

## **Response to the Alison Johnstone's Consultation on the Proposed Protection and Conservation of Wild Mammals (Scotland) Bill**

**by Scottish Environment LINK**

**Date: 13<sup>th</sup> September 2019**



### **Summary**

LINK welcomes the opportunity to contribute to Alison Johnstone's consultation on the proposed Protection and Conservation of Wild Mammals (Scotland) Bill, (hereafter referred to as the proposed Bill). While we fully endorse the focus of the proposed Bill, which sets stringent standards for animal welfare, we recommend that in addition to employing an animal welfare approach, protection of mammals should also consider an ecological perspective. LINK makes the following comments in response to the consultation:

- **We welcome the proposal to remove the exceptions listed within the Protection of Wild Mammals (Scotland) Act 2002 and support the implementation of Lord Bonomy's recommendations.**
- **Scope of the proposed Bill should also consider an ecological approach, including other methods of reducing species population as an alternative to 'pest control.'**
- **Text within the proposed Bill should accurately reflect intended outcomes.**
- **Key concepts such as 'hunt', 'chase' and 'emergency situation' should be clearly defined within the proposed Bill.**
- **Support the proposals as outlined to go further than Lord Bonomy's recommendations.**
- **More stringent sentencing and penalties to reflect impact and scale of offences.**

### **Introduction**

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 35 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

LINK members welcome the opportunity to comment on this consultation. This response contributes to those consultation questions that are relevant to our areas of work.

## Aim and approach of the Bill.

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? Please indicate from the options available: fully supportive to unsure.

**LINK is supportive of the aim and approach** of the proposed Bill. Additional points noted below-

- **Support removal of most exceptions:** With reference to The Protection of Wild Mammals (Scotland) Act 2002 hunting with dogs is subject to wide range of exceptions. The scope of exceptions also extends to including 'to search for' a wild mammal with a dog within its definition of hunting (WM(S)A, s.10). While we recognize that removing these exceptions address loopholes on 'hunting with dogs with intent to kill', there are concerns that legislation makes it potentially illegal to use dogs to locate wild mammals for legitimate conservation purposes. The exceptions in the Act are targeted for 'pest control' activities there is no provision for searching for mammal with a dog with the immediate purpose of confirming its presence and location. Instances where this is required is in projects which eradicate non-native species (INNS) that threaten native species, and in deer management, where there is no intent to use dogs to kill other animals but to merely locate the animals for future reference.
- **Scope of the proposed Bill should also consider an ecological approach:** The current proposed Bill addresses 'animal welfare and conservation concerns as well as the ethical implications of hunting wild mammals for recreation or sport'. We welcome this approach; however, we believe that the proposed Bill when introduced should include ecological considerations. In a functioning ecosystem, with good ecological health, wildlife management and human intervention should play a lesser role. Additionally, proposed hunting loopholes should be closed and along with it measures which protect, enhance and improve nature and wildlife's resilience should be considered. An example would be, measures that target species population reduction, such as brown hares which would need to consider welfare aims as well as forestry aims, could employ alternative methods<sup>1</sup>, such as natural predation as opposed to culling and persecution. This would not only sit with welfare aims but also give due consideration to conservation efforts.

---

<sup>1</sup> Eskander, P. (2017): An analysis of lethal methods of wild animal population control: [vertebrates https://was-research.org/paper/analysis-lethal-methods-wild-animal-population-control-vertebrates/](https://was-research.org/paper/analysis-lethal-methods-wild-animal-population-control-vertebrates/)

## Hunting with Dogs

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", and
- "includes to search for or course" becomes "includes to search for, stalk, flush, chase, pursue or course"?

Please indicate from the options available: fully supportive to unsure.

**LINK is fully supportive of the proposed amendments of text** noting that the amended words within the Bill should not leave any scope for loopholes. Additional points noted below-

