

**Consultation for a Member's Bill
'Protecting Scotland's Wild Mammals'**

Alison Johnstone MSP

Scottish Countryside Alliance Response 2019

Consultation Questions

1. Which of the following best expresses your view of the proposed Bill's aim to improve the protection and conservation of wild mammals by: ending the hunting of wild mammals with dogs; protecting foxes and hares; and tightening the criteria for issuing a licence for the killing of certain wild mammals?

Countryside Alliance Position:

Fully opposed

The passing of the Protection of Wild Mammals (Scotland) Act 2002 introduced a ban on the use of dogs to pursue and kill wild mammals, which those who promoted the ban claimed were the two aspects of traditional hunting which compromised animal welfare.

The Rural Development Committee - 10th Report 2001, Stage 1 Report on the Protection of Wild Mammals (Scotland) Bill – concluded:

"Two possible causes of suffering were described to the Committee: the chase, and the kill."

"It is not the use of a dog in itself that implies cruelty; but the method and intent with which it is used."

"We also support continuation of the present operations of the Scottish Hill Packs."

The Act continues to allow the use of dogs (both hounds and terriers) to flush to guns to protect livestock and wildlife. The use of dogs to flush to guns was supported by all sides during the passage of the Protection of Wild Mammals (Scotland) Act 2002. Nothing has occurred since which would justify changing this.

The Protection of Wild Mammals (Scotland) Act 2002 only allows the use dogs for clearly defined purposes as set out in the Act. These purposes do not include 'sport'.

Both fox and hare populations need to be managed. The consultation seems to suggest that wildlife management is not needed, especially in the case of foxes. This is contrary to all the evidence

The need for management is accepted by the Scottish Government; by Lord Burns's inquiry in England and Wales; and confirmed again by Lord Bonomy who conducted an independent review of the Protection of Wild Mammals (Scotland) Act 2002 at the request of the by the Scottish Government.

Lord Bonomy's report to the Scottish Government stated, *"The use of packs of hounds to flush out foxes to be shot remains a significant pest control measure, both to control the general level of foxes in an area as well as to address particular problems affecting a farm or estate."*

Brown hares and mountain hares are currently protected in the close season under the Wildlife and Countryside Act 1981 (as amended). The Wildlife and Natural Environment (Scotland) Act 2011 introduced closed seasons for the killing or taking of wild hares.

Brown hare: 1 February to 30 September

Mountain hare: 1 March to 31 July

Control of mountain hares usually takes place to protect young trees, mainly native montane shrubs and hardwoods, the main reason we have strict legislation on the control of wild grazing/browsing deer species and to reduce tick numbers associated with Lyme disease and louping ill.

Research has shown that mountain hares also thrive on managed grouse moors to a far greater extent than on unmanaged moors.

The question is misleading with regard to licences as it implies that licensing is already in place for killing wild mammals. This is not the case, with the exception of hares in the close season.

2. Which of the following best expresses your view of clarifying the offence of hunting (under the Protection of Wild Mammals (Scotland) Act 2002) so that:

- “deliberately hunts” becomes “intentionally or recklessly hunts”?

Countryside Alliance Position:

Fully opposed

Sherriff Paterson in *Procurator Fiscal, Jedburgh v Jonathan Riley & John Clive Richardson* (Jed Forest case) agreed with Lord Bonomy and noted that the use of the adverb “deliberately” “*was included to put beyond doubt that hunting is not something that could be done accidentally. It is designed to protect the innocent dog walker who has his dogs off their leads, whose dogs come across a fox, chases it and potentially kills it...*”

Unlike in England and Wales the Act’s definition of “to hunt” explicitly includes the activity of searching in the definition. The very broad scope of what amounts to hunting in Scotland makes it imperative that the legislation makes absolutely clear that a person’s dog sniffing in undergrowth (an activity within the definition of “to hunt”) does not amount to an offence unless the dog was being used deliberately.

By including the term ‘deliberately’ Parliament clearly wanted to make explicit that the hunting must be fully intended for a prosecution to succeed.

