

Protecting Scotland's wild mammals

A proposal for a Bill 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.

**Consultation by
Alison Johnstone MSP, Member for Lothian**

June 2019



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1 FOREWORD by ALISON JOHNSTONE MSP



Scotland is blessed with a diversity of wild mammals and they are part of our shared natural heritage. Iconic species like the red fox and the mountain hare are widely celebrated in popular culture and valued by rural and urban Scots alike, and they form part of a landscape that continues to attract global acclaim and tourists in their millions.

In 2002 the Scottish Parliament legislated to ban the hunting of wild mammals with dogs with its Protection of Wild Mammals (Scotland) Act. It was remarked in the Chamber at the time of passing that “when people wake up in Scotland tomorrow, the country will be a little bit more civilised.” However, it is now widely recognised that the Act failed to stop fox hunting. Seventeen years after it was first passed, it’s time to rectify this failure.

In the intervening period, public awareness of and interest in wild mammal protection and conservation in Scotland has grown markedly, prompted by evidence of continued fox hunting and the widespread killing of hares. I was encouraged when, in April 2018, the First Minister confirmed she would take action to end the indiscriminate slaughter of mountain hares following footage of mass killing released by the League Against Cruel Sports Scotland and OneKind. As no progress has been made on this, or the similarly routine killing of brown hares, I address these issues in this consultation too.

It is generally accepted that mammals are sentient beings, capable of experiencing pain and distress. I aim to improve the welfare of wild mammals in Scotland by ending the hunting with dogs and improving the protection of certain wild mammals, which will also address conservation concerns.

I recognise that these proposals would represent a significant shift. They would end the hunting of wild mammals with dogs and permit killing using other means only as a last resort and as part of a transparent system with regulatory oversight. Those that have become accustomed to the casual and unmonitored approach that is currently in place may instinctively reject these proposals. I urge everyone, however, to consider them carefully.

The routine and widespread killing of wildlife, and particularly wild mammals in Scotland, is opposed by the majority of the public in urban and rural areas. Politicians have repeatedly promised action, and the Parliament passed the Protection of Wild Mammals (Scotland) Act back in its very first session; for hunting to continue despite this leads to distrust in our institutions and those leading them. This will only grow until

significant progress is made. My proposals would represent a new contract between land managers and the wider public that could help restore good faith.

I look forward to hearing the views of all who have an interest in this important topic.

A handwritten signature in black ink that reads "Alison Johnstone". The signature is written in a cursive, flowing style.

Alison Johnstone MSP
June 2019

2 HOW THE CONSULTATION PROCESS WORKS

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

A limited number of additional copies of this paper are available and can be requested by contacting me at Alison Johnstone MSP, MG.19, The Scottish Parliament, Edinburgh, EH99 1SP, 0131 348 5634, alison.johnstone.msp@parliament.scot

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website (www.parliament.scot) under Parliamentary Business / Bills / Proposals for Members' Bills.

3 AIM OF THE PROPOSED BILL

There are 62 species of wild mammal found in and around Scotland including 13 species found in coastal waters. Mankind's relationship with wild mammals is very varied – over the centuries we have hunted many to extinction on these islands, including beaver, lynx and wolf, although beavers have now been reintroduced. Others are still hunted for so-called “sport” and food, and many are killed as part of land management and farming practices. The legal protections enjoyed by these species vary widely and originate from various legislative changes over the years, summarised below.

It is generally accepted that all non-human vertebrates, particularly mammals, are sentient and therefore capable of experiencing pain and distress. This concept is enshrined in the European Union Treaty of Lisbon and was also recognised in the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

In this proposed Member's Bill, I aim to address some deficiencies in the current legislation governing the conservation and welfare of wild mammals. The issues addressed by this proposal are of significant public interest, as reflected by the level of debate around them and the high levels of correspondence I and other MSPs receive from constituents. Wild mammals belong to no-one while they are free-living, but UK legislation has long held that animal welfare is a public good¹, and that animals should therefore be protected in the public interest².

The aim of the proposed Bill is, therefore, to improve the protection of some wild mammals in Scotland, specifically by:

- i. Ending the use of dogs in the hunting of wild mammals
- ii. Improving the protection of certain wild mammals

The proposed Bill will therefore address animal welfare and conservation concerns as well as the ethical implications of hunting wild mammals for recreation or sport.

4 BACKGROUND

4.1 Wild mammals affected by the proposed Bill

The proposed Bill will respond to ongoing conservation and welfare concerns by extending protection to more wild mammals, particularly Mountain and Brown Hares and the Red Fox. It also aims to end the use of dogs as a tool for the killing of wild mammals by amending the Protection of Wild Mammals (Scotland) Act 2002.

¹ Angus Nurse (2016) Beyond the property debate: animal welfare as a public good, Contemporary Justice Review, 19:2, 174-187, DOI: [10.1080/10282580.2016.1169699](https://doi.org/10.1080/10282580.2016.1169699)

² For example, Wildlife and Countryside Act 1981 and other such legislation.

Further background information on the ecology and population of these species, as well as the current arrangements for their killing, is set out in the annex to this consultation paper.

4.2 The existing legal framework

Wild mammals in Scotland are protected, or their killing is regulated, by a number of statutes including:

The Wildlife and Countryside Act 1981

Section 9 prohibits the intentional killing, injuring or taking of, and the possession of or trade in, the wild animals listed in Schedule 5, such as wildcat and pine marten. In addition, places used for shelter and protection by Schedule 5 animals are safeguarded against intentional damage, destruction and obstruction and against intentional disturbance whilst those animals are occupying those places.

Section 10 identifies certain exceptions to section 9, e.g. provision to allow the tending of or humane destruction of injured animals; provision to cover incidental actions that are an unavoidable result of an otherwise lawful activity.

