

Hunting with Dogs (Scotland) Bill

Business and Regulatory Impact Assessment

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Scottish Government
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Purpose and intended effect

Background

The Hunting with Dogs (Scotland) Bill ("the Bill") will repeal and replace the Protection of Wild Mammals (Scotland) Act 2002 ("the 2002 Act") which makes it an offence to hunt a wild mammal using a dog in Scotland except in limited specified circumstances.

The Bill will broadly replicate the core provisions of the 2002 Act but will address the inconsistencies and ambiguities in the language of the 2002 Act to make the law easier to understand and to enforce. The use of dogs to hunt wild mammals in Scotland will continue to be banned except in limited, specified circumstances and for certain permitted activities. Those activities do not include using a dog to chase or kill a wild mammal. Therefore, as was the position under the 2002 Act, it will be an offence to chase and/or kill a wild mammal using a dog.

In addition, the Bill will introduce new measures to:

- Limit the number of dogs that can be used to search for, stalk or flush wild mammals from cover above ground to two.
- Introduce a licensing regime for the use of more than two dogs to search for, stalk or flush wild mammals above ground in certain limited circumstances.
- Limit the number of dogs that can be used to search for or flush foxes or mink from cover below ground to one.
- Prohibit the activity known as trail hunting (the activity of directing a dog to find and follow an animal-based scent).

Objective

The objective of the Bill is to further protect the welfare of wild mammals in Scotland. The Bill is being introduced to address widespread concerns that foxes and other wild mammals are being hunted (and killed) by dogs in contravention of the intention of the 2002 Act. It therefore seeks to minimise the risk of wild mammals being caught and killed by dogs in the course of hunting by placing restrictions on their use.

Rationale for Government intervention

Since the 2002 Act came into force, the Scottish Government has continued to hear concerns from stakeholder organisations and the public about hunting with dogs. The legislation has been criticised for being complex, and needs to have greater clarity to make it more effective.

In particular, Police Scotland identified weaknesses in the 2002 Act, including the absence of definition of certain expressions, the number and complexity of the overlapping exceptions to the offence of "deliberately hunting a wild animal with a dog" and a general consequent lack of clarity in the legislation. As a result of these issues, they explained that obtaining sufficient evidence to prove the principle offence of deliberately hunting a wild mammal with a dog was extremely difficult.

Stakeholders also offered the view that the low number of successful prosecutions under the 2002 Act may be explained in part by the difficulties of interpretation presented to both police and prosecutors.

In order to address these concerns, in 2015 the Scottish Government appointed Lord Bonomy to undertake a review of the 2002 Act to consider whether it provided the necessary level of protection for foxes and other wild mammals, while at the same time allowing effective and humane control of those animals where needed.

Lord Bonomy's report to the Scottish Government (the "Bonomy Report¹") made a number of recommendations, and he 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, and that such illegality raised concerns about the welfare of foxes and other wild mammals.

The Bonomy Report also highlighted that the 2002 Act contains inconsistencies and ambiguities in language that unduly complicate the detection, investigation and prosecution of alleged offences, and Lord Bonomy recommended that it be amended to provide greater consistency and clarity.

The Scottish Government accepted the majority of Lord Bonomy's recommendations for legislative reform with particular regard given to the issues raised with the interpretation and enforcement of the 2002 Act.

The proposed changes to the legislation are in step with the Scottish Government's vision of a society which treats all with kindness, dignity and compassion, respects the rule of law, and acts in an open and transparent way. This will help to increase the protection given to wild mammals in Scotland.

By reducing the risk to wild mammals of being chased and killed by dogs, and clarifying the language used in the legislation, we would progress the 2018 National Performance Framework Environmental vision of; *"We take a bold approach to enhancing and protecting our natural assets and heritage."*

In doing so we would also contribute to the 2015 'Life on land' UN Sustainable development goal; *"15.5 Take urgent and significant action to reduce the degradation of natural habitats, halt the loss of biodiversity and, by 2020, protect and prevent the extinction of threatened species"*

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

Consultation

Within Government

Scottish Animal Welfare Commission have provided advice on the welfare needs of sentient animals and possible legislative routes to further protect their welfare.

