

The use of dogs to control foxes and other wild mammals in Scotland

A Consultation

October 2021



Scottish Government
Riaghaltas na h-Alba
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Introduction

On 9 January 2019, the then Minister for Rural Affairs and the Natural Environment, Mairi Gougeon MSP, gave a statement on proposals for fox hunting reform in Parliament, as part of a statement on animal health and welfare. The proposals announced by the Minister were:

- The implementation of the majority of Lord Bonomy's recommendations¹
- A new limit of no more than two dogs to be used to flush foxes or other wild mammals from cover
- Consideration of a licensing scheme permitting more than two dogs to flush foxes or other wild mammals from cover where necessary for the purposes of pest control; and
- Provision to discourage the establishment in Scotland of the practice known as "trail hunting" as this poses significant risks for wild mammals.

In the statement, the Minister said:

"..despite the ban on hunting introduced by the Protection of Wild Mammals (Scotland) Act 2002, it is clear to me that there remains considerable public concern about fox hunting in Scotland and doubts about the operability of the legislation as it currently stands."

The full transcript of this statement can be found on the [Scottish Parliament website](#).

Background

The Protection of Wild Mammals (Scotland) Act 2002 (the 2002 Act) primarily concerns the use of dogs to hunt wild mammals. This legislation does not entirely ban the use of dogs, but places significant restrictions on doing so.

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 2002 Act.) However, the 2002 Act also provides a number of exceptions which allow the limited use of dogs for certain situations including:

- Protecting livestock, ground-nesting birds, timber, fowl (including wild fowl), game birds, or crops from attack by wild mammals*
- Protecting human health*
- Preventing the spread of disease*
- Controlling the number of pest species*
- Sport (i.e. falconry and shooting)*

It also permits dogs to be used for the purposes of:

- Searching by an authorised person with no intention of harming a wild animal.
- The retrieval and location of shot hares and escaped, released, seriously injured, or orphaned mammals.

The full 2002 Act is available [online](#).

¹ [In his Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#)

* 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.

Review of the Protection of Wild Mammals (Scotland) Act 2002

Ongoing concerns about the effectiveness of the legislation, and about the use of packs of dogs to flush foxes, led the Scottish Government to appoint Lord Bonomy to undertake a review of the operation of the legislation. The report was published in November 2016.

The review came to two main conclusions; first, that *'there are aspects and features of the legislation which complicate unduly the detection, investigation and prosecution of alleged offences'* under the 2002 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'*.

Among the proposals in the review were that:

- The language of the 2002 Act should be reviewed with a view to removing inconsistencies in language and introducing greater consistency and clarity of expression (including specific changes recommended to the wording of section 1 of the 2002 Act)
- Consideration should be given to appointing part-time independent monitors 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
- Consideration should be given to providing that the onus of establishing that an activity falls within one of the exceptions detailed in the 2002 Act should lie upon the person accused of an offence
- The time limit for bringing prosecutions under the 2002 Act should be extended.

Lord Bonomy's report is available on the [Scottish Government website](#).

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 exploring the potential for a new monitoring scheme, and
- (ii) consulting the public regarding Lord Bonomy's other recommendations.

The public consultation on Lord Bonomy's suggested reforms to the 2002 Act took place between 6 October 2017 and 31 January 2018, and received 18,792 responses. These included 295 'substantive' (i.e. personalised) submissions and 18,497 responses submitted through five different campaigns. The consultation and analysis of the responses can be found on the [Scottish Government website](#).

Alison Johnstone, MSP consultation

On 24 June 2019, Alison Johnstone, Scottish Green Party MSP, launched a consultation on her potential member's bill² in which she proposed a number of amendments to the 2002 Act. The key proposals were:

“ending the use of dogs in flushing and hunting wild mammals, including foxes and hares”

“establishing that Red Fox, Brown Hare and Mountain Hare are all protected, and that any killing may be carried out only under licence”

Ms. Johnstone's consultation received just under 10,000 responses. As of the date of the publication of this consultation, the analysis of the responses has not been published.

