

12<sup>th</sup> November 2021

Dear Minister,

**Re: Consultation - The use of dogs to control foxes and other wild mammals in Scotland**

We are writing to you regarding the consultation launched by the Scottish Government on 29 October. Again, this consultation does not consult on the recommendations of the Bonomy Review, but rather on the additional proposals suggested in Mairi Gougeon's statement of 9 January 2019, which not only announced a two dog limit to be introduced, but also a possible licensing scheme for the use of more than two dogs, as well as a pre-emptive ban on trail hunting. Given the fact that the consequences of these proposals are extremely serious for farmers, land managers and all those responsible for the management of pest species in Scotland, as well as the welfare of the livestock and wildlife which that management helps protect, we have a number of concerns about the consultation. We are also concerned that until we see any draft bill, following these various consultations and proposals, we will not have a clear view of the impact of the changes proposed. We may not even have details about what a licensing system would look like if the bill simply gives the minister the power to introduce licensing, or allows existing powers to be used. There is, in our view, a strong case for consulting on any draft legislation and setting out the detail of any licensing alongside any bill, if it is not contained in the bill itself. This would enable Parliament to take an informed view as to whether effective and humane fox control will remain possible, and the welfare of livestock and wildlife will remain protected. Any proposals should be fair and workable.

**Data**

When the consultation is responded to online via Citizen Space, only a name and email address is required to be given. As this is the means of response encouraged, it is highly likely that, for the vast majority of responses, there will be no way of determining whether those responses are from Scotland or from elsewhere. In contrast, the paper and downloadable form requires name, address, and telephone number, before a response will be accepted. We are not arguing that people from outside Scotland should not be able to respond, but that given the impact these proposals could have for rural Scotland, its communities, animals, and wildlife, the Government should be able to separate out responses from Scotland from the data as a whole. This will ensure a genuine understanding of the views of Scottish voters, including those who will be most directly impacted. We would expect this to be rectified as a matter of urgency and for those who have already responded to be contacted for their additional details.

**Restriction on responses**

There is a lack of space for full and detailed comment on these proposals. Respondents are limited to 150 words on selected questions and a final 350 for anything else. 150 words is hardly sufficient, for example, to set out the evidence surrounding the negative pest control and animal welfare implications of a two dog limit. Evidence from the peer-reviewed science and the clear findings of Lord Bonomy, as well as the views of those opposed to hunting, both before and since the ban in Scotland, who have supported packs flushing to guns and recognised that two dogs are inadequate, must be presented. It also leaves no room for

<b>T</b>	020 7840 9200	52 Grosvenor Gardens
<b>E</b>	<a href="mailto:info@countryside-alliance.org">info@countryside-alliance.org</a>	London
<b>W</b>	<a href="http://www.countryside-alliance.org">www.countryside-alliance.org</a>	SW1W 0AU

respondents to set out their personal experience of managing pest species, protecting both livestock and vulnerable species, such as ground nesting birds, and what these proposals will mean for them. The Government is not simply ignoring the scientific evidence but actively proposing a measure that contradicts that evidence, and the conclusions of their own independent review. This represents a significant, unjustified and disproportionate interference with rights under the ECHR, in particular with Art 1 (Protocol 1). Where such fundamental rights are engaged it is all the more important that the consultation should not be restricting responses unduly, especially from those who would be most directly affected and their property rights interfered with, as a result of these contradictory proposals.

## **Licensing**

The concept of licensing was first raised in January 2019. Since then, nothing more has been heard until this current consultation. This is the first time anyone has had the opportunity to comment on the prospect of licensing, and yet the consultation is devoid of any adequate detail, and with only 150 words allowed to explain the circumstances under which more than two dogs would be needed. Is it to be assumed from this that any future legislation will give powers to ministers to issue section 16 licences to derogate from the two dog limit, when the detail of what those licences might look like is undecided and only to be worked out after legislation has been passed; or will the scheme be part of any bill? The suggestion in the consultation that licences could be introduced along the lines of the process set out in section 16 based on a lawful purpose, on the basis of there being no satisfactory alternative, and subject to a possible range of conditions that could apply, hardly inspires confidence, not least because the consultation is based on the erroneous assumption that two dogs will suffice in most situations, when the reverse is true. If licences need to be the norm and not the exception, will these be individual licences, or would there be class or general licences? What would count as 'no satisfactory alternative'? What evidence would be needed from the farmer to show that the damage was 'serious'? Is a two per cent loss of lambs to foxes in the pre-licence year serious? That loss would have been against the background of widespread fox control, utilising a pack, so the restriction of a maximum of two dogs will only mean a greater loss the following year. Clarification on what level of loss the damage is considered serious needs to be explained. How will the licensing authority be satisfied that the farmer has tried all the other options such as fencing, housing, trying to shoot more at night? Will licences be granted which allow for the preventative culling of foxes where there is evidence of historical loss? In many areas foxes are culled to promote the conservation of wild birds. How will this be incorporated into a licensing system? There will be situations where a landowner has qualified for a licence but their neighbour has not, which will cause further complexities. The licensing process may be fraught with both practical and legal complications. Alongside all this uncertainty will be the constant threat of legal action by those who do not accept any form of fox control to be necessary. Unless licensing is open, fair, reasonable, proportionate and applied properly, it will raise serious legal questions.