It should also be noted that in *Procurator Fiscal, Jedburgh v Trevor Adams* (the Adams case), Sherriff Drummond stated that “*the Act creates in section 1 the straightforward offence of deliberately hunting a wild mammal with a dog or dogs.*” Although Sherriff Drummond addressed a variety of interpretive issues, including the meaning of “hunt”, “stalking”, “searching” and “flush”, he did not have any problem with the existing wording of the offence and the inclusion of the word “deliberately”.

Lord Bonomy suggested a number of alternatives to the current wording of the offence from simply removing the word ‘deliberately’ to entirely new formulations, including “*intentionally or recklessly hunts a wild mammal with a dog*” He then stated that: “These suggestions may give rise to concern about the risk that setting a lower standard might lead to allegations against moorland dog-walkers whose pets set off unexpectedly in pursuit of a fox”, but then argues that these concerns are “misplaced” because “to act recklessly one must display gross negligence. Mere carelessness is insufficient.” However, this does not take account of the fact that hunting in Scotland does not just mean to hunt in the sense of pursue but also includes the hunting for (searching). As such the risk to dog walkers would seem self-evident and justifies the current wording of the offence and makes a higher standard than recklessness or merely permitting essential.

Moreover, at no point does Lord Bonomy actually present any evidence that the courts have had any difficulty with the Act as drafted, as far as the mental element (mens rea) is concerned. No prosecution has ever failed because of the current wording of the offence, only where the evidence was insufficient.

Where there is the necessary evidence prosecutions succeed, and there have been many successful prosecutions under the Act as it stands.

Given the way in which hunting is defined in the Act, the police do not need to concern themselves with the mental element. When a mounted hunt meets with hounds and those hounds begin searching there is self-evidently a deliberate act of hunting taking place. The question of whether that hunting is lawful is then one of evidence of compliance, or not, with the conditions set out in the exceptions, depending on the activity being undertaken. Failure to comply with any one of the conditions renders the activity unlawful.

The situation may be less clear for the police when faced with a few people out walking and letting their dogs sniff around. In reality it is relatively straight forward to distinguish a couple of walkers from those engaging in the deliberate hunting hare, a deer etc. However, if the mental element is lowered as is being suggested then many dog walkers could be guilty of offences either through being reckless and knowingly and intentionally taking dogs to areas where there may be wild mammals or permitting them to hunt, which includes to search.

It is important to note that under the Act hunting can take place even if no wild mammal is actually found or even present at all. The activity of hunting for is an offence. The law cannot be so broad and the mental element of the offence lowered such that vast numbers of ordinary people are breaking the law and relying on the restraint of the police and courts not to prosecute, on the basis that somehow, despite what the law actually says, it is only really meant to enable the prosecution of people in red coats on horseback.

- **“includes to search for or course” becomes “includes to search for, stalk, flush, chase, pursue or course”?**

Countryside Alliance Position:

Fully opposed

There is no need to amend the current definition. There is a non-exhaustive definition of “to hunt” in the Protection of Wild Mammals (Scotland) Act 2002 which, unlike in England and Wales, explicitly includes the activity of searching. It also includes “to course” making it clear that the legislation covers not just hunting by scent, but also by sight.

Any deliberate use of a dog to search for, or pursue, a wild mammal whether by scent or sight is already therefore unlawful.

The answer to the question of whether or not the current definition of “to hunt” in the Act is adequate is whether or not the enforcement of the Act has been hindered by the current definition. We have not seen any evidence of this being the case. Looking at the significant number of prosecutions brought under the Act and the number of those which succeeded is clear evidence that the current legislation is perfectly enforceable and the courts have been more than capable of understanding and applying the law, including what is meant by hunting. The latest wildlife crime statistics released on December 2017 support this view.

Lord Bonomy’s concern over the lack of a fuller definition of “to hunt” in the legislation, and that of Police Scotland, seems to arise from a focus on the fact that at the time of the Bonomy review there had been no successful prosecution of a mounted hunt. This is no longer the case. Yet the legislation is concerned with any, and every, situation where a dog is used deliberately to hunt for (search) or hunt (flush or pursue whether by scent or sight) a wild mammal. The Act does not distinguish between the different types of hunting in terms of whether it is conducted by formally constituted mounted packs or those on foot; or by individuals or groups of individuals informally, and this is reflected in the prosecutions brought under the Act.