The consultation and draft proposal can be found on the [Scottish Parliament website](#).

While this document covers some of the same issues, the Scottish Government proposals for fox hunting reform, outlined on page 2, are different from those proposed by Ms. Johnstone and require separate public consultation.

This consultation is available to all members of the public, regardless of any response provided to previous consultations.

Comparison to UK law

In England and Wales, the [Hunting Act 2004](#) prohibits the hunting of wild mammals with more than two dogs, following the conclusion of the [Burns Report](#) in 2000 that this form of fox hunting "*seriously compromises the welfare of the fox*" as "*death is not always effected by a single bite to the neck or shoulders by the leading hound*".

In Northern Ireland, the hunting of certain wild mammals, including foxes, rabbits and hares is permitted. John Blair, a Member of the Northern Ireland Assembly, has proposed a Bill to restrict the use of dogs to hunt mammals in Northern Ireland. Further information about that Bill can be found on the [Northern Ireland Assembly website](#).

Consultation proposals

As the Scottish Government has already consulted on the recommendations made by Lord Bonomy in his review of the 2002 Act, this consultation seeks views on the proposals made by the Minister for Rural Affairs and the Natural Environment on 9 January 2019 as they pertain to the hunting of wild mammals with dogs.

The focus of the Scottish Government's intentions in this area is to enhance animal welfare and to significantly reduce the risk of wild mammals being killed by packs of hounds. It is for these reasons that the then Minister for Rural Affairs and the Natural Environment, Mairi Gougeon MSP, announced the following proposals in 2019.

² A Member's Bill is a public Bill introduced by a member of the Scottish Parliament who is not a member of the Scottish Government.

Limit on number of dogs

Lord Bonomy did not recommend a limit on the number of dogs allowed to flush a fox from cover to waiting guns. However, in his review he noted that:

“there are occasions ... when a fox is caught and killed by the hounds before it can be flushed from cover into the open and when a fox is wounded by the guns when it emerges from cover and is killed by the hounds” and that “in general 20% or more of foxes disturbed by hunts are killed in this way by hounds”.

Lord Bonomy also noted that there were legitimate grounds for suspicion that the present arrangements were providing cover for the unlawful use of dogs, contrary to the intention of the 2002 Act, with the associated concerns about welfare of foxes and other wildlife.

Licensing use of more than two dogs

In his review of the 2002 Act, Lord Bonomy acknowledged that in some types of terrain it may be difficult to use alternative methods of pest or fox control, such as lamping or the use of night-vision equipment, and that the use of a pack of dogs may be the most effective option.

“...imposing such a restriction [the use of only two dogs] could seriously compromise effective pest control in the country, particularly on rough and hilly ground and in extensive areas of dense cover such as conifer woodlands.”

The Scottish Government is therefore exploring the introduction of a licensing scheme that would allow the use of more than two dogs where no other method of control would be effective in the particular circumstances.

While the exact details of any licensing arrangements for the use of more than two dogs are still to be developed, there are established and well-understood approaches to licensing of wildlife management operations set out in section 16 of the [Wildlife and Countryside Act 1981](#). Following a similar model could mean that a licence would only be granted if, for example, the licensing authority was satisfied that the use of more than two dogs:

- was for a specified purpose, for example, the prevention of serious damage to livestock, and;
- that there was no satisfactory alternative method of control available.

Any licensing scheme would also consider details such as the period of validity of a licence granted, the geographical area that it covers, and any reporting duties on the licence-holder (number of foxes culled etc.).

Any licensed operations would be subject to monitoring to ensure compliance with the law and with licence conditions. Licences could be withdrawn for non-compliance with monitoring or breaches of conditions.

