

Improving the Protection of Wild Mammals in Scotland

A Consultation

October 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

Ministerial foreword



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

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

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

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

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

legislative reform with particular regard to interpretation and enforcement.

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



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

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Introduction

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

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

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

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

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

The Act is available via the following web link:

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

Lord Bonomy's report is available at:

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

CONSULTATION QUESTIONS

1. Features of Language in the Act

Please see section 5 of Lord Bonomy's report.

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

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

Please answer Yes or No

Please explain your answer

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

Please answer Yes or No

Please explain your answer

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

Please answer Yes or No

Please explain your answer

1.4. Is “searching” relevant to any other subsections?

Please answer Yes or No

Please explain your answer

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

“to stalk”

Please answer Yes or No

“to search”

Please answer Yes or No

“to flush”

Please answer Yes or No

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

Please explain your answer

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

Please answer Yes or No

Please explain your answer

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

Please answer Yes or No

Please explain your answer

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

Please answer Yes or No

Please explain your answer

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.

Please explain your answer

2. Terriers

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

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

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

Please answer Yes or No

Please explain your answer

3. Mental State Required for Illegal Hunting

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

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

3.1 Do you agree with Lord Bonomy's suggestions which seek to provide greater clarity on the question of whether someone is hunting illegally (by finding ways to clarify the element of intent)?

Please answer Yes or No

Can you suggest ways in which we might do this?

Please explain your answer

4. Vicarious Liability

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

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

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

Please answer Yes or No

Please explain your answer

5. Burden of Proof

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

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

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

Please answer Yes or No

Please explain your answer

6. Time Limit for Prosecution

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

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

6.1 Do you agree with Lord Bonomy's recommendation that the time limit for prosecution under the 2002 Act be extended and harmonised with other statutes which create wildlife offences?

Please answer Yes or No

Please explain your answer

7. Any other comments

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

Annex A

Improving the Protection of Wild Mammals in Scotland

RESPONDENT INFORMATION FORM

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

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

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

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

Information for organisations:

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

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

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

- Yes
 No

Responding to this Consultation

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

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

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

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

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

Handling your response

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

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

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

Next steps in the process

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

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

Comments and complaints

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

Scottish Government consultation process

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

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

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

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

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



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