- **The text within the proposed Bill should accurately reflect its intended outcome:** It is crucial that the text set out within the Bill achieves the intended outcome. For example, with regards to the Protection of Badgers Act (1992), one of the offences within the Act is the intentional or reckless interference with a badger sett. Most offences against badgers in Scotland (over 50%)<sup>2</sup> are purportedly linked to unlicensed sett disturbance. With evidence that perpetrators take extra measures to prevent their crimes from being detected<sup>2</sup>, it is crucial that the 'intentional or reckless interference' test as set out within the Act is enforced effectively. However, LINK members note that text within the Protection of Badgers Act (1992) in its current form does not offer protection to badgers in the manner the word 'reckless' can be interpreted within the Act. The text currently leaves scope for wider interpretation where the accused stands to fail the reckless test, only if the evidence provided indicates that inadequate precautions were taken to avoid harm or damage. Considered within the wider context that perpetrators take extra measures to prevent crime detection the reckless test within the Act has not been as effective as intended protection to badgers.
- **Key concepts should be clearly defined within the Bill:** When defining key concepts within the Bill consideration also needs to be given how the definition is used. Using the example of Protection of Badgers Act (1992), when defining the word 'sett' every individual word had to be defined in a very focused manner to avoid any loopholes in interpretation. It is advised that a similar approach is employed in the case of defining 'hunt', as counter arguments can be put forward; for example: moving in the same direction as the animal cannot be constituted as 'chase'. In addition to providing a very focused and narrow definition of key text, the Bill should also allocate burden of providing proof on the accused. Evidence provided should indicate that adequate measures were taken to protect wild mammals from being 'chased, pursued, stalked or flushed.'

---

<sup>2</sup> Scottish Environment LINK: Natural Injustice Report: Paper 1- A review of the enforcement of wildlife protection legislation in Scotland <http://www.scotlink.org/wp/files/documents/Natural-Injustice-paper1-FINAL.pdf>

LINK is a Scottish Charity (SC000296) and a Scottish Company Limited by guarantee (SC250899). LINK is core funded by Membership Subscriptions and by grants from Scottish Natural Heritage, Scottish Government and Charitable Trusts.

Registered office: 13 Marshall Place, Perth PH2 8AH, T. 01738 630804, [information@scotlink.org](mailto:information@scotlink.org)  
Advocacy office: Dolphin House, Hunter Square, Edinburgh, EH1 1QW, T. 0131 225 4345, [advocacy@scotlink.org](mailto:advocacy@scotlink.org)

## LINK Consultation Response

3. Which of the following best expresses your view of prohibiting the use of fox-based scents in recreational activities, such as trail hunting? Please indicate from the options available: fully supportive to unsure.

**LINK is fully supportive with regards to prohibition of fox-based scents** in recreational activities.

- The Protection of Wild Mammals Act (2002) in Scotland prohibits<sup>3</sup> 'traditional' hunting. The ban on 'traditional' hunting has led to a shift to 'trail hunting'<sup>Error! Bookmark not defined.</sup> and there are concerns<sup>4</sup> that this can be used a cover for 'traditional' hunting. LINK therefore supports the call for a complete ban on any activities which encourage 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)? Please indicate from the options available: fully supportive to unsure.

**LINK is partially supportive of removing current exceptions** to the offence of hunting wild mammals with dogs as set out in the Protection of Wild Mammals (Scotland) Act 2002 except for establishing a narrowly defined exception allowing the use of dogs for genuine conservation purposes.

- **Efficacy of 'pest control' as a method of maintaining fox predation levels:** While there are arguments in favour of 'controlling' certain 'pest species' populations, there is an absence of conclusive evidence that 'pest control' has had a substantial impact on fox populations in Scotland<sup>5</sup>. Data from work done in 1970's and 1980s suggests that factors such as enhancing management of hill sheep, which has led to fewer carcasses over winter might have been more effective in reducing fox populations as compared to maintaining 'control.'
- **Searching for (but not killing) wild-living mammals using dogs for conservation purposes** should be permitted in certain clearly and narrowly defined circumstances (e.g. to locate mammals as part of invasive non-native species (INNS) control programmes or for general survey purposes) as well as for deer management where the use of a dog to locate shot and wounded deer is considered best practice. This might be best achieved by a licensing system where a licence may be issued only for certain defined purposes and the licence itself further restricts the nature and scope of permitted actions in each individual case.

---

<sup>3</sup> Protection of Wild Mammals (Scotland) Act 2002 <http://www.legislation.gov.uk/asp/2002/6>

<sup>4</sup> BBC News (2019): Bid to close loopholes in Scottish fox hunting ban <https://www.bbc.co.uk/news/uk-scotland-scotland-politics-46813439>

<sup>5</sup> Harris, S. (2016): The utility of killing foxes in Scotland <http://www.nfws.org.uk/The%20utility%20of%20killing%20foxes%20in%20Scotland.pdf>

LINK is a Scottish Charity (SC000296) and a Scottish Company Limited by guarantee (SC250899). LINK is core funded by Membership Subscriptions and by grants from Scottish Natural Heritage, Scottish Government and Charitable Trusts.