Prevention of trail hunting

The description of trail hunting provided by Lord Bonomy in his review was;

"...the hunting of a scent laid manually in such a way as best to simulate traditional mounted hunting activity. The trail is laid along the line a fox might take when moving across the countryside. Trail hunters use animal-based scent, primarily fox urine, a scent with which the hounds are familiar and with which it is intended they should remain familiar."

In England and Wales, trail hunting has been established following the prohibition of hunting wild mammals with more than two dogs by the 2004 Act. There have been occasions where packs hunting a trail have encountered a fox and the fox was hunted in contravention of English law. This situation was acknowledged by Lord Bonomy:

"However, it is worthy of note that the way in which some mounted hunts now operate in Scotland and the practice by mounted hunts of trail hunting in England and Wales have both given rise to suspicion that organised mounted hunts have continued to hunt foxes with a pack of hounds in contravention of the legislation."

The pre-emptive action to prevent trail hunting becoming established in Scotland has been proposed by the Scottish Government to avoid it being used as a cover for illegal hunting, following the introduction of a two dog limit. This could be by banning the use of animal-based scents or any other scent that seeks to mimic the scent of wild mammals for the purpose of providing a trail for dogs to follow.

Drag hunting also continues to be widely practised in England and has occasionally been practised in Scotland in the past. However, although they share common elements, there are some key differences between drag hunting and traditional mounted fox hunts, e.g. drag hunting typically uses an artificial scent such as aniseed or a human based scent, and is undertaken in short bursts over a pre-determined course that covers a fixed distance which has been agreed in advance with the landowner.

As it does not involve the hunting of live animals, drag hunting is legal in both Scotland and England and Wales and the Scottish Government is not proposing to prohibit this practice.

Hare-coursing

The 2002 Act prohibits the hunting of hares with dogs in Scotland (hare coursing). However, we are aware that illegal hunting continues in some parts of Scotland. As well as the welfare implications, those involved in hare coursing cause significant problems for people living in rural communities, including disturbance of livestock, damage to crops and fields and vandalism of property such as fences.

We are therefore, seeking your views on whether there are amendments we could make to strengthen the law to tackle hare-coursing.

Responding to this Consultation

We are inviting responses to this consultation by 15 December 2021.

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.gov.scot/environment-forestry/dog-use-to-control-foxes-and-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 15 December 2021.

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

The use of dogs to control foxes and other wild mammals in Scotland Consultation
Wildlife Legislation Team
The Scottish Government
Area 3H-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 this 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 WildMammalsActConsultation2021@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.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

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.

Respondent information form

The use of dogs to control foxes and other wild mammals in Scotland

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

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

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

Consultation questions

Section 1 – limit on the number of dogs used to flush wild mammals

1. In situations where the use of dogs is permitted, including searching for or flushing a wild mammal to waiting guns, do you think the Scottish Government should limit the number of dogs that can be used to two?

Yes No Don't Know

2. If a two dog limit were to be introduced, should the Scottish Government introduce licensing arrangements to allow the use of more than two dogs in certain circumstances?

Yes No Don't Know

If you answered yes, please briefly explain the circumstances under which more than two dogs would be needed (max 150 words).

3. If licensing arrangements to permit more than two dogs in certain circumstances were to be introduced, should there be a limit to the number of dogs that could be used? E.g. no more than four dogs, six dogs etc.

Max. number No Limit Don't Know

Section 2 – trail hunting

4. Do you agree that the Scottish Government should ban trail hunting?

For the purposes of this consultation we are defining trail hunting as:

‘The hunting of a scent laid manually in such a way as best to simulate traditional mounted hunting activity. The trail is laid along the line a fox might take when moving across the countryside. Trail hunters use animal-based scent, primarily fox urine, a scent with which the hounds are familiar and with which it is intended they should remain familiar.’

Yes

No

Don't Know

5. Other than for the purpose of laying a trail for sport as outlined in question 4, are you aware of any other activities or circumstances which may necessitate the setting of an animal-based or artificial scent for dogs to follow?