Section 11 prohibits the use of self-locking snares, bows, explosives, and the use of live mammals or birds as decoys, for the capture and killing of any wild animal. It also prohibits the use of traps, snares, nets, poisons, electrical devices, dazzling devices, and automatic weapons, night shooting devices, gas or smoke for killing, injuring or taking animals listed in Schedule 6. The use of sound recordings as decoys and pursuit with mechanically propelled vehicles are also prohibited for animals on Schedule 6.

Following amendments made by the Wildlife and Natural Environment (Scotland) Act 2011, the 1981 Act now includes close seasons for both Mountain and Brown Hares (section 10A and schedule 5A). Close seasons prohibit killing except under licence over a specified period of time, usually to protect animals during the breeding season and when dependent young are present. The 2011 amendments also introduced additional measures to regulate the use of snares, and a prohibition on the poaching of hares and rabbits.

Protection of Badgers Act 1992

This Act makes it an offence to wilfully take, injure or kill a badger, to ill-treat a badger or to interfere with badger setts. Various exceptions to this protection are provided such as to allow the tending of or humane destruction of injured badgers; provision to cover incidental actions that are an unavoidable result of an otherwise lawful activity or activities undertaken under licence.

The Conservation (Natural Habitats, &c.) Regulations 1994

As amended, the regulations implement European species protection legislation and, among other things, prohibit certain methods of killing protected wild animals, along similar lines to the Wildlife and Countryside Act 1981. Mountain Hares are protected under this legislation from non-selective traps.

The Wild Mammals Protection Act 1996

Provides that any person who “mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates any wild mammal with intent to inflict unnecessary suffering” commits an offence. The Act does not prohibit fox hunting or fox baiting.

The Deer (Scotland) Act 1996

Prohibits the killing or injuring of any deer otherwise than by shooting. For this reason, the use of dogs to hunt deer was not regulated by the Protection of Wild Mammals (Scotland) Act 2002.

The Protection of Wild Mammals (Scotland) Act 2002

Regulates hunting with dogs by prohibiting the use of a dog to hunt a wild mammal, subject to a wide range of exceptions. (See section 5 of this document for more discussion of the 2002 Act.)

Although best known for its application to fox hunting and hare coursing, the 2002 Act applies to all wild mammals apart from rabbits and rodents. Any amendments to this Act will therefore affect all of these species, although in practice flushing, stalking and hunting with dogs principally affects foxes and hares.

The Nature Conservation (Scotland) Act 2004

Places duties on public bodies in relation to the conservation of biodiversity, increases protection for Sites of Special Scientific Interest (SSSIs), amends legislation on Nature Conservation Orders and strengthens wildlife enforcement legislation.

The Animal Health and Welfare (Scotland) Act 2006

Primarily applies to domestic animals but also covers wild animals when they come under the control of man, making it an offence to cause unnecessary suffering or for a responsible person to fail to provide for an animal’s welfare needs.

Marine (Scotland) Act 2010

Part 6 of this Act (“Conservation of Seals”) provides that killing, injuring or taking of a seal is an offence, but as with many such statutes also establishes a range of exceptions (e.g. for the humane destruction of injured animal) and a licensing scheme. The Act specifies the reasons for which a licence may be granted, as well as the conditions that must or may apply to such a licence – including the power for Scottish Ministers to charge a fee for such licences.

The Wildlife and Natural Environment Act 2011

Amends the Wildlife and Countryside Act 1981 to provide close seasons for hares, further regulate the use of snares and prohibit poaching of hares and rabbits.

4.3 Problems with the existing legislation

The above list is not comprehensive but, as can be seen, wildlife legislation is complex and spread across several different Acts and Regulations, most of which are designed

for conservation and species protection. Some elements of the legislation (e.g. close seasons and prohibitions on some means of killing or taking) arise from welfare concerns. However, the welfare of the sentient individual animal has often been of secondary importance. This is at odds with modern concepts of animal welfare and scientific understanding of animal sentience, which should require welfare concerns to be treated as an equal issue of public interest – alongside the conservation concerns.

This existing legislation also takes the need for wildlife management, including by lethal means, as a given. I would like to see a more modern approach that balances the needs of humans and animals more equitably, and seriously promotes alternatives to the killing of animals.

4.3.1 Animal welfare and hunting wild mammals with dogs

The Burns Inquiry in 2000³ concluded that hounds killing foxes and digging out/terrier work “seriously compromises” the welfare of the fox but noted the lack of scientific evidence particularly around the impact of the pursuit. The Burns report did, however, cite evidence from farmed foxes that fear and anxiety are experienced by foxes in response to stressful stimuli⁴.

The Burns report also cited the Bateson and Bradshaw paper on the physiological effects of hunting red deer with dogs⁵. Whilst foxes and deer are different species, and deer hunting is not necessarily comparable to fox hunting, this study illustrates the fact that mammals have been shown to experience suffering as a result of a long pursuit.

The Protection of Wild Mammals (Scotland) Act 2002 aimed to end the cruelty associated with the use of dogs in the hunting of wild mammals by mounted fox hunts, hare coursing, and the use of terriers⁶. The use of dogs was still permitted, as long as this was confined to flushing the wild mammals towards guns, to be shot as soon as it was safe to do so.