Justice Directorate, Scottish Government provided advice on issues relating to offences and sentencing;

Justice analysts, Scottish Government have provided details of the prosecution of offences under the 2002 Act;

Crown Office & Procurator Fiscal Service (COPFS) have provided advice on the current court and prosecution arrangements;

Police Scotland have provided advice on the investigation of offences under the 2002 Act; and

NatureScot have provided advice on issues relating to licensing arrangements for wildlife management purposes.

Public Consultation

The public consultation on Lord Bonyon'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 vast majority of respondents took advantage of a "free-text" comments facility in the consultation to say that they were in favour of further restrictions with a particular focus on securing an end to mounted fox hunting.

Full analysis of this consultation can be found on the Scottish Government website².

The majority of respondents agreed that the 2002 Act would be improved if it included clearer language and further restrictions, including:

- specifying a maximum number of dogs allowed to be used in flushing activities in the legislation,
- limiting the number of dogs used underground to one in legislation,
- providing a definition of cover

The Scottish Government public consultation on the Use of Dogs to Control Foxes and other Wild Mammals in Scotland ran from 29 October 2021 to 15 December 2021. Overall the consultation received close to 11,000 responses, 10,417 of which were received through the online consultation platform. Detailed analysis of the consultation responses is due to be published later in 2022; a preliminary overview of responses received through the online platform is provided below.

² [Improving the Protection of Wild Mammals in Scotland Consultation Analysis](#)

The majority of respondents agreed that the Scottish Government should limit the number of dogs allowed to search for or flush a wild mammal from cover to two, and that trail hunting should be prohibited.

Stakeholder engagement

As well as the public consultation, the Wildlife Legislation team met with the following stakeholders to discuss the consultation proposals in more depth:

- Game and Wildlife Conservation Trust
- British Association of Shooting and Conservation
- Scottish Gamekeepers Association
- Scottish Society for the Protection of Animals
- National Farmers Union Scotland
- OneKind
- Scottish Countryside Alliance
- League Against Cruel Sports
- International Association for Falconry
- Royal Society for the Protection of Birds
- National Sheep Association

A short summary of the main issues raised by stakeholders is provided below. A more detailed analysis of the stakeholder discussions will be included alongside the full analysis of the Use of Dogs to Control Foxes and other Wild Mammals in Scotland consultation and will be published later in 2022.

Key animal welfare stakeholders agree that there is a need to revise the 2002 Act, and are generally supportive of the measures in the Bill, in particular, placing a limit on the number of dogs allowed to flush a wild mammal from cover, and the pre-emptive ban of trail hunting. However, some call for a full ban on the use of dogs to hunt wild mammals, specifically foxes, above and below ground.

Key land management stakeholders have reiterated that predator control using dogs is essential to protect livestock, especially when farm land is adjacent to dense forestry blocks. In particular, farmers are concerned that the limit of two dogs to flush a wild mammal from cover will interfere with predator control, stating that in certain circumstances, the only way to carry this out is by flushing a fox with a pack of dogs. Hunt supporters generally oppose any limit placed on the number of dogs allowed to flush foxes from cover.

Business

We do not intend to interview 6-12 businesses, as a key conclusion is that, for the reasons set out below, the provisions in the Bill will have a minimal impact on business.

Wildlife management which utilises dogs is not confined to business activities. It is undertaken by a variety of individuals, organisations and businesses for a range of purposes on both a commercial and non-commercial basis. Where wildlife management using a pack of dogs is undertaken for the purposes of predator control, it can be undertaken by businesses operating as a predator control service or by individuals or groups on an informal, ad hoc basis.

The provisions in the bill cover all of the purposes for which dogs may be used in the management of wild mammals and do not differentiate between those undertaking those activities on a commercial basis or for other reasons e.g. conservation or recreational shooting or falconry.