Registered office: 13 Marshall Place, Perth PH2 8AH, T. 01738 630804, [information@scotlink.org](mailto:information@scotlink.org)  
Advocacy office: Dolphin House, Hunter Square, Edinburgh, EH1 1QW, T. 0131 225 4345, [advocacy@scotlink.org](mailto:advocacy@scotlink.org)

## LINK Consultation Response

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? Please indicate from the options available: fully supportive to unsure.

**LINK is partially supportive to any exceptions to the offence** of hunting wild mammals with dogs other than for specific, narrowly defined conservation purposes (e.g. INNS control, day to day best practice conservation management) and only in relation to searching without killing.

- **Exceptions in the Bill may act as barriers in penalising perpetrators:** Lord Bonomy's review noted 'the flushing from cover for pest control exception is a decoy for the continuation of some traditional hunting practices'. The Police Scotland evidence to Lord Bonomy's review highlighted that 'Exceptions to the offence to "deliberately hunt a wild animal with a dog" are multiple and provide opportunities for exploitation by those who continually and deliberately offend. As a consequence of this lack of clarity, the Police are on occasion unable to establish the high threshold of evidence required to prove and, ultimately, report cases'<sup>6</sup>.

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

- to make the landowner who gives permission for hunting on his/her land vicariously liable for any offence committed,
- to put the onus on the accused to show that hunting fell within an exception to the ban, and
- that the time limit for bringing a prosecution 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.

Please indicate from the options available: fully supportive to unsure.

**LINK is fully supportive of the Bonomy recommendations.**

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? Please indicate from the options available: fully supportive to unsure.

**LINK is fully supportive of increasing** the maximum penalty for hunting a wild mammal with a dog to a £40,000 fine or 5 years imprisonment. The advice of the Wildlife Crime Penalties Review Group should be implemented.

---

<sup>6</sup> Written Submission from Police Scotland to Lord Bonomy (2016):

<https://www.gov.scot/binaries/content/documents/qovscot/publications/consultation-analysis/2016/10/review-protection-wild-mammals-scotland-act-2002-written-submissions/documents/00508093-pdf/00508093-pdf/qovscot%3Adocument/00508093.pdf>

LINK is a Scottish Charity (SC000296) and a Scottish Company Limited by guarantee (SC250899). LINK is core funded by Membership Subscriptions and by grants from Scottish Natural Heritage, Scottish Government and Charitable Trusts.

Registered office: 13 Marshall Place, Perth PH2 8AH, T. 01738 630804, [information@scotlink.org](mailto:information@scotlink.org)

Advocacy office: Dolphin House, Hunter Square, Edinburgh, EH1 1QW, T. 0131 225 4345, [advocacy@scotlink.org](mailto:advocacy@scotlink.org)

- **More stringent sentencing and penalties to reflect impact and scale of offences:** LINK have previously<sup>7</sup> indicated that penalties should be increased to act as dissuasive instruments and also reflect the seriousness of the offence. While the Scottish Government consultation has considered increasing the maximum penalty for hunting wild mammals with a dog to a £40,000 fine or 5 years imprisonment, LINK notes that these are not in line with the original recommendations made in the Poustie Review. The Poustie Review noted ‘while an increase in the maximum fine on summary conviction to the norm for the principal environmental offences in Scotland, £40,000, would be an option, the Scottish Government should consider a move to unlimited fines as has just occurred in England and Wales, albeit that we recognise that the latter change would require wider legislative amendment, the merits of which would need to be considered.’ It is therefore recommended that the maximum penalty should be in line with the recommendations made by the Poustie Review<sup>8</sup>.

### **Additional protections for certain wild mammals**

8. Which of the following best expresses your view of protecting mountain hares, so that any killing at any time would require a licence? Please indicate from the options available: fully supportive to unsure.

**LINK is fully supportive of stringent licensing conditions.** As noted in our responses to Question 4 and Question 1 within this consultation, employing ‘control’ measures to address ‘pest species’ populations in some instances are not the most effective methods to reduce species numbers.

9. Which of the following best expresses your view of protecting brown hares, so that any killing at any time would require a licence? Please indicate from the options available: fully supportive to unsure.

