

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

Scottish Land & Estates is a member organisation representing landowners and land-based businesses across Scotland. Given the main impact of this legislation falls on those owning, managing and making a living from rural land, land occupiers and their staff, we welcome the opportunity to input to the Scottish Government's legislative review of The Protection of Wild Mammals (Scotland) Act 2002 ("the Act") led by Lord Bonomy.

Background to the review

Scottish Land & Estates considers it good practice for legislation to be reviewed after a period of time to assess its operation and functionality, although this should be on the basis of the law as it stands and not what the law is in other jurisdictions. We agree with the aim of this review of the Act outlined in the Scottish Government press release of 26th December 2015 which observed the balance between protecting foxes and other wild mammals, while simultaneously allowing for effective and humane control. There is no doubt that it is vital that the review is necessarily factual and evidence based and not clouded by emotion or politics. We note that it is not within the remit of the review to consider whether predator control is necessary to protect livestock or wildlife or to consider other types of wildlife legislation unless it has a bearing on the Act and we have therefore limited our comments to what is within the scope of the review.

The Act

It is our view that the Act is working at present without the need for any amendment. The Act does as intended: prohibiting the chasing and killing of foxes with dogs, while recognising that flushing is a significant form of fox control. It would seem that the clear intention of the Scottish Parliament through the Act, namely the humane despatch of target or pest species by shooting, is being met.

The use of hounds to flush wild mammals to guns has been undertaken under the Act for the past fourteen years and was widely accepted at the time of legislating, including by the then Rural Affairs Committee of the Scottish Parliament. Using a full pack of dogs for flushing is an essential form of fox control, not least in areas where alternatives such as lamping are impractical. Any attempt to restrict the number of dogs would make it almost impossible to flush foxes from cover. We oppose the setting of any arbitrary limit less than a full pack without substantive evidence that this is more effective and humane. From a practical point of view two dogs in contrast to a pack of dogs may be less likely to locate foxes when drawing in large forestry blocks for instance and if two dogs do find a fox the pursuit may be more protracted before the fox is flushed out and shot than if a larger number of dogs were used. We would draw attention to the research which has been carried out in this area:

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308553/FOI_Hunting - 27 March 14 6454 Annex A Research.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308553/FOI_Hunting_-_27_March_14_6454_Annex_A_Research.pdf)

Any removal of current exceptions or other amendment may have social and economic implications for rural communities as well as wider environmental and animal husbandry implications. We trust that the Scottish Government in recognising the importance of Scotland's rural economy and our fragile rural communities will consider the Act in that wider context too.

Policing and Enforcement

We understand that there has been open co-operation between hunts in Scotland and Police Scotland and its predecessors since the law came into force. Activities of hunts are transparent and undertaken within the operation of the law as it stands. This was recognised in evidence given by the police to the Rural Affairs, Climate Change and Environment Committee of the Scottish Parliament at an evidence session on 13th January of this year. We are aware through partnership working that Police Scotland has robust procedures in place to deal with all rural and wildlife crime and we have no reason to believe that it does other than investigate thoroughly.

Under the Act a constable who suspects with reasonable cause that a person has committed or is committing an offence may, without warrant, arrest that person; search that person, and search or examine any associated vehicle, animal or article if the constable suspects that evidence in connection with the offence is likely to be found; seize that evidence, including a vehicle or animal and enter land, other than a dwelling, to exercise the power to search. These are comprehensive powers and we are satisfied that in the rare instance where evidence suggests any criminality, a prosecution will be brought under the Act and if substantiated will succeed. Members of the public can of course report any matter on 101 and where any campaigning organisation feels that the law is being broken it should obviously take its concerns to the police in the first instance.

The Act also has to be seen in the wider legislative context. For instance where a case was carefully considered by a Specialist Prosecutor within the Wildlife and Environmental Crime Unit who concluded that there was sufficient evidence to proceed and libelled a charge of the Protection of Wild Mammals (Scotland) Act 2002, Section 1(1) with an alternate charge of the Wildlife and Countryside Act 1981, Section 11G(i) (intentionally or recklessly kill a wild animal). The prosecution was successful as the prosecutor accepted a plea of guilty to the alternate charge.

Therefore it is our firm view that while a review of the Act is welcome, there is at this time no need for any amendment to the Act and we would support the status quo, which we suspect on the basis of wider opinion surveys is also the accepted view of the public.

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March 2016