Yes

No

Don't Know

If you answered yes to question 5, please explain the reason for your answer here (max 150 words):

Section 3 – mammals covered by the 2002 Act

6. For the purposes of this Bill do you agree with the current definition of wild mammal?

The 2002 Act defines a wild mammal as including ‘a wild mammal which has escaped, or been released, from captivity, and any mammal which is living wild’. However, rabbits and rodents³ are excluded from this definition. This means that this Act does not prohibit the use of a dog or dogs to hunt and kill a rabbit/s or rodent/s. However, some species of rodents such as beavers and red squirrels are afforded certain protections within other wildlife legislation⁴.

Yes

No

Don't Know

7. If you answered no to question 6, do you think that:

Rabbits should be included in this definition

All species of rodent should be included in this definition

Some but not all species of rodents should be included in this definition

None of the mammals listed should be included in the definition

Please add any further comments on this section here (max 150 words):

³ Rodents are mammals of the order Rodentia. Species of rodents found in Scotland include rats, mice, beavers, squirrels and voles.

⁴ Such as the [Wildlife and Countryside Act 1981](#) and the [Conservation \(Natural Habitats, &c. Regulations 2004](#).

8. For the purposes of this Bill, do you agree that a person should be allowed to use dogs to stalk, search and flush wild mammals for the purpose of controlling the number of a 'pest' species?

The 2002 Act permits the use of dogs to flush from cover or from below ground for a number of different purposes including the purpose of 'controlling the number of a pest species'. The 2002 Act defines pest species as; foxes, hares, mink, stoats and weasels.

Yes

No

Don't Know

9. For the purposes of this Bill do you agree with this definition of pest species?

The 2002 Act defines "pest species" as foxes, hares, mink, stoats and weasels.

Yes

No

Don't Know

10. If you answered no to question 9, do you think that:

Hares should be included in the definition of pest species

Stoats should be included in definition of pest species

Mink should be included in the definition of pest species

Weasels should be included in the definition of pest species

None of the mammals listed should be included in the definition of pest species

Please add any further comments on this section here (max 150 words):

Section 4 – hare coursing

Under the 2002 Act, it is an offence to use dogs to hunt brown and mountain hares (hare-coursing) however, we are aware that illegal hunting still continues in some areas. We are considering whether there are any further changes to the law which could discourage this practice.

11. Do you think the current legislation provides sufficient protection in order to tackle hare coursing in Scotland?

Yes

No

Don't Know

Please explain the reason for your answer here (max 150 words):

Section 5 – comments

12. If you have any other comments on the proposals we have set out in sections one to four of this consultation or if there are any further measures relating to the hunting of wild mammals with dogs that you think we should consider please provide them here (max 350 words).

Section 6 – Evaluation

Please help us improve our consultations by answering the questions below.
(Responses to the evaluation will not be published).

Question 13: How satisfied were you with this consultation?

- | | |
|------------------------------------|--------------------------|
| Very dissatisfied | <input type="checkbox"/> |
| Slightly dissatisfied | <input type="checkbox"/> |
| Neither satisfied nor dissatisfied | <input type="checkbox"/> |
| Slightly satisfied | <input type="checkbox"/> |
| Very satisfied | <input type="checkbox"/> |

Please enter comments here

Question 14: How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?

- | | |
|------------------------------------|--------------------------|
| Very dissatisfied | <input type="checkbox"/> |
| Slightly dissatisfied | <input type="checkbox"/> |
| Neither satisfied nor dissatisfied | <input type="checkbox"/> |
| Slightly satisfied | <input type="checkbox"/> |
| Very satisfied | <input type="checkbox"/> |
| Not applicable | <input type="checkbox"/> |

Please enter comments here



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The Scottish Government
St Andrew's House
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EH1 3DG

ISBN: 978-1-80201-563-8 (web only)

Published by The Scottish Government, October 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS964006 (10/21)

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