There is widespread concern that the Act has largely failed to deliver this goal. From the earliest days, monitoring by animal welfare groups such as OneKind and the League Against Cruel Sports Scotland (LACSS) uncovered prolonged chases of foxes and an apparent absence of appropriately positioned guns. In particular, the LACSS has presented extensive video evidence of hunt activities from 2015 onwards. They claim that this shows “at least half of Scotland’s mounted hunts sending packs of

³ [Final Report of Committee of Inquiry into Hunting with Dogs, June 2000](#)

⁴ Kreeger, T.J., Monson, D., Kuechle, V.B., Seal, U.S. and Tester, J.R. “Monitoring heart rate and body temperature in red foxes (*Vulpes vulpes*.)” *Canadian Journal of Zoology*, 1989: 67(10), 2455- 2458

⁵ Bateson, P. and Bradshaw, E.L. “Physiological effects of hunting red deer (*Cervus elaphus*.)” *Proc. R. Soc. Lond. B Biol. Sci.*, 1997: 264, 1707-1714. This showed that on long hunts (on average 19 km) caused: “(i) *depletion of carbohydrate resources for powering muscles, (ii) disruption of muscle tissue, and (iii) elevated secretion of β -endorphin. High concentrations of cortisol, typically associated with extreme physiological and psychological stress, were found.*” (iv) haemolysis quite early in the pursuit, after 5 km.

⁶ <http://archive.scottish.parliament.uk/business/committees/historic/x-rural/reports-01/rar01-10-vol01-02.htm#02>

hounds into cover with no discernible presence of guns waiting to shoot flushed foxes” in 2015 and 2016.⁷

Such concerns led the Scottish Government to commission a review of the Act by Lord Bonomy⁸, who was asked to “*undertake a review to ascertain whether the Protection of Wild Mammals (Scotland) Act 2002 is providing a sufficient level of protection for wild mammals, while at the same time allowing effective and humane control of mammals, such as foxes, where necessary*”. Lord Bonomy’s report provides recommendations that would clarify and tighten the law, and can be read in full on the [Scottish Government website](#). However, it is only partially relevant to this proposed Bill because of the limited remit of the review. The Bonomy review, as result of his remit and his interpretation of it, focused primarily on regulating hunting with dogs, whilst this proposal seeks to end the practice. This difference of approach is illustrated by Lord Bonomy not addressing the welfare implications of the use of dogs to find and chase wild mammals *per se* – and thus the lack of any recommendation on the question of whether dogs should be used at all and whether their number should be restricted.

This is further illustrated by Lord Bonomy’s statement to the Environment, Climate Change and Land Reform Committee on 17 March 2017⁹:

“Fox hunting is an activity that has been conducted in this country for 300 or 400 years and was considered to be legitimate, and most of its elements give rise to no problem, so I have always had in my mind the notion that there must be a way of preserving it and securing the welfare of the animal at the same time. My view is couched not in the form of abolishing fox hunting but in the form of trying to find a way of maintaining it.”

Following the review, the Scottish Government consulted on Lord Bonomy’s recommendations. 18,787 responses were received, with the majority supporting further action to protect wild mammals, with support both for Lord Bonomy’s specific recommendations and for action beyond those recommendations¹⁰. Paragraph 12.9 of the Scottish Government’s analysis of responses to Lord Bonomy’s report summarises the suggestions made that go “beyond his recommendations”. It says:

“While respondents in this group¹¹ often said they would prefer a ‘real ban’ on hunting with dogs, they also made a variety of suggestions for compromise which would fall short of a complete ban. The most common suggestions, made by organisations, individuals and campaign respondents, were:

- *To amend the legislation to make mounted fox hunting with dogs illegal (this suggestion was often phrased as ‘remove the ‘flush to guns’ exemption that mounted hunts use to continue hunting’)*

⁷ <https://www.league.org.uk/Handlers/Download.ashx?IDMF=aa56a0e3-bc3d-4016-9991-acece0b4415b>

⁸ <https://consult.gov.scot/wildlife-management-and-protected-areas/improving-protection-for-wild-mammals/>

⁹ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10877>

¹⁰ <https://www.gov.scot/publications/consultation-improving-protection-wild-mammals-analysis-responses/>

¹¹ Those who felt the “changes do not go far enough”.

- *To introduce a limit of two on the number of dogs that can be used to ‘flush to guns’, thus bringing Scottish legislation in line with that in England and Wales and reducing the risk of a fox being killed by dogs*
- *To introduce a licensing scheme for all forms of hunting*
- *To require pest control services to be carried out only by registered, regulated and trained professionals.”*

4.3.2 Pest control and hunting wild mammals with dogs

As well as considering hunting wild mammals with dogs a recreational activity, the current legislation considers it a valid pest control measure aimed at protecting agricultural and game interests. However, the different methods of hunting wild mammals with dogs appear to play varying roles in pest control.

Mounted fox hunts currently account for the killing of up to 800 foxes per year, with Lord Bonomy estimating that in general 20% or more of foxes disturbed by hunts are killed by dogs¹². A significant proportion of these foxes will also be dug out using a terrier, with one hunt reporting that 27% of foxes they killed during the 2015/16 season were killed in this way¹³. So far as I am aware, there are no recent estimates of the number of foxes killed using dogs by footpacks or terrier work that is unrelated to the activities of mounted hunts.

Mounted fox hunting appears to play a negligible role in pest control. Lord Bonomy observed that “*among mounted hunts pest control can appear to be incidental to the primary objective of exercising horse and hounds*”¹⁴. This echoes the findings of the report by Lord Burns to the Westminster Parliament in 2000¹⁵, which concluded that: “*the overall contribution of traditional fox hunting, within the overall total of control techniques involving dogs, is almost certainly insignificant in terms of the management of the fox population as a whole*”.

4.3.3 Trail and drag hunting

In contrast to Scotland, hunts in England and Wales responded to the Hunting Act 2004 by developing a new pastime known as trail hunting. Trail hunting is similar to the existing sport of drag hunting. Drag hunting is a sporting activity that dates back to the early 19th Century that involves huntsmen working with a pack of dogs to follow an artificially laid scent trail. The quarry for the ‘draghounds’ is a drag; normally an absorbent material to which the scent is applied and laid by a runner or rider. The scent is artificial and often incorporates aniseed. Animal welfare NGOs are supportive of drag hunting because they view it as a way of humanely recreating the recreational value of traditional hunting.

