self-regulated the number of guns they require – therefore allowing this clause to be used a loophole for illegal hunting. At the least the legislation should stipulate that the number of guns must be adequate to ensure any mammal flushed from cover is shot as soon as possible.

Question 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? [Yes / No] Please explain your answer.

Yes. The language in subsection 2 (3) could be tightened, to make clear that this exemption is only applicable to situations when the fox or mink is below ground. It is vital that both subsections 2 (1) and 2 (3) continue to include explicit references to using dogs under control. As explained in our answer to question 1.2 it is important to protect the Act from loopholes which would allow hunting to continue if dogs are deemed out of control.

Question 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? [Yes / No] Please explain your answer.

Yes. Greater consistency between subsections 2(1), 2(3), 3(a), and 5 would undoubtedly aid the understanding of the law for both those seeking to legally remove wild mammals as well as law enforcers policing the countryside. Our recommendation would be to update the timeframes in each section to state 'as soon as possible'. The current partial inclusion of the timeframe 'once it is safe to do so' is too subjective and has allowed illegal hunters to claim a chase has taken place because they deemed it 'unsafe to shoot'.

Question 1.9: Do you think the “lawful means” mentioned in section 2(2) should be specified? [Yes / No] Please explain your answer.

Yes. The phrase ‘lawful means’ is superfluous in the context of an Act which in itself defines the exemptions for legality. Therefore we would suggest removing the phrase in totality and instead include explicit references to the need to shoot a wild mammal as soon as possible after it has been flushed from cover.

Question 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.

There are two aspects which we feel are currently not adequately addressed within the Act. The first of these is the unlimited number of dogs which may be used to flush an animal from cover. This is at odds with the law in England and Wales and we would urge the government to use this opportunity to harmonise the law in Scotland with neighbouring legislation. Allowing an unlimited number of dogs to be used to flush from cover undermines the purpose of flushing from cover, which is to allow the animal to be identified clearly and swiftly shot. Using a large group of dogs is counterintuitive to this aim as a clear shot will be less likely to be found swiftly when multiple animals are roaming the area.

The second aspect which should be addressed concerns the issue of recklessness, as outlined in our previous answer to question 1.2. The Act in its current state allows for a significant loophole by means of claiming dogs were out of control when they chased a wild mammal. This loophole effectively neuters the legislation by giving any illegal hunter an open excuse for their activity which is hard to dispute in court. Strengthening the Act to ensure those in charge of a pack of dogs are held accountable for the actions of those dogs would seem both sensible in terms of closing this loophole, as well as logical when considering the standard responsibility undertaken by any other dog owner who exercises their animal in public.

Question 2: 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? [Yes / No] Please explain your answer.

Yes. Once again this is an aspect of the Act which appears to lag behind the sister legislation in place in England and Wales. The Hunting Act in England and Wales stipulates a code of conduct by which anyone working a terrier must abide and is enshrined in law. We would recommend the same official inclusion of this code of conduct within the Protection of Wild Mammals Scotland Act, so it becomes law. It should be a clear offence to not abide by all the aspects of this code of conduct, and a specific stipulation must be made to ensure only one terrier is entered into the ground at a time. This is vital on animal welfare grounds as it will help ensure terriers are only used to flush from cover, not to fight, by limiting the amount of time they spend underground.

Question 3: 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)? [Yes / No] Please explain your answer.

Yes. As per our responses to questions 1.2 and 1.10, it is crucial that the Act does not just cover those who are seen to deliberately participate in hunting activities, but to also close the loophole for those who argue their dogs were ‘out of control’. Including provision in the law to convict those

whose reckless behaviour leads to hunting would address this concern and sufficiently tighten the law. Any definition of illegal hunting must include both those who act intentionally as well as those who would seek to claim the out of control behaviour of their dogs has exempted them from the law.

Question 4: 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? [Yes / No] Please explain your answer.

Yes. This extension would provide more consistency with some other wildlife crime offences. The lessons learnt from other offences would indicate such an extension would ensure landowners took more of an active interest in what is happening on their property, and therefore make illegal hunting less likely to take place.

Question 5: 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 Act? [Yes / No] Please explain your answer.

Yes. It would appear perfectly logical to expect a person who is conducting activities to remove a wild animal under certain specified exemptions in the Wild Mammals Scotland Act to be able to evidence this fact. The exemption they are following ought to have been front of their mind when they began the activity, to ensure they adhered to the rules carefully so as to not fall foul of the law. Therefore it should not be unreasonable to place the onus on the accused to prove they were following appropriate conditions in line with the exemption they are claiming.

Question 6: 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? [Yes / No] Please explain your answer.

Given that the nature of hunting cases are often exceptionally complicated and normally involve multiple witnesses and suspects, it would appear extremely sensible to extend the time limit for prosecutions under this Act. Such an extension would allow for adequate investigation and thorough implementation of the law.