The Protection of Wild Mammals (Scotland) Act 2002 is no different from any other criminal law. When there is evidence of illegal hunting then successful prosecutions have been brought under the Act. Official statistics show that there have been over 200 charges brought under the Protection of Wild Mammals (Scotland) between 2002 and 2014. Figures from the Wildlife crime in Scotland report highlighting 36 cases of hunting with dogs between 2013 and 2017 resulting in a 69% conviction rate.

If the evidence was sufficient to bring successful hunting prosecutions against those who were breaking the law unmounted then a successful prosecution is equally possible against anyone breaking the law mounted. In either case a prosecution will only succeed if the evidence exists to support it.

Lord Bonomy himself noted: "4.15 ...In the end it appears that there have been proportionately no more prosecutions in England and Wales than in Scotland, bearing in mind that there are 17 times as many organised hunts in England and Wales..." Most significantly he states at 4.16: "The statistics suggest that the Act enables prosecution of offences relating to hares." Clearly, if the definition of "to hunt" causes no problem in prosecuting hunting offences against hares, there is no logical reason why it should cause a problem in relation to foxes. Why is it that the same legislation, with the same offences, is somehow more difficult for the police and courts when a fox, and indeed horses, are involved? Sherriff Drummond in the Adams case, and more recently Sherriff Paterson, in the Jed Forest case found no difficulty in applying and interpreting the law. Accepting that, as with almost all laws, the drafting could always be improved, is not the real issue a lack of evidence of law breaking not any fundamental problem with the legislation? Interpreting legislation is something which courts do the entire time.

The Act's broad definition understood according to its ordinary English meaning has not prevented a single prosecution, where the evidence has been sufficient to show that the hunting did not fall within whatever exception was raised by the defence. We would respectfully suggest that this concern over the definition of "to hunt" in the Act results entirely as a result of a misplaced preoccupation with mounted hunts as opposed to hunting in all forms, which is what the Act seeks to address.

3. Which of the following best expresses your view of prohibiting the use of fox-based scents in recreational activities, such as trail hunting?

Countryside Alliance Position:

Fully opposed

There is no evidence that fox-based scents increase the likelihood of hounds pursuing live quarry. Since the 2002 Act came into force, it has anyway been the practice of hunts in Scotland to continue to offer farmers, landowners and estate managers a pest/fox control service using the pack of hounds to flush out and shoot foxes to limit predation of livestock, game and ground nesting birds. None of the MFHA registered Scottish foxhound packs have adopted trail hunting.

4. Which of the following best expresses your view of removing the current exceptions to the offence of hunting wild mammals with dogs (as defined in the Protection of Wild Mammals (Scotland) Act 2002)?

Countryside Alliance Position:

Fully opposed

The use of dogs to locate and flush foxes to guns is a necessary and legitimate wildlife management tool. This position is supported by the Burns Inquiry and Lord Bonomy who noted: "...there is no firm scientific evidence of the extent of the impact on the fox. Indeed, it was observed in the Burns Report that the banning of hunting could have an adverse effect on the welfare of foxes in upland areas unless dogs could be used at least to flush foxes from cover.

Lord Bonomy's review concluded: "The use of packs of hounds to flush out foxes to be shot remains a significant pest control measure, both to control the general level of foxes in an area as well as to address particular problems affecting a farm or estate...Searching and flushing by two dogs would not be as effective as that done by a full pack of hounds; imposing restrictions could seriously compromise effective pest control in the country."

The exceptions also reflect the agreement by all sides in the debate, when the legislation was going through the Parliament, that activities using dogs, such as shooting and falconry, should not fall within the offence of hunting. Without these exceptions may activities unrelated to traditional hunting would be rendered unlawful and those engaging in these activities in danger of prosecution.

League Against Cruel Sports magazine, Wildlife Guardian (2002) stated that:

“League staff attended every Parliamentary committee meeting and briefed MSPs about the dangers of dozens of pro-hunt amendments... and...there are no gaping loopholes or flaws.”

5. Which of the following best expresses your view of providing one new, narrowly defined exception to the offence of hunting wild mammals with dogs, which would allow a maximum of two dogs to be used?