¹² [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 6.19

¹³ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 3.8.

¹⁴ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 6.12

¹⁵ [Report of Committee of Inquiry into Hunting with Dogs in England & Wales](#), June 2000

One of the key differences between trail and drag hunting is that trail hunting uses a fox-based scent, usually urine. This means that dogs are trained to pursue fox scents which introduces the risk that the dogs will come across, and pursue, a fox scent during the course of a trail hunt. In their study of trail hunting in England, the animal welfare charity IFAW concluded that:

“trail hunting is primarily a false alibi to avoid prosecutions of illegal hunting, rather than a harmless temporary simulation of hunting before the ban, or a slight variation of the cruelty-free sport of drag hunting”¹⁶.

In his review, Lord Bonomy noted that:

“Trail hunting has the incidental benefit that packs of hounds are ready for action should the 2004 Act ultimately be repealed, as many involved in hunting hope”¹⁷.

Drag hunting is relatively common in England and has occasionally been practised in Scotland. Trail hunting has no history in Scotland, but Lord Bonomy noted that it would be one possible response by Scottish hunts if the legislation was tightened without specific measures in place to prevent this outcome. Because of the risk of a trail hunt “accidentally” developing into the pursuit of a live fox, undermining the aims of the existing legislation, I would wish to ensure that trail hunting does not become a common practice in Scotland.

4.3.4 Scottish Government position on hunting with dogs

On 9 January 2019, the Scottish Government announced its response to the review and consultation¹⁸. In the Scottish Parliament, Mairi Gougeon MSP, the Minister for Rural Affairs and the Natural Environment, said:

“Consequently, despite the ban on hunting introduced by the Protection of Wild Mammals (Scotland) Act 2002, it is clear to me that there remains considerable public concern about fox hunting in Scotland and doubts about the operability of the legislation as it currently stands. I believe that Parliament should therefore be given the opportunity to consider reform of the 2002 Act in the interests of furthering the welfare of wild mammals. I plan to bring forward a bill to deal with that and other wildlife welfare issues during the course of the current parliamentary session.

“In addition to progressing the majority of Lord Bonomy’s recommendations, the bill will, as has already happened in England and Wales, seek to limit to two the number of dogs that can be deployed against wild mammals. It is important that we do not undermine the need for legitimate pest control, particularly in upland areas, so I intend to explore the possibility of a new licensing scheme that could enable the use of more than two dogs where that is deemed necessary.

¹⁶ <https://s3.amazonaws.com/ifaw-pantheon/sites/default/files/legacy/Uncovering%20the%20Trail%20of%20Lies.pdf>

¹⁷ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 3.12

¹⁸ <https://news.gov.scot/news/new-legislation-on-fox-hunting>

The bill will also contain provision to discourage the establishment in Scotland of the practice known as trail hunting, as that poses significant risks for wild mammals. Even with the best of intentions, there appears to be too high a risk that hounds following a trail will be diverted by the scent of a live fox and will pursue and possibly kill that animal.

“We will, of course, consult on the draft bill in due course.”¹⁹

This statement is very welcome – in itself and in the indication that the Government will support measures beyond simply implementing Lord Bonomy’s recommendations. I note, especially, the Minister’s commitment to limit to two, subject to a possible licencing scheme, the number of dogs that may be deployed against wild mammals and to act against the development of so-called “trail hunting”.

However, to date, no further action has been taken – there is no further consultation, no draft legislation or any indication of when this legislation will be introduced. I believe it is time to act – hence, this consultation which delivers on the Bonomy report and the additional matters that the Scottish Government has agreed, but also takes a broader and more comprehensive approach.

4.3.5 Hare killing

Despite the establishment, in the Wildlife and Natural Environment Act 2011, of a close season for killing hares, Mountain Hares are routinely killed in large numbers on grouse moors. Gamebag Census data, collected by the Game and Wildlife Conservation Trust (GWCT), suggests an average of 26,000 Mountain Hares are killed each year²⁰. A questionnaire-based survey of estates in 2006/07 commissioned by Scottish Natural Heritage²¹ found that 50% of hares were reported killed as part of grouse moor management, with the aim of controlling the tick-borne louping-ill virus (LIV) and thus, in theory, sustaining high densities of red grouse for recreational shooting. 40% of hares reported killed were for sport, and the remaining 10% for forestry protection. Recent reports suggest that the killing of Mountain Hares for grouse moor management purposes has intensified, so it may be that the proportion killed for this reason has increased²².

As the survey indicated, the primary stated reason for large-scale hare killing on grouse moors is to reduce the numbers of the parasitic tick (*Ixodes ricinus*) carried by mountain

¹⁹ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11873>

²⁰ Scottish Natural Heritage papers released under FOI, available from: <https://theferret.scot/38000-mountain-hares-killed/>

²¹ Kinrade, V., Ewald, J., Smith, A., Newey, S., Iason, G., Thirgood, S. Raynor, R., The distribution of Mountain Hare (*Lepus timidus*) in Scotland (2006/07). Scottish Natural Heritage Commissioned Report No.278 (ROAME No. R07AC308). 2008.