Campaign 2: OneKind and League Against Cruel Sports

Comments submitted by 5,655 respondents

I am responding to the consultation on the Protection of Wild Mammals Act. I feel very strongly that the Scottish Government should amend the Act to stop foxes being chased down and killed, and League Against Cruel Sports polling shows that 85% of the Scottish public support a full ban on hunting.

Lord Bonomy's proposals are helpful in improving animal welfare on hunts, but Lord Bonomy himself is on record as saying he did not intend to produce measures that would amount to a full ban on hunting.

To ban foxhunting, the Government must:

1. Amend any "flushing to guns" exemptions so that they cannot be used by mounted hunts. Lord Bonomy himself says that mounted hunts appear to be more for exercising horses and hounds, and a social gathering, rather than pest control operations. Only one mounted hunt has ever been convicted under the Protection of Wild Mammals Act, despite evidence that they routinely end with hounds chasing down and killing foxes.
2. Introduce a limit to the number of dogs that can be used to "flush to guns"
In England and Wales, the number of dogs that can be used to flush from cover is limited to two. This makes the Hunting Act a much more robust piece of legislation than the Protection of Wild Mammals Act, in terms of preventing unnecessary suffering to wild mammals. If this was introduced in Scotland then hunts would no longer be able to use a range of excuses that they currently claim prevents them from shooting the fox.
3. Include an offence of "reckless" hunting
The Protection of Wild Mammals Act should outlaw "reckless" hunting, so section 1(a) should state "A person who intentionally or recklessly hunts a wild mammal with a dog commits an offence."

Mounted hunts in England and Wales have invented "trail hunting". This ostensibly involves using a pack of hounds to follow a foxed based scent, and is a cover for illegal hunting as it is designed to hunt by "accidents" that give hunters the defence of claiming the hunting was not intentional. It is possible that this activity will be taken by the Scottish hunts if this review makes it more difficult for them to use the exemptions they have been using.

Campaign 3: OneKind and League Against Cruel Sports

Comments submitted by 9,063 respondents from outside Scotland

I live outside of Scotland and care about wildlife across the UK. I am writing to ask you to strengthen Scotland's foxhunting laws to be at least as robust as those in place in England and Wales.

I was absolutely delighted when, in 2015, the SNP said they would vote to keep the English and Welsh Hunting Act. I was also heartened when they reiterated this promise in 2017.

I am aware that in Scotland, the Protection of Wild Mammals Act is less robust than the Hunting Act. I have been shocked at scenes recorded by League Against Cruel Sports monitors which show that, over the last few years, mounted hunts have routinely used packs of hounds to chase down and kill foxes in Scotland.

These actions would clearly have been illegal if they had taken place in England or Wales.

I am aware that the Scottish Government is consulting on strengthening the law in Scotland. I am writing to ask you to give wild mammals in Scotland the same protection that they are afforded in England and Wales; protection they are currently given thanks to the actions of the SNP.

Please use this opportunity to remove altogether the exemptions that allow mounted hunts to use dogs to flush to guns and limit the number of dogs that can be used in other exceptions to two.

Scotland has a great reputation for wildlife crime legislation, above all other parts of the UK. Please take this opportunity not just to protect mammals in Scotland, but to maintain Scotland's moral and progressive leadership in this crucial policy area.

Campaign 4: Scottish Greens

Responses submitted by 1,705 respondents via the Scottish Green Party website.

Question 1.1: Do you think the definition of ‘to hunt’ as provided in the 2002 Act should be more specifically defined? [Yes / No]

Yes.

Question 1.2: Do you agree with Lord Bonomy’s suggestion that the word ‘deliberately’ in section 1(1) serves no useful purpose? [Yes / No]

Yes.

Question 1.3: Do you think the Act would be clearer if ‘searching’ was included alongside ‘stalking and ‘flushing’ in section 2(1)? [Yes / No]

Yes.

Question 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.

I believe there should be a real ban on foxhunting in Scotland. There are two more changes to the 2002 Act that would help to deliver this: a restriction on the number of dogs and a provision to prevent hunts happening under the guise of trail hunts. The legislation in England and Wales limits the number of dogs that can be used to flush to two and this has made it a comparatively stronger piece of legislation. The offence of hunting in Scotland should include “reckless” hunting to ensure the practice where a ‘trail hunt’ becomes the hunt of a live fox when one is discovered, is illegal.

Question 4: 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?

Yes.

Question 6: 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?

Yes.

Question 7: 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.

I believe that changes to the legislation should go further than the changes recommended by the Bonomy Review as it did not aim to produce measures that would amount to a full ban on hunting. Specifically, I believe the proposed changes must remove the ‘flush to guns’ exemption that mounted hunts use to continue hunting.