We therefore targeted our stakeholder consultations towards organisations that which represented groups or individuals who undertake wildlife management with dogs for a range of different purposes and those who might engage a group or individual to undertake wildlife management on their behalf.

Options

Option 1:

Do nothing, and retain the existing provisions in the 2002 Act.

Option 2:

Adopt the provisions of the Bill.

Sectors and groups affected

The Bill will impact professional 'pest control' business that utilise dogs to locate wild mammals so that they be humanely dispatched, those that breach wildlife legislation, the enforcers of the legislation and the designated licensing authority including the following groups / organisations;

- Police Scotland
- Crown Office and Procurator Fiscal Service (COPFS)
- Scottish Courts and Tribunals Service (SCTS)
- Scottish Prison Service (SPS)
- Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA)
- NatureScot

Benefits

Option 1

There are no additional benefits to be gained by retaining existing provisions.

Option 2

All of the changes proposed in the Bill will benefit the welfare and protection of wild mammals. The key benefit of the amendments made by the Bill is that:

- the risk of wild mammals being chased and killed by dogs should be significantly reduced, while allowing wildlife management to continue,
- the prohibition of trail hunting will seek to pre-emptively prevent this activity being used in Scotland as a cover for illegal hunting as has been seen in England and Wales, and
- the clarity in the language used, and definition of appropriate terms will remove the complexity that Police Scotland and the Crown Office and Procurator Fiscal Service currently face when investigating and prosecuting offences under the 2002 Act.

Costs

Option 1

There would be no additional financial costs from retaining existing provisions. However, in his review of the 2002 Act, Lord Bonomy's found 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, and that such illegality raised concerns about the welfare of foxes and other wildlife.

Doing nothing would ignore those findings, alongside the views expressed in response to Scottish Government consultations that clearly signal the public's growing concerns regarding wild animal welfare and in particular the use of dogs to hunt wild mammals.

This approach would also not address the need to clarify the language of the Act in order to clear up the ambiguities and close the loopholes in the existing legislation.

Retaining the 2002 Act will continue to unduly complicate the investigation and prosecution of hunting with dogs offences and pose difficulties in ensuring illegal hunting is effectively addressed. It would also not address the risk of wild mammals being accidentally killed by a pack of dogs during the course of permitted hunting activities.

Option 2

The estimated financial costs arising from the provisions in the Bill are outlined in detail in the Financial Memorandum accompanying the Bill. There will be general costs to the Scottish Government of introducing and drafting the Bill, and drafting the associated guidance. There will also be general introductory costs for many of the organisations involved in relation to staff training and procedural changes.

It is anticipated that changes to the legislation made by the Bill may initially result in a small increase in court cases relating to offences of hunting a wild mammal using a dog because the Bill removes some of the current barriers to enforcement of the existing prohibition. However, the broader expectation is of a longer-term reduction in the total number of cases as a result of clearer legislation, thereby removing any doubt as to what constitutes an offence.

There will also be a cost to NatureScot as the designated authority responsible for issuing licences to use more than two dogs to search for or flush wild mammals.

This cost will not be passed on to the applicant however, as NatureScot do not currently charge for any licences relating to wildlife management.

However, although NatureScot do not currently operate licences on a cost recoverable basis the Scottish Government/Scottish Green Party Shared Policy Programme contains the commitment to review the wider species licensing system and assess the potential to apply the principle of full cost recovery to species licensing. The Bill will therefore include provisions to allow for the possible introduction of charges for licences issued under these provisions at a later date.

Scottish Firms Impact Test

The intention is not to interview individual businesses, as the proposed changes will minimally affect businesses that respect wild animal welfare and the associated legislation.

The purpose of this Bill is not to ban the use of dogs to manage wildlife, including for the purposes of predator control.

It does however, seek to limit the use of predator control practices that carry the most risk of harm to wild mammals. This could in turn have some impact on how predator control businesses that currently provide a service using a pack of dogs operate.