²² For example: 1,500 mountain hares being culled on a single grouse moor in the Lammermuir Hills in 2014 (HeraldScotland. 2014. Outrage over mountain hare “massacre”. Available at <http://www.heraldscotland.com/news/home-news/outrage-over-mountain-hare-massacre.25442597>)

hares. Moorland managers believe that this reduces the risk of transmission of LIV from the ticks to grouse, thus increasing the number of grouse available to shoot at the end of the summer. There is no evidence that this practice is effective²³, with research concluding that mountain hare culling is not effective if alternative tick hosts, such as deer, are present²⁴. The evidence currently available is insufficient to provide scientific justification for culling mountain hares for the purposes of tick and louping ill virus (LIV) control²⁵. Recent research has shown that large-scale killing can also risk the local extinction of mountain hare populations²⁶.

The Scottish Government does not support “large, indiscriminate culls of mountain hares”²⁷. In December 2014, Scottish Natural Heritage published a joint statement with Scottish Land & Estates (SLE) and GWCT appealing for “voluntary restraint” on large-scale hare culls²⁸. However, evidence has continued to emerge that culls continue²⁹ and in November 2017 the Scottish Government established an independent group to look at sustainable moorland management, including hare culls³⁰. A report is expected to be published in Summer 2019.

In March 2018, the League Against Cruel Sports, LUSH and OneKind published video evidence of mountain hare killing on grouse moors in the Highlands. In response to a question I asked on 29 March 2018, the First Minister said:

*“I make it very clear that the Government is exploring all the available options in order to prevent mass culls of mountain hares. One of those options, of course, is legislation and a licensing scheme. What we are seeing is not acceptable. That is the very clear message from the Government.”*³¹

While the Scottish Government has not yet published an update on this process, it is likely to be considered as part of the wider grouse moor review.

²³ Gilbert, L., Norman, R., Laurenson, K.M., Reid, H.W. & Hudson, P.J. 2001. Disease persistence and apparent competition in a three-host community: an empirical and analytical study of large-scale, wild populations. *Journal of Animal Ecology* **70**: 1053–1061 (<https://besjournals.onlinelibrary.wiley.com/doi/abs/10.1046/j.0021-8790.2001.00558.x>); Laurenson, M.K., Norman, R.A., Gilbert, L., Reid, H.W. & Hudson, P.J. 2003. Identifying disease reservoirs in complex systems: mountain hares as reservoirs of ticks and louping-ill virus, pathogens of red grouse. *Journal of Animal Ecology* **72**: 177–185 (<https://besjournals.onlinelibrary.wiley.com/doi/full/10.1046/j.1365-2656.2003.00688.x>); and Harrison, A., Newey, S., Gilbert, L., Haydon, D.T. & Thirgood, S. 2010. Culling wildlife hosts to control disease: mountain hares, red grouse and louping ill virus. *Journal of Applied Ecology* **47**: 926-930 (<https://besjournals.onlinelibrary.wiley.com/doi/full/10.1111/j.1365-2664.2010.01834.x>).

²⁴ Gilbert *et al*; *op cit*.

²⁵ Harrison *et al*; *op cit*.

²⁶ For example, in the north-east of Scotland; see Watson, A and Wilson, JD. 2018. Seven decades of mountain hare counts show severe declines where high-yield recreational game bird hunting is practised. *Journal of Applied Ecology* **55**: 2663-2672 (<https://besjournals.onlinelibrary.wiley.com/doi/abs/10.1111/1365-2664.13235>).

²⁷ http://www.parliament.scot/S5_PublicPetitionsCommittee/Submissions%202018/PE1664_I.pdf

²⁸ <https://www.snhpresscentre.com/news/call-for-voluntary-restraint-on-large-scale-hare-culls>

²⁹ OneKind (2016) [Mountain hare persecution in Scotland](#)

³⁰ <https://news.gov.scot/news/moorland-management>

³¹ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11452>

5 DETAIL OF THE PROPOSED BILL

The proposed Protection and Conservation of Wild Mammals (Scotland) Bill will improve protections for wild mammals in Scotland. It will achieve this by ending the use of dogs in flushing and hunting wild mammals, including foxes and hares, and improving the protection of mountain hares, brown hares, and red foxes.

The Bill is in the public interest as it seeks to address the following concerns:

- Animal welfare – the suffering caused by the widespread shooting of hares, killing vixens during the breeding season, and the use of hounds to search, flush and/or hunt is unacceptable.
- Conservation – Mountain Hares are a declining species³², subject to a requirement to monitor and report conservation status under the EU Habitats Directive. Both Mountain and Brown Hares are Priority Species under the Biodiversity Action Plan, and more effort is required to ensure their conservation status.

However, I am also seeking to address an ethical concern: that wildlife should not be killed or made to suffer unnecessarily for recreational purposes.

5.1 Who will the proposed Bill affect?

The proposed Bill will affect hunters, land managers, gamekeepers, farmers, and others who kill wild mammals either for recreation, as part of land management, or with the intention of protection of farming interests.

The proposed Bill will also affect everyone in Scotland with an interest in wild mammal protection. As wild mammals are a part of Scotland's natural heritage, all residents of Scotland therefore have a legitimate interest in their protection, as will our tourism industry, as many tourists visit to enjoy our natural heritage, as well as others around the world who care for all wildlife.

5.2 Ending the use of dogs in the hunting of wild mammals

The proposed Bill will prohibit the flushing, searching and hunting of wild mammals with dogs. I set out below what I believe new legislation should achieve and what it should prevent. In particular, it is clear that the existing Protection of Wild Mammals (Scotland) Act 2002 is not fit for purpose. One reason for this is that it creates a (welcome) 'catch all' offence and then permits a wide range of exceptions, some of which are overlapping or duplicated, many of which are unclear and some of which then contain exceptions to the exception. This lack of clarity was one of the conclusions of Lord Bonyon's

³² Massimino, D., Harris, S.J., Gillings, S., (2018). Evaluating spatiotemporal trends in terrestrial mammal abundance using data collected during bird surveys. *Biological Conservation*. 226, pp. 153-167 (<https://www.sciencedirect.com/science/article/abs/pii/S0006320718300533?via%3Dihub>); <https://www.rspb.org.uk/about-the-rspb/about-us/media-centre/press-releases/severe-declines-of-mountain-hares-on-scottish-grouse-moors/>; and Watson and Wilson, 2018; *op cit*.

review³³, and I believe that these exceptions have acted as loopholes, allowing the continued use of dogs to hunt foxes.