Countryside Alliance Position:

Fully opposed

There is already a ban on the use of dogs to pursue and kill wild mammals. The existing exemption provides a vital framework to enable the use of dogs (both hounds and terriers) to locate and flush foxes to guns as a necessary and legitimate wildlife management tool.

Lord Bonyon is unequivocal in his rejection of the argument to reduce the number of dogs which can be used to two. He stated: *“Searching and flushing by two dogs would not be as effective as that done by a full pack of hounds; imposing restrictions could seriously compromise effective pest control in the country.”*

The only peer reviewed scientific research on the use of dogs in fox control compares the use of two dogs and a full pack (Naylor & Knott 2018). It demonstrates conclusively that a pack rather than is considerably more effective than a pair of dogs in flushing foxes from cover.

The main tenet of the Protection of Wild Mammals (Scotland) Act 2002, as argued by opponents of hunting, is the elimination of the deliberate "chase and kill" of wild mammals by dogs. The research by Naylor & Knott provides clear evidence that the reduction of the pack to two hounds actually prolongs the time between finding and flushing. To limit the number of dogs would be utterly illogical in terms of the very arguments advanced by hunting's opponents.

The Scottish Parliament recognised in the exemptions incorporated in the Act the need for effective fox control and that, as Douglas Batchelor, then Chief Executive of the League Against Cruel Sports, stated in August 2005 with reference to the Hunting Act in England and Wales: *“The gun packs have realised that pairs of dogs are utterly useless in flushing to guns...”*. Significantly he went on to say *“They (the dogs) can't be easily seen or closely controlled and the fox can easily run round just two dogs”*.

Clearly, if fox management is to be effective in Scotland a restriction to two dogs would, as the League Against Cruel Sports have stated, make that impossible. The view expressed by the League Against Cruel Sports is an argument in favour of continuing to be able to use a pack of hounds.

6. Which of the following best expresses your view of implementing the following Bonyon Review recommendations:

➤ **to make the landowner who gives permission for hunting on his/her land vicariously liable for any offences committed?**

Countryside Alliance Position:

Fully opposed

The 2002 Act already makes it an offence for an owner or occupier of land knowingly to permit another person to enter or use it to commit an offence under section 1, subsection (2). An offence is also committed were a person “knowingly to permit” another person to use a dog to hunt, contrary to section 1, subsection (1).

Creating an offence of vicarious liability seems wholly unnecessary. If there is evidence that the owner or occupier of land conspired with, encouraged or gave a ‘nod and a wink’ to criminal activity then the law already allows them to be prosecuted.

The Act, like Lord Bonomy, recognises the need to be able to control foxes. If the Act is amended such that landowners simply will not risk allowing those operating under the Act's exceptions to be on their land then this could result in a de facto ban on lawful pest control. This would be detrimental to wildlife in Scotland and leave landowners in a very difficult situation.

➤ **to put the onus on the accused to show that hunting fell within an exception to the ban?**

Countryside Alliance Position:

Fully opposed

The fundamental principle that a person is innocent until proven guilty should not be dispensed with.

To reverse burden is neither necessary, nor compatible with fundamental rights or the provisions of the Human Rights Act. As Lord Griffiths in *Nimmo v Alexander Cowan* notes: "When all the cases are analysed those in which the courts have held that the burden lies on the defendant are cases in which the burden can easily be discharged." This is not the case as far as the conditions of the exceptions are concerned under the Protection of Wild Mammals (Scotland) Act.

The examples presented by Lord Bonomy in his discussion of situations in which a reverse burden should, or can, be applied, all involve situations in which the evidential burden is relatively easy to discharge. In other words, it may be said to be proportionate bearing in mind the nature of the offence and the public interest.

When the original Bill was considered by the Scottish Parliament's Justice and Home Affairs Committee they "opposed placing the onus of proof of an exception on the accused". Lord Bonomy recognised this in his report but did not set out the Committee's reasoning, which is later reflected in the Wright judgement (discussed below). The Committee felt that in the case of a licensing system then reversing the burden of proof may be acceptable, given the relative ease with which such a burden may be discharged by the accused. The Committee did not consider it acceptable that the accused should have to prove all the elements of exceptions to the offence. The Committee concluded:

Burden of proof on the person charged with the offence

27. *Section 5(6) imposes on the person charged with contravening the prohibition on hunting in section 1(1) the burden of proving that one of the exceptions to that prohibition applies. That burden would require to be discharged on the balance of probabilities (which is generally the burden applicable in civil cases); the prosecution would still require to prove beyond reasonable doubt that an offence had been committed.*
28. *The Scottish Countryside Alliance saw "no justification for departing from the basic principle of Scots law that it is for the prosecution to establish and bring home guilt on every aspect of a charge" (col 1789). The Scottish Gamekeepers' Association objected to the mention made by SCAHD of a parallel provision in the Misuse of Drugs Act 1971 (col 1714), saying "There is no parallel between those who misuse or sell drugs and the work of the professional gamekeeper. The SCAHD has failed to show why a 'crime' that the police concede does not fulfill the criteria of a 'serious crime', should be classified as one that requires such harsh measures" (JH/00/29/9).*
29. *SCAHD acknowledged these concerns, and recognised that "effective enforcement of the provisions would not be compromised seriously if some or all of the exceptions in the Bill were subject to a lesser onus. In other words, it would be possible simply to raise an excuse to create a reasonable doubt" (col 1708). The Campaign accepted that "this aspect of the bill could profitably be reviewed at Stage 2" (col 1708).*
30. ***The Committee believes section 5(6) is draconian and represents a greater compromise of the rights of an accused person than is justified in this context. There is a case for saying that section 2(1) – the exception for licensed activities – is the one exception in the Bill for which such a reversed burden of proof would be appropriate. However, on the assumption that the licensing scheme is to be removed by amendment, it would also be appropriate to remove in its entirety section 5(6).***

For a prosecution to succeed it is only necessary to prove beyond reasonable doubt that any one of the conditions of the exception has not been met. Were the burden of proof to be reversed a defendant would have to prove on the balance of probabilities that all conditions were met.

Reversing the burden would place an unreasonable burden on the defendant and may amount to an infringement of Article 6 of European Convention on Human Rights. Lord Bingham has made clear that he accepts his position on reverse burden is probably in a minority amongst judges.'

The Administrative Court in *DPP v Anthony Wright* (the Wright case) has set out clearly in respect of the Hunting Act in England and Wales why the burden should rest on the prosecution to prove the offence and not on the defendant. The Protection of Wild Mammals (Scotland) Act has similar construction to the English legislation in that it creates a general offence and then a series of exceptions, not dissimilar to the exemptions in the English legislation. The arguments against a reverse burden would apply equally to the Scottish legislation.

By reversing the burden the onus on the defendant is disproportionately great and unreasonable then the Article 6 ECHR right to a fair trial is infringed without the necessary justification. The Administrative Court sets out the position well:

"the series of exemptions from unlawful hunting in Schedule 1 of the 2004 Act do not, in our view, come within the narrow exception described in R v Edwards, which must be limited to matters which are straightforward for a defendant to prove; and, secondly, that significant elements of Schedule 1 would permit a conviction in spite of reasonable doubt in the mind of the court as to the guilt of the accused."

The Judge in Wright went on to note that he did not find the argument that "unless there is a reverse burden of proof, prosecutions under the 2004 Act would rarely be viable" persuasive. The judge noted that "it will in practice usually be evident which paragraph of Schedule 1 the defendant relies on; and the prosecution will then succeed if they can disprove any one of the conditions in that paragraph. The nature of the facts and the available evidence will indicate which condition to aim at." He ruled that:

"A balance has to be struck between the general interests of the community and the protection of the fundamental rights of the individual. This will not be achieved if a reverse onus provision goes beyond what is necessary to accomplish the objective of the statute.... Since the ban is not absolute, the rights of individuals are, in a sense, two-fold. There is the fundamental right in article 6(2) of the Convention. There is also the right to engage in hunting a wild mammal with a dog which is exempt hunting. Speaking generally we think that the wide content of Schedule 1 of the 2004 Act makes it unreal and disproportionate to suppose that Parliament intended that all hunting of wild mammals with a dog was taken to be unlawful unless the defendant proved it was not. If someone is plainly hunting rabbits with dogs, there is no necessity for a presumption that their activity is unlawful."