In his review of the 2002 Act, Lord Bonomy noted that prior to the 2002 Act, about 18,000 foxes were killed each year by the various fox control methods employed in Scotland. Although only an overall approximation can be made due to the way in which such data is collected, of that number of foxes killed, 92% (16,600)³ did not involve the use of a pack of dogs. Lord Bonomy also indicated that this percentage has increased in the time since the 2002 Act was enacted.

As only 8% of foxes are killed using a pack of dogs, it can therefore be seen that a very large majority of predator control will continue without being affected by the provisions in the Bill.

There is some evidence to suggest that using two dogs may be less effective than a pack when flushing a fox from cover to be shot, however businesses that currently provide a predator control service using a pack of dogs will still have a range of legal predator control services that can be offered, including lamping, using a maximum of two dogs to search for, stalk or flush a wild mammal from cover above ground, or in limited circumstances, using more than two dogs under licence for this activity.

Lord Bonomy also estimated that there are between 10 and 13 foxhound packs operating a predator control service in Scotland, some of which are mounted hunts and some are hill packs.

In his report Lord Bonomy noted that mounted hunts providing a predator control service, were reported to operate as sporting societies funded by subscribers who follow the hunt on horseback or on foot, and ownership of the pack can be independent of the hunt. The Scottish Hill Packs Fox Control Association was also said to collect a subscription from its membership, comprising farmers and landowners, for the use of services of the pack for predator control. The pack could also be hired by non-members on payment of a fee.

The Bill will have no direct effect on the subscriptions paid to such predator control services, as the provisions only limit the number of dogs that can be used, not the number of people who may undertake that activity. The Bill will also have no impact on activities that do not involve the hunting of wild mammals, such as drag hunting.

³ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002 - gov.scot](http://www.gov.scot/Report-of-the-Review-of-the-Protection-of-Wild-Mammals-(Scotland)-Act-2002)
(www.gov.scot)

Subsequently, the Bill may have an impact on businesses that require the use of predator control services. There may be occasions where the use of only two dogs would be more expensive or not cost effective to flush foxes from cover, due to the length of time it would take two dogs to cover certain terrain, and the reduced likelihood that they would find and flush a fox.

However, it is expected that this would be mitigated by the licensing scheme which will permit the use of more than two dogs in circumstances where only two would not be practical.

Dogs are also used to search for, stalk or flush wild mammals for other wildlife management activities, including deer stalking, falconry, and conservation projects.

During our stakeholder engagement, no significant issues relating to any negative impacts on businesses undertaking predator control using dogs were identified.

We anticipate that organisations undertaking such activities will be able to continue to operate with some minor adjustments to their business practices, as has been seen in England and Wales, following the introduction of a two dog limit by the Hunting Act 2004.

Competition Assessment

There are no market effects considered to result from the proposed Bill. Therefore, there is considered to be no competition concern to suppliers and consumers; including those providing and using public services.

Consumer Assessment

These proposals are not thought to have an impact on consumers as the amendments to the existing law and the creation of the new offences will only impact on those undertaking hunting activities, committing the offences under the Bill, those enforcing the rules and the licencing authority.

Test run of business forms

No new business forms are proposed. A licence application form will be required to apply to use more than two dogs. They will be developed by NatureScot in the same format as other wildlife management licences currently operated by them. NatureScot will consult with stakeholders as part of the development process for the new licensing regime including seeking feedback on any accompanying forms and guidance.

Digital Impact Test

There are no new digital impacts considered to result from these proposals, as the licence authority will process applications using existing arrangements.

Legal Aid Impact Test

The proposed changes to the legislation are not expected to have a significant effect on the number of people applying for legal aid in relation to prosecutions of the new offences. It is considered reasonable that the same proportion of individuals will need to apply for legal aid in any case.

Potential costs relating to the Scottish Legal Aid Board (“SLAB”) are outlined for scenarios of increased numbers of prosecutions in Table 1 below. Further details of these costs are outlined in the financial memorandum.