I propose to enact all of Lord Bonomy's recommendations; however, my Bill will also go further to ensure it effectively ends hunting with dogs. This requires removal of the exceptions as set out in the 2002 Act. They have proven to be ineffective as currently expressed.

5.2.1 The offence

Section 1(1) of the Protection of Wild Mammals (Scotland) Act 2002 sets out the core offence: *A person who deliberately hunts a wild mammal with a dog commits an offence*. I propose that this is amended so that a person who intentionally or recklessly hunts a wild mammal with a dog will be committing an offence.

Recklessness is a concept that is well recognised by the Scottish courts and the bar is a high one. Lord Bonomy states that recklessness requires the offender to display gross negligence³⁴. My proposal:

- Puts the offence on the same footing as other wildlife offences, such as section 1 of the Wildlife and Countryside Act 1981, which provides that it is an offence "intentionally or recklessly to take, kill or injure any wild bird".
- Was recommended by Lord Bonomy³⁵
- Would have no effect on a responsible³⁶ dog-walker whose dog unexpectedly pursues a wild mammal³⁷, which was a chief concern during the passage of the 2002 Act.

It is possible that mounted trail hunts may be introduced in Scotland following an effective ban, as has been seen in England and Wales. Expanding the offence to include recklessness should ensure that this proposed ban is not similarly circumvented in Scotland. This is also the intention of the Scottish Government (see above), and I believe that, given Lord Bonomy's recommendations and comments about the interpretation of recklessness, this amendment would, in effect, prevent such a development. I am, however, also seeking views as to whether, in addition, the use of fox-based scents should be specifically prohibited in recreational activities.

5.2.2 Definition of hunting

Section 10 of the Protection of Wild Mammals (Scotland) Act 2002 provides an incomplete interpretation of 'to hunt' as including 'to search for or course'. Lord Bonomy noted that this limited definition presents courts with difficulties³⁸, and recommends a definition that includes all of the terms that are used in the current Act, so that hunting

³³ For example, [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraphs 2.5, 5.3 and 5.23.

³⁴ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 5.21

³⁵ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 2.8

³⁶ Responsible here should be interpreted as acting in accordance with the Scottish Outdoor Access Code.

³⁷ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 5.21

³⁸ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 5.7

“includes to search for, stalk, flush, chase, pursue or course”. I am minded to introduce this definition.

5.2.3 Exceptions to the offence

The Protection of Wild Mammals (Scotland) Act 2002 creates an offence of deliberately hunting a wild mammal with a dog or allowing others to do so in certain circumstances (section 1), while sections 2 to 6 set out exceptions to these offences. Each exception is explained below. Given my aim is to end all hunting of wild mammals with dogs, I propose removing all the existing exceptions. However, I am open to representations as to whether a narrowly-framed new exception is required and if so how this could be managed to ensure it does not act as a loophole.

Section 2 (Exception: stalking and flushing from cover) permits dogs to be used to stalk, search or flush a wild mammal as long as it is shot “once it is safe to do so”. This is permitted for a range of reasons, including:

- (a) protecting livestock, ground-nesting birds, timber, fowl (including wild fowl), game birds or crops from attack by wild mammals;
- (b) providing food for consumption by a living creature, including a person;
- (c) protecting human health;
- (d) preventing the spread of disease;
- (e) controlling the number of a pest species; or
- (f) controlling the number of a particular species to safeguard the welfare of that species

Section 2 is the principal exception used by mounted fox hunts to provide ‘pest control’ services ((a) and (e) above). As Lord Bonyon observed: “*The activities of a mounted hunt engaged in flushing to guns bear many similarities to the hunt’s pre-2002 activities*”³⁹. In theory, this exception requires wild mammals to be killed using guns, but there is considerable debate about whether hunts are fielding sufficient numbers of guns during a hunt to ensure this happens, and to avoid the risk of prolonged pursuits. This is discussed at length in the Bonyon review (Paragraphs 6.2 – 6.12). Indeed, Lord Bonyon estimates that 20% of foxes disturbed by hunts are killed by the hounds⁴⁰.

Section 3 (Exception: use of a dog in connection with falconry and shooting) permits dogs to be used to stalk and/or flush a wild mammal so that it can be shot or killed with a bird of prey for recreational purposes. Given that part of the purpose of my Bill is to end this practice as a “sport”, I propose removing this exception.

Section 4 (Exception: search by authorised person) permits the use of dogs to search for, or catch, a wild mammal if that person does not intend to harm it and is authorised to do so by a Local Authority or if they are a police officer. Its principal use is for searching for and retrieving escaped wild mammals. There is little evidence in the

³⁹ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 6.13

⁴⁰ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 6.19

public debate as to how this exception is used, if at all, so I am particularly keen to hear from stakeholders on the importance or otherwise of this exception.

Section 5 (Exception: retrieval and location) contains three subsections that are confusing and repetitive.

Subsection (1) allows dogs to be used to:

- (a) retrieve a hare which has been shot;
- (b) locate a wild mammal which has escaped, or been released, from captivity (but only if that person acts to ensure that the mammal is captured or shot once it is located); and
- (c) retrieve or locate a wild mammal which that person reasonably believes is seriously injured or orphaned (but only if that person acts to ensure that the mammal, once located, is captured, treated or killed as humanely as possible in order to relieve its suffering).