Campaign 5: Animal Concern

Comments submitted by 15 respondents

I have looked at your prepared response questionnaire for the consultation on Improving the Protection of Wild Mammals in Scotland. Your questionnaire does not properly reflect my feelings on this and I wish you to accept this e-mail as my submission to this consultation. I give permission for my details to be published along with my submission.

Like the vast majority of people in Scotland I believe there is no place for hunting with hounds in the 21st Century. The Protection of Wild Mammals (Scotland) Act 2002 sought to end the killing of foxes by hounds but failed miserably.

Fox hunters had their chance to change to drag hunting and stop killing foxes. They chose not to do that and, free from the attention of hunt saboteurs and of the police who totally failed to police the new law, they continued killing foxes.

Instead of tweaking and tinkering with The Protection of Wild Mammals (Scotland) Act 2002 I ask the Scottish Government to replace that Act with a new law which truly bans hunting, lethal or otherwise, with dogs. I ask that it be made illegal to use dogs to deliberately chase wild mammals and that it be made illegal for people on horseback to chase wild mammals.

While I disagree that there is any legitimate need to kill foxes I fear the Scottish Government will continue to allow dogs to be used to flush foxes out of cover to be shot. If that is the case I urge you to do three things.

1. Limit the number of dogs to be used to two.
2. Make it mandatory that dogs used are fitted with safe muzzles.
3. Make it illegal to put terriers or other dogs into any hole in the ground to force any animal to the surface.

I urge the Scottish Government to create a law which truly bans fox hunting.

Annex 4: Question response rates (substantive responses only)

The table below shows the number of substantive (personalised) responses received, and the percentage of all substantive responses, for each consultation question.

Question	Number of responses	% of 290	
1.1	Do you think the definition of 'to hunt' as provided in the 2002 Act should be more specifically defined? [Yes / No]	216	73%
	Please explain your answer.	174	59%
1.2	Do you agree with Lord Bonyon's suggestion that the word 'deliberately' in section 1(1) serves no useful purpose? [Yes / No]	213	72%
	Please explain your answer.	161	55%
1.3	Do you think the Act would be clearer if 'searching' was included alongside 'stalking and 'flushing' in section 2(1)? [Yes / No]	214	73%
	Please explain your answer.	168	57%
1.4	Is 'searching' relevant to any other subsections? [Yes / No]	184	63%
	Please explain your answer.	133	46%
1.5	Do you think the Act would be improved if it included definitions of:		
	• 'to stalk' [Yes / No]	198	67%
	• 'to search' [Yes / No]	196	66%
	• 'to flush' [Yes / No]	196	66%
1.6	Please explain your answer:		
	• 'to stalk'	128	44%
	• 'to search'	120	41%
	• 'to flush'	126	43%
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? [Yes / No]	194	67%
	Please explain your answer.	145	50%
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? [Yes / No]	185	63%
	Please explain your answer.	145	50%
1.9	Do you think the 'lawful means' mentioned in section 2(2) should be specified?	195	66%
	Please explain your answer.	149	51%
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.	169	58%
2	Do you agree with Lord Bonyon'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? [Yes / No]	196	66%
	Please explain your answer.	171	59%

Question		Number of responses	% of 290
3	Do you agree with Lord Bony'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)? [Yes / No]	196	66%
	Please explain your answer.	152	52%
4	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? [Yes / No]	216	73%
	Please explain your answer.	177	60%
5	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? [Yes / No]	198	67%
	Please explain your answer.	171	58%
6	Do you agree with Lord Bony's recommendation that the time limit for prosecution under the 2002 Act be extended and harmonised with other statutes which create wildlife offences? [Yes / No]	215	73%
	Please explain your answer.	158	54%
7	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.	256	87%



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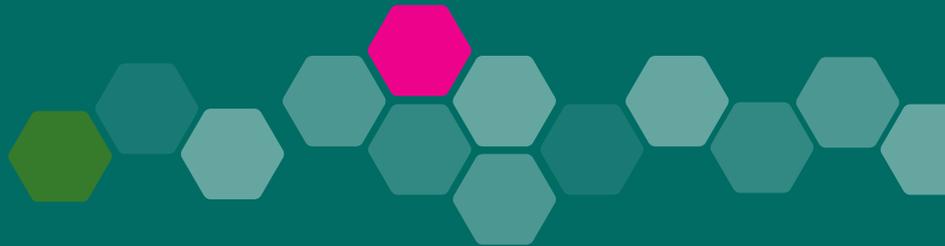
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This document is also available from our website at www.gov.scot.
ISBN: 978-1-78781-057-0

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for
the Scottish Government
by APS Group Scotland
PPDAS435846 (06/18)
Published by
the Scottish Government,
June 2018



Social Research series
ISSN 2045-6964
ISBN 978-1-78781-057-0

Web and Print Publication
www.gov.scot/socialresearch

PPDAS435846 (06/18)