These figures are based on the following data:

In the last ten years, an average of 6.9 cases relating to the 2002 Act were prosecuted by summary procedure and 0.1 by solemn procedure. The average cases costs are estimated to be £604 for summary proceedings and £1,622 for solemn proceedings.

Table 1: Impacts of Bill on Scottish Legal Aid Board (SLAB)

	Procedure	number of people prosecuted	cost of scenario	additional costs
current costs to SLAB	Summary	6.9	£4,168	£0
	Solemn	0.1	£162	
3 fold increase in prosecutions	Summary	20.7	£12,503	£8,660
	Solemn	0.3	£487	
5 fold increase in prosecutions	Summary	34.5	£20,838	£17,319
	Solemn	0.5	£811	
10 fold increase in prosecutions	Summary	69	£41,676	£38,968
	Solemn	1	£1622	

Enforcement, sanctions and monitoring

Police Scotland will enforce the Bill and therefore continue to report cases, and respond to complaints by the public in the same way as they do currently under the 2002 Act.

The provisions of the Bill are intended to strengthen and simplify the enforcement of the legislation by providing clarity in the language used, and definition of appropriate terms. Thus removing the complexity that Police Scotland and the Crown Office and Procurator Fiscal Service currently face when investigating and prosecuting offences under the 2002 Act.

Implementation and delivery plan

The proposed changes are intended to come into force in 2023, subject to Parliamentary process and timing, on a date to be appointed by the Scottish Ministers in regulations, supported by Scottish Government guidance for enforcement agencies.

Post-implementation review

The Scottish Government Wildlife Management Team has a close working relationship with key stakeholders across Scotland and will monitor the development of this policy change and its application in practice.

Under section 26B of the Wildlife and Countryside Act 1981 Scottish Ministers are required to report every calendar year on offences which relate to wildlife, including information on incidences and prosecutions on research and advice relevant to those offences.

Summary and recommendation

We recommend that the Bill (Option 2) is pursued due to the costs and benefits and the wider impacts of the policy set out here, and in the accompanying documents published in support of the Bill.

Summary costs and benefits table

Option	Total benefit per annum:	Total cost per annum:
1: Do Nothing		
	<ul style="list-style-type: none"> • No additional benefits. • A small number of businesses can continue to operate without change, using a full pack of dogs for predator control. 	<ul style="list-style-type: none"> • Retaining the 2002 Act will continue to unduly complicate the investigation and prosecution of hunting with dogs offences and pose difficulties in ensuring illegal hunting is effectively addressed. • It would also not address the need to reduce the risk of wild mammals being accidentally or deliberately killed by a pack of dogs during the course of permitted hunting activities.
2: Adopt the Bill		
	<ul style="list-style-type: none"> • The risk of wild mammals being chased and killed by dogs should be significantly reduced, while allowing the very large majority of wild mammal management to continue without change. • Acknowledges that a significant portion of the Scottish public finds using a pack of dogs to chase and kill a wild mammal objectionable. • The prohibition of trail hunting will preemptively close a potential loophole as seen in England and Wales. • The clarity in the language used, and definition of appropriate terms will remove the complexity that Police Scotland and the Crown Office and Procurator Fiscal Service currently face when investigating and prosecuting offences under the 2002 Act. • There is the expectation of a longer-term reduction in cases relating to offences under the Bill. 	<ul style="list-style-type: none"> • The organisations involved in the enforcement of the Bill and the operation of the licensing scheme may see a small cost associated with staff training. • There may be a small, initial increase in cases relating to offences under the Bill. • A small number of predator control businesses will be required to adopt different way of working. • NatureScot will see an increase in the number of licences processed.

Declaration and publication

Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that
(a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and
(b) that the benefits justify the costs.

I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:
Mairi McAllan
Minister for the Environment and Land Reform

Date:
24 February 2002

Scottish Government Contact point: Scottish Government Wildlife Legislation Team



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