**LINK is fully supportive of stringent licensing conditions.** Please see details as noted in response to Question 1, Question 4 and Question 9.

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? Please indicate from the options available: fully supportive to unsure.

**LINK is fully supportive of the view that any killing would require a licence.**

- **Clear definition of what is classed as an emergency situation:** LINK members however highlight their concern on how the words ‘emergency situation’ could be defined and

---

<sup>7</sup> LINK response to Wildlife Crime Penalties Consultation (2019): <http://www.scotlink.org/wp/files/documents/LINK-Response-to-wildlife-crime-penalties-consultation.pdf>

<sup>8</sup> Wildlife Crime Penalties Review Group Report (2015) [https://strathprints.strath.ac.uk/59764/1/Poustie\\_2015\\_Wildlife\\_Crime\\_Penalties\\_Review\\_Group\\_Report.pdf](https://strathprints.strath.ac.uk/59764/1/Poustie_2015_Wildlife_Crime_Penalties_Review_Group_Report.pdf)

## LINK Consultation Response

interpreted. As noted in our response to Question 2 on the definition of concepts, there is a risk that these can be interpreted differently by perpetrators to their advantage. To address this, the definition must be clearly stated. Additionally, onus should be on stakeholders such as landowners, farmers or keepers of animal stock that may be impacted by fox incursions to take appropriate preventative action in managing their resources in such a manner that the threat from foxes are minimized. For example, owner of stock animals such as sheep and poultry should responsibly dispose of animal offal, scent of which can attract animals such as foxes and badgers. If owners do not responsibly get rid of animal waste and this leads to a rise in fox incursions, a certain amount of culpability lies with the owners as well. To prove that a situation is an emergency it is recommended that lawful evidence is retained, including evidence that preventative measures were in place and while it is difficult to establish a like for like value for species, unless there is a threat to human life, careful consideration needs to be given as to what is classed 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? (Choose all that apply)

LINK members support the following criteria-

- Licences should not be issued unless the licensing authority is confident that there will be no negative impact on the local or national conservation status of the species in question.
- Licences should not be issued unless the licensing authority is confident that the proposed method and timing of killing will not have an unacceptable impact on animal welfare.
- Licences should not be issued where there is a risk that dependent young will suffer.
- Licences should not be issued unless they are a last resort measure and non-lethal measures have been shown to be ineffective.
- The licencing scheme should be transparent and publicly accountable.
- Any use of a licence must be conditional on reporting how many animals have been killed/hunted and that they have been killed in accordance with the licence. This information should be published by the licensing authority.
- Fees should be charged for licences, with the level of fees set so as to fully cover the costs involved in issuing licences.

LINK is a Scottish Charity (SC000296) and a Scottish Company Limited by guarantee (SC250899). LINK is core funded by Membership Subscriptions and by grants from Scottish Natural Heritage, Scottish Government and Charitable Trusts.

Registered office: 13 Marshall Place, Perth PH2 8AH, T. 01738 630804, [information@scotlink.org](mailto:information@scotlink.org)  
Advocacy office: Dolphin House, Hunter Square, Edinburgh, EH1 1QW, T. 0131 225 4345, [advocacy@scotlink.org](mailto:advocacy@scotlink.org)

## LINK Consultation Response

**This response was compiled on behalf of LINK and is supported by:**

Badenoch & Strathspey Conservation Group

RSPB Scotland

Scottish Badgers

Scottish Raptor Study Group

Scottish Wildlife Trust

Woodland Trust Scotland

### **For more information contact:**

Dilraj S Watson, Advocacy Officer  
Email: [dilraj@scotlink.org](mailto:dilraj@scotlink.org) | 0131 225 4345  
[www.scotlink.org](http://www.scotlink.org)  
[www.savescottishseas.org](http://www.savescottishseas.org)  
[www.fightforscotlandsnature.scot](http://www.fightforscotlandsnature.scot)

LINK is a Scottish Charity (SC000296) and a Scottish Company Limited by guarantee (SC250899). LINK is core funded by Membership Subscriptions and by grants from Scottish Natural Heritage, Scottish Government and Charitable Trusts.

Registered office: 13 Marshall Place, Perth PH2 8AH, T. 01738 630804, [information@scotlink.org](mailto:information@scotlink.org)  
Advocacy office: Dolphin House, Hunter Square, Edinburgh, EH1 1QW, T. 0131 225 4345, [advocacy@scotlink.org](mailto:advocacy@scotlink.org)