The judge concluded that: "We consider that many prosecutions would be unfairly unbalanced if section 1 and Schedule 1 placed a legal burden on the defendant. Where, for instance, a defendant intended that his hunting was exempt under paragraph 1, he would have to prove the substantial issues in the case, once the prosecution had established a prima facie case that he was in pursuit of a wild mammal with a dog." It should be noted that in Scotland a prima facie case can exist where dogs are simply searching for a wild mammal, there does not even need to be a wild mammal present.

The Judge goes on to find that: "We do not consider that imposing a legal burden on the defendant is necessary to make the Act workable... The prosecution does not have to prove or disprove everything which might be theoretically conceived as capable of arising under Schedule 1. From the circumstances of the case and anything the defendant may have said when interviewed they will know before ever the prosecution is brought what facts appear to them to make the hunting (which they have to prove) unlawful... the prosecution only have to prove a failure to conform to one condition."

The court was explicit that if the Act could be construed as imposing a reverse burden then the court would be required under Human Rights Act to read down the imposition of a legal burden of proof so that the defendant has the evidential burden to "raise matters of defence sufficiently to require the prosecution to deal with them. This would have the effect of making prosecutions reasonably practical when the prosecution has sufficient evidence for a viable case.... The Act should, within the limits of its subject matter and the content of Schedule 1, be reasonably workable if it is seen as imposing an evidential, but not a legal, burden on the defence."

To reverse burden is neither necessary, nor compatible with fundamental rights or the provisions of the Human Rights Act.

There is also the danger of vexatious prosecutions being brought where the prosecution simply have to assert that an offence has been committed and the accused would have to show that all the conditions of the exemption on which he relies had been met. Prosecution could be used simply as a weapon against hunts and by those who do not accept the need for any fox control at all.

It should also be noted that Lord Bonomy believes that the courts could find a reverse burden under existing legislation.

It should be left to the courts to decide whether a reverse burden should apply in the case of the Protection of Wild Mammals (Scotland) Act.

- **that the time limit for bringing prosecutions should start from six months from the date on which sufficient evidence came to the knowledge of the prosecutor, rather than six months from the date the offence was committed?**

Countryside Alliance Position:

Fully opposed

Lord Bonomy suggests the current time limit “*has given rise to problems for both Police Scotland and Crown*”. This was not a matter raised by the police in their written evidence and Lord Bonomy presents no substantive evidence in the Report that the current time limit for prosecution has resulted in an inability of the police to prosecute offences under the Act.

Contrary to what seems implied by the consultation, not all wildlife offences have an extended time limit for prosecution, and indeed these are the exception and not the rule.

The longer the lapse of time between the events in question and the prosecution the harder it will be to ensure a fair trial.

Extending the time limit as suggested would in our opinion make the likelihood of a fair trial less, and were this coupled with the legal burden being on the defendant (reverse burden), represent an unacceptable departure from the right of defendants under Article 6 of the ECHR that everyone has the right to a fair trial.

There are significant elements of the exceptions which would be far from straightforward for the accused to prove and to quote from the Wright judgement “*would permit a conviction in spite of a reasonable doubt in the mind of the court as to the guilt of the accused.*”

The proposed change would mean that an allegation dating back three years can be brought so long as it is brought within six months from the date on which sufficient evidence came to the knowledge of the prosecutor. Accepting that it is the mounted hunts that are the principal ‘target’ of this proposal then it should be asked what sort of evidence might emerge up to three years after any alleged offence, given the very public nature of their activities.

7. Which of the following best expresses your view of increasing the maximum penalty for hunting a wild mammal with a dog to a £40,000 fine or 5 years imprisonment?

Countryside Alliance Position:

Fully opposed

Given that these increased penalties are being proposed in the context of reversing the ordinary burden of proof; extending the time between any alleged offence and it coming to court; and introducing recklessness, there is a substantial risk of persons being found guilty where serious doubt might remain. In these circumstances we believe the proposed penalties would be draconian.

In the most recent Wildlife Crime in Scotland report, Cabinet Secretary for Environment, Climate Change and Land Reform Rosanna Cunningham MSP noted both the 50% reduction in the number of

hunting with dogs offences and that of those proceeded against in the Scottish courts for wildlife related offences, 96% were convicted - the highest it's been in the five years since 2012-13.