## **Impact of and restriction and licensing on wildlife and protected sites**

The imposition of a two dog restriction, even with licensing, represents a significant change in the management of wildlife in Scotland. There appears to have been no assessment as to the impact of this legal change on vulnerable species and on protected sites, including European Protected sites. Similarly, the conditions of any licensing system could mitigate harm, but could equally exacerbate the pressure on wildlife generally, and on protected sites specifically. The impact of a new licensing regime required by a fundamental change in the law will need assessing. There must be a measure in place to assess possible negative

<b>T</b>	020 7840 9200	52 Grosvenor Gardens
<b>E</b>	<a href="mailto:info@countryside-alliance.org">info@countryside-alliance.org</a>	London
<b>W</b>	<a href="http://www.countryside-alliance.org">www.countryside-alliance.org</a>	SW1W 0AU

impacts prior to any implementation, and in the case of European Protected Sites full Habitat Regulation Assessments must be conducted at the appropriate moment, as the law requires. The new law, and certainly any new licensing system, must count as a 'plan or project' for the purposes of the Regulations. Can it be assumed that the same precautionary approach to these changes, and the likelihood of damage to European sites, will be taken as is so often deployed in respect of activities and land management practices that long pre-date designation?

### **Trail hunting**

If the Government followed the independent science and evidence, there would be no need to ban an activity that does not exist in Scotland. The Scottish Parliament, having previously listened to the evidence, accepted that packs were needed to flush to guns and legislated accordingly. Parliament accepted that in allowing flushing, there would be occasions when a fox was killed by dogs before it was able to be shot. They also accepted that even where dogs were the means of dispatch, what mattered was the speed and certainty of death. As Lord Bonomy noted: "The practice of using dogs or a single dog to dispatch another injured animal or orphaned cubs may seem to many distasteful. The same may be said of the sight of the breaking up of the carcass of a fox. However, the weight of the evidence, as noted in the Burns Report at paragraph 6.48, is that in the vast majority of cases the time to insensibility and death in these situations is no more than a few seconds. These provisions were enacted in the knowledge of the terms of the Burns Report..." As such, the hunts that had previously not flushed to guns changed their operational practice but were still able to provide a pest control service to farmers. Parliament recognised that so long as there was a need for pest control it was not important where the activity took place, the clothes worn or the means of transport deployed. All the evidence gathered by the then Rural Development Committee remains available. Nothing has changed in terms of the need for effective and humane fox control, or in terms of animal welfare considerations, that would justify the changes being proposed. Even those campaigning for a ban supported the use of packs to flush to guns.

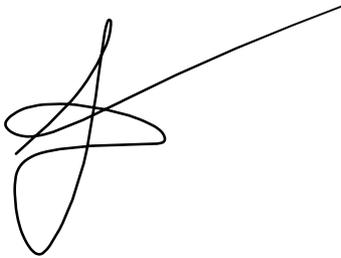
### **Misrepresentation of Bonomy and Burns**

The consultation document seeks to link the two dog limit introduced in England to the finding of the Burns Inquiry in that death is not always effected by a single bite. This is not simply wrong but profoundly misleading, as can be seen in Lord Bonomy's reference above. The full quote is: "Arguably, the precise cause of death is irrelevant. What is more critical is how quickly insensibility and death result and how much suffering, physical or mental, the fox experiences... There seems little doubt, however, that in the vast majority of cases the time to insensibility and death is no more than a few seconds, bearing in mind the great disparity between the size and weight of the fox and the hounds." Speaking in the House of Lords on 12 October 2004 Lord Burns said: "The committee did not have sufficient evidence to reach a clear conclusion on whether hunting involves significantly worse welfare effects than other legal methods of control." The two dog limit is entirely arbitrary and unrelated to Burns or to any welfare benefit. It was chosen by those promoting the hunting ban because they wanted to give the impression of supporting legitimate pest control, but opposing hunting for sport. They were also aware that a two dog limit would make pest control using dogs impractical in almost all situations. Their target was the hunting community and ensuring that no vestige of it could remain, not a consideration of welfare. Since then, opponents of hunting have come clean and, as they submitted to Lord Bonomy, do not believe fox control is necessary at all. Lord Bonomy rejected that argument, just as firmly as he did their suggestion of a two dog limit. Colleagues who were involved at every stage of

<b>T</b>	020 7840 9200	52 Grosvenor Gardens
<b>E</b>	<a href="mailto:info@countryside-alliance.org">info@countryside-alliance.org</a>	London
<b>W</b>	<a href="http://www.countryside-alliance.org">www.countryside-alliance.org</a>	SW1W 0AU

the passage of the Protection of Wild Mammals (Scotland) Act, the Hunting Act, the Burns Inquiry and everything since, are increasingly concerned by the misrepresentation of historical debate. To attempt to use Burns to justify a two dog limit smacks of desperation, faced with a proposal that is against all science, evidence and principle and may well face considerable scrutiny in Parliament and even the courts. It is also worth remembering that the argument of proponents of the original ban was that they did not like the chase or the kill by dogs, hence flushing to guns minimised the chase and meant the vast majority of foxes were shot. The peer-reviewed science comparing flushing to guns with two dogs and with a pack not only shows that a pack is more efficient in terms of numbers flushed, but that flushing occurs more quickly and prolonged periods of pursuit are reduced. If one accepts the arguments of those opposed to hunting then using a pack to flush must be preferable in welfare terms than using only two dogs.

I would greatly welcome an opportunity to meet to discuss these and wider issues, and I would ask for assurance, as a matter of immediate priority, that an amendment will be made to the online form for responding to the consultation, so it can be determined where those responses come from and sufficient evidence can be recorded.



Jake Swindells  
Director  
Scottish Countryside Alliance  
[jake-swindells@countryside-alliance.org](mailto:jake-swindells@countryside-alliance.org)