Paragraph (a) allows for retrieval of a hare that has been shot. It does not specify that the hare must be alive (although in circumstances where it is dead, the act would not be “hunting” as defined by section 1 and thus an exception would not be necessary). It is also limited to hares (while the Act allows or even, arguably, encourages the shooting of foxes). Neither does it require any specific further action on behalf of the person using the dog, such as treating its injuries or killing it humanely, in the way that the following purposes (b) and (c) do require such action. I am concerned that the exception provided by section 5(1)(a) allows for actions that are unnecessary and could cause welfare concerns for injured hares being ‘handled’ by a dog, however well trained that dog may be. I recognise that an argument can be made that the use of a dog to search for an injured wild mammal is more humane than either leaving that mammal or searching for it by other means. However, I recognise that there are strong concerns that such an exception could be exploited, and the net effect of retaining it would be negative.

Paragraph (b) allows individuals other than authorised persons to use dogs to locate an escaped wild mammal if it requires either capture (by unspecified means) or shooting once located.

Paragraph (c) may also be interpreted as a welfare measure covering two very different situations.

- i. There are reasonable grounds for believing that a wild mammal has been seriously injured by unspecified means (not necessarily due to the actions of the person using the dog). This raises the possibility that anyone could claim that a wild mammal was seriously injured or ill, and therefore that the person was entitled to use a dog or dogs to retrieve or locate it.
- ii. There are reasonable grounds for believing that a wild mammal has been orphaned. The usual assumption here is that the exception refers to the retrieval or location of dependent fox cubs after their mother has been killed.

However, this welfare issue is best addressed by better regulation of fox killing, which is addressed later on in this consultation.

Subsection (2) creates a number of ‘exceptions to the exception’ in section 5(1)(b), prohibiting the use of a dog for the retrieval and location of an escaped or released fox or hare, an escaped or released deer, boar or mink, unless it has escaped from a farm or zoo; or an escaped or released wild mammal that has been raised or released for the purpose of being hunted. It is difficult to understand the purpose or application of these exceptions, but I invite views as to when and why they would legitimately be used.

Subsection (3) allows the use of a dog below ground, by an occupier of the relevant land or someone acting with the occupier’s permission. The dog may be used to locate a fox which a person reasonably believes is orphaned, but only if that person takes reasonable steps to ensure that the fox, once located, is despatched by a single dog or otherwise killed as humanely as possible. This exception is specifically intended to allow the killing of dependent cubs in the earth and therefore permits some use of terriers. To some extent it duplicates the provision already made at 5(1)(c) with regard to orphaned animals.

5.2.4 Is a new, narrowly defined exception required for exceptional purposes?

As explained above, it is my intention to remove all the current exceptions in the current Protection of Wild Mammals (Scotland) Act 2002 (i.e. sections 2–6). As part of this consultation, I invite views as to whether a restricted, clear, well structured, single exception that would allow the use of one or two dogs dog in certain exceptional circumstances is needed. This exception would need to pass a clear public benefit test, such as conservation or public safety. This is in contrast to current exceptions that protect private interests, such as the protection of game and killing for “sport”.

5.2.5 Limiting the number of dogs permitted

The Hunting Act 2004, which applies to England and Wales, restricts the number of dogs permitted to be used in connection with any excepted activity to a maximum of two⁴¹. In July 2015, a motion was proposed at Westminster to remove this restriction. However, the proposal was dropped when SNP MPs confirmed they would oppose it, arguing that:

“We totally oppose foxhunting and, when there are moves in the Scottish parliament to review whether the existing Scottish ban is strong enough, it is in the Scottish interest to maintain the existing ban in England and Wales for Holyrood to consider”⁴².

Given the welfare implications of permitting packs of dogs to be used in excepted activities, and the fact that a restriction is already in place in England and Wales, I consider the case for a two-dog limit for any excepted activity to be compelling if there is

⁴¹ Schedule 1, paragraph 1(5): <http://www.legislation.gov.uk/ukpga/2004/37/schedule/1>

⁴² <https://www.theguardian.com/uk-news/2015/jul/13/foxhunting-ban-changes-under-threat-from-snp>

to be any exception to the offence. As well as the SNP's Westminster position in relation to this issue, quoted above, this is now the position of the Scottish Government in relation to Scotland⁴³.

The Wild Animal Welfare Committee (WAWC) published a statement on this issue in 2016. It advised that:

“Our search has failed to find any robust peer-reviewed evidence that relates specifically to the welfare of foxes when flushed from cover by dogs. In the absence of hard data, the general approach suggested by the European Food Safety Authority (2012) when conducting a risk assessment for animal welfare is to use expert elicitation to form the best working position, which seems appropriate until such time as more information becomes available.

“Given the recommendation of EFSA, the position of WAWC after reviewing available evidence is that the greater the number of dogs involved, the more difficult it becomes to retain good control over them, especially when working out of sight under dense cover. It is thus increasingly likely that a chase or aggressive encounters may occur, thus impacting on the welfare of the fox (or any other wild animals that are encountered). Also, there would be more risk to the dogs, and more likelihood of failing to get a shot at the fox, if more than two dogs were used. On this basis, and given the lack of new evidence since the Burns report, if flushing foxes from cover with dogs is to be undertaken, the restriction to the use of only two dogs seems in the best welfare interest of the fox, based on available evidence.”⁴⁴

5.2.6 Other recommendations made by Lord Bonomy

The following recommendations were specifically consulted upon by the Scottish Government in 2018. Below, I provide a summary and a suggested way forward for each.