What further evidence is required to inform, politicians, decision makers and the wider public that the current law is working as an effective deterrent. The Scottish Countryside Alliance remains committed to working with the Scottish Government to provide the greatest clarity possible in our mounted foxhound pack activities while maintaining the ability to effectively carry out much needed pest control.

8. Which of the following best expresses your view of protecting mountain hares, so that any killing at any time would require a licence?

Countryside Alliance Position:

Fully opposed

We do not believe that making the mountain hare a protected species, subject to licensing, is necessary. The mountain hare is already protected by a close season and the proper management of hare populations should continue.

The Game and Wildlife Conservation Trust's studies of where mountain hares are living in Scotland agree that most losses are at the edge of their range, where heather moorland has been changed to forest and farmland. Data gathered by the GWCT over the same period does not suggest such a decline in hare numbers on our remaining grouse moors.

The Game and Wildlife Conservation Trust is an independent wildlife conservation charity which has carried out scientific research into Britain's game and wildlife since the 1930s. We are therefore compelled to follow the advice of renowned scientists as opposed to the rhetoric of politicised opinion.

We believe that licensing would be burdensome and would do nothing to ensure a balanced and healthy hare population. Most damaging to hares would be a reduction in the ability of land managers to control foxes and other predators.

9. Which of the following best expresses your view of protecting brown hares, so that any killing at any time would require a licence?

Countryside Alliance Position:

Fully opposed

We do not believe that making the mountain hare a protected species, subject to licensing, is necessary. The mountain hare is already protected by a close season and the proper management of hare populations should continue.

In the most recent Wildlife Crime in Scotland report, Cabinet Secretary for Environment, Climate Change and Land Reform Rosanna Cunningham MSP noted both the 50% reduction in the number of hunting with dogs offences and that of those proceeded against in the Scottish courts for wildlife related offences, 96% were convicted - the highest it's been in the five years since 2012-13.

Brown hare numbers slumped between the world wars during a period of farming recession. A similar decline in the brown hare was found in Denmark, France, Germany, Sweden, Switzerland and Hungary and, later, in the Poland. It paralleled a change in agricultural enterprise and the loss of farmland birds. In 1995, following The Convention on Biological Diversity (1992), Britain set up a broad-based Biodiversity Action Plan to recover the status of a range of wildlife.

In the decade since then there has been significant progress in conserving farmland wildlife. In particular there have been radical changes to the CAP. Changes to agricultural practices have seen a positive reaction and the improving status of the brown hare.

The Game and Wildlife Conservation Trust is an independent wildlife conservation charity which has carried out scientific research into Britain's game and wildlife since the 1930s. We are therefore compelled to follow the advice of renowned scientists as opposed to the rhetoric of politicised opinion.

10. Which of the following best expresses your view of protecting red foxes, so that any killing at any time would require a licence other than in an emergency situation?

Countryside Alliance Position:

Fully opposed

As already stated within this response, the red fox is a significant predator of livestock, game and ground nesting birds. Even the lowest estimates suggest 36,000 new-born and infant lambs are slaughtered by foxes in Scotland every year at a cost of great emotional trauma to sheep and farmers/crofters and millions of pounds to the rural economy.

Lord Bonomy: "...the use of packs of hounds to flush out foxes to be shot remains a significant pest control measure, both to control the general level of foxes in an area as well as to address particular problems affecting a farm or estate... The fox can cause considerable loss to country enterprises through predation on poultry, game and livestock, particularly lambs. There is a powerful argument for completing the fox control exercise by digging out the fox once it has been found.

The Scottish Countryside Alliance has worked with the Scottish Government and other stakeholders including the League Against Cruel Sports, OneKind and the SSPCA to develop guidance for practitioners involved in lethal fox control. This work was commissioned to ensure that the control of wild mammals met a range of legal and welfare measures. Subject to the lengthy consultation, the Scottish Government did not agree that the red fox required an elevation in protection.

To impose a strict licensing system as currently proposed would make the proper management of foxes in Scotland unworkable, causing huge damage to farmers and Scotland's biodiversity.

We are unclear as to what may, or may not, count as an "emergency situation".

11. The Bill proposes tightening the criteria for issuing a licence to kill foxes, hares or other wild mammals. Which of the following would you support?

None of the Above

It would seem that the author is somewhat confused in relation to the legal process surrounding pest and predator control in Scotland. Alternatively, the author may be trying to influence the respondent through the issue of misleading information. Either way this is an inappropriate question.

For the record, Brown hares and mountain hares are currently protected in the close season under the Wildlife and Countryside Act 1981 (as amended). The Wildlife and Natural Environment (Scotland) Act 2011 introduced closed seasons for the killing or taking of wild hares.

Brown hare: 1 February to 30 September

Mountain hare: 1 March to 31 July

The Red fox is listed as an IUCN species of least concern and subject to inclusion within a wide range of UK wildlife legislation, including the Protection of Wild Mammals (Scotland) Act 2002, none of which require a licence for lethal control.

We have already commented on the downward trend, from a very low base line of crimes against fox and hare. The current legislation is clearly robust enough to prosecute and convict where evidence supports.

The bill refers to fox and hare but the question appears to broaden that remit to include “other wild mammals”. We are uncertain which. We would request further detailed information relating to identified species in order we make an appropriate response.

12. Taking into account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

a Significant increase in cost

b Significant increase in cost

c Significant increase in cost

It is our understanding that the author believes that the principal costs flowing from the bill will be those associated with the licensing of the killing of protected wild mammals, i.e. brown hares, mountain hares and foxes during the closed seasons. And that the author believes it appropriate for this cost to be recovered by the applicant who seeks to protect property or the natural heritage.

As already stated within this response, the fox is a significant predator of livestock, game and ground nesting birds. Despite the many millions of man hours dedicated to the protection of domestic animals, even the lowest estimates suggest 36,000 new-born and infant lambs are killed by foxes in Scotland every year at a cost of great emotional trauma to sheep and farmers/crofters and millions of pounds to the rural economy.

Currently, much of this pest control service is delivered gratis. If the author introduces a licence and expects that this have a financial cost, that cost must be passed on to the already strained farmer or conservation charity.

If the author succeeds in her attempts to achieve a licensing system, such responsibility would logically fall to Scottish Natural Heritage to design, implement and monitor progress. Such an additional burden on already stretched resources which is likely to lead to the third party employment of additional resources to monitor activities. As stated, many millions of hours are already committed to lethal control of foxes by thousands of practitioners across Scotland. It is hard to imagine the costs of replacing that free provision by employed staff or indeed the cost to the state in monitoring the activity.

If the author succeeds in her attempts to achieve a licensing system for fox and hare control, would it be appropriate that the control of pest bird species is carried out under licences which are issued at no cost.

The author acknowledges the financial impact on the services of Police Scotland and the Crown Office and Procurator Fiscal services in relation to dealing with suspected criminal activities, presumably operating without a licence. The potential impact on these already strained services could be seriously detrimental to the investigation of serious crime.

13. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, maternity and pregnancy, marriage and civil partnership, race, religion or belief, sex, sexual orientation?

Neutral

14. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

No

The author seems confused in relation to her understanding of sustainable. The bill purports to support sustainable development by ensuring that mountain hares will no longer face population decline due to mass hare culling while ignoring the science forwarded by the independent body, the Game and Wildlife Conservation Trust.

In addition, as stated several times in this response, without practical wildlife management the cost implication for Scotland's farmers, crofters, gamekeepers and conservationists could be unsustainable leading to an economic and social retreat from some of Scotland's iconic landscapes. The consequences of no species or habitat management will undoubtedly lead to a landscape scale environmental disaster.

15: Do you have any other comments or suggestions on the proposal and are there any other wild mammals that you believe should be afforded greater protection than they currently have?

While we respect the authors right as a politician to raise concerns. The Scottish Countryside Alliance remains committed to working with the Scottish Government to reach the right outcome in relation to wildlife management.

Any legislative framework should offer clarity and transparency in the effective management of a wide range of wild animals, resident or seasonal visitors, to Scotland. The welfare of those animals subject to lethal control must be a priority. However, we must resist the creep towards animal rights.

Scottish Natural Heritage, the agency charged with the responsibility of monitoring wildlife management on behalf of the Scottish Government published an opinion clearly setting out the difference between animal rights and animal welfare, which seems either to have been ignored, or not read, by the author of these proposals.