Vicarious liability

Lord Bonomy recommended that:

“There may be merit in providing that the owner who gives the hunt permission to hunt over the land would be guilty of an offence in the event that someone involved in the hunt commits an offence. Similar provisions were introduced into the Wildlife and Countryside Act 1981 by section 24 of the Wildlife and Natural Environment (Scotland) Act 2011. They provide that a person who has a legal right to kill or take a wild bird on or over land or manages or controls the exercise of that right is guilty of an offence where his employee or agent or an independent contractor engaged by him commits an offence. It is a defence for

⁴³ <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=11873>

⁴⁴WAWC statement, June 2016 <http://www.wawcommittee.org/news/18-wawc-statement-on-the-number-of-dogs-used-to-flush-foxes-from-cover-welfare-aspects-for-foxes>

the landowner to show that he took all reasonable steps and exercised all due diligence to prevent the offence being committed.”⁴⁵

The Scottish Government consulted on this proposal and 97% of respondents supported it, although I note that all countryside management and ‘sporting’ groups opposed it⁴⁶. Those organisations also opposed the introduction of vicarious liability for other forms of wildlife crime⁴⁷. However, now it is law, they have successfully (in most cases) operated with it in place, and openly advise members how to ensure compliance. It is also a common form of offence in other areas of law where the public interest is being protected (such as Health and Safety) and where “chains of command” may be as at fault as individuals “on the ground”.

Given the level of support for this recommendation, illustrating the public’s concern on this issue, the fact that it is already in place for some other forms of wildlife crime and Lord Bonyon’s support, I am minded to use my proposed Bill to implement it.

Reversal of the burden of proof

In most criminal cases, the burden of proof lies on the Crown and the prosecutor must meet a high standard of proof, to establish the guilt of the accused beyond reasonable doubt. However, Lord Bonyon noted the difficulty in gathering evidence related to fox hunting cases and suggested that “The Act should be amended to provide that the onus of establishing that conduct fell within one of the exceptions lies upon the accused”⁴⁸.

Again, the majority of responses to the Scottish Government consultation supported this proposal. Concerns were raised relating to its compatibility with the European Convention on Human Rights. This was explored in depth by Lord Bonyon, who reviewed all relevant case law and took the view that this was not the case and concluded that it would be reasonable and proportionate to require an individual acting under an exception to the Act to prove that he or she was doing so.

I am therefore minded to implement this proposal for offences under the Protection of Wild Mammals (Scotland) Act 2002.

Extend the time limit for bringing prosecutions under the Act

Lord Bonyon recommended that the time limit for completing an investigation into an alleged offence and instituting the prosecution (currently six months after the alleged offence occurred) be extended to six months from the date on which sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the alleged offence⁴⁹. This mirrors time limits provided for in other wildlife legislation,

⁴⁵ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 7.24

⁴⁶ Scottish Government (2018) [Improving the protection of wild mammals: consultation analysis](#)

⁴⁷ For example, sections 18A and 18B of the Wildlife and Countryside Act 1981 (as introduced by the Wildlife and Natural Environment (Scotland) Act 2011).

⁴⁸ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 2.10

⁴⁹ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 2.11 and 7.42

reflects developments made in wildlife crime investigative techniques, and would be welcomed by Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS)⁵⁰. It was also overwhelmingly supported in responses to the Scottish Government consultation. I am minded to implement it both for existing offences under the Protection of Wild Mammals (Scotland) Act 2002 and for any new offences created by my proposed Bill.

5.2.7 Penalties

Between 2011/12 and 2015/16, there were 25 cases of hunting with dogs that were prosecuted in the Scottish Courts and resulted in penalties being imposed. Three of these resulted in a custodial sentence and 13 fines were issued, with an average fine of £393⁵¹. This is similar to the sentences seen across all wildlife crimes in Scotland.

The Wildlife Crime Penalties Review Group was created as part of a package of measures to combat wildlife crime announced by the Minister for Environment and Climate Change, Paul Wheelhouse, in July 2013. The Group published its report in November 2015⁵². The report puts forward a range of recommendations to enhance the enforcement of wildlife crime, including hunting with dogs. Many of the recommendations are systemic in nature and it would not be appropriate to take them forward in this Bill. However, enforcement is a key challenge when it comes to ensuring the efficacy of wildlife legislation. I therefore suggest that the following recommendation made by the Review Group be taken forward in relation to offences affected or created by my proposed Bill:

“That maximum penalties available on summary conviction at least for the more serious offences, are raised to at least a £40,000 fine and up to 12 months imprisonment”⁵³.

It is, of course, a matter for the COPFS to determine the seriousness of each case, and whether to instigate summary proceedings or to prosecute on indictment. However, I note the recommendation of the Wildlife Crime Penalties Review Group that “conviction on indictment is more commonly made available across the range of wildlife offences with a maximum term of imprisonment of up to 5 years⁵⁴” and this would be the approach I would adopt in relation to offences affected or created by my Bill.

5.3 Improved protection for certain wild mammals

As outlined above, Scotland is still blessed with a wide range of wild mammals who share this place with us. Many of these species attract a number of different protections for conservation and/or welfare reasons. My bill will widen this protection somewhat in line with addressing the conservation and welfare concerns described earlier.

⁵⁰ [Report of the Review of the Protection of Wild Mammals \(Scotland\) Act 2002](#), Paragraph 7.43

⁵¹ [Wildlife Crime in Scotland: 2017 annual report](#)

⁵² [Wildlife Crime Penalties Review Group: report](#)

⁵³ [Wildlife Crime Penalties Review Group: report](#) – first part of recommendation 1, page 66.

⁵⁴ [Wildlife Crime Penalties Review Group: report](#) – second part of recommendation 1, page 66

Thus, I propose establishing that Red Fox, Brown Hare and Mountain Hare are all protected, and that any killing may be carried out only under licence, as a last resort, and in a way that minimises any suffering of the target animal and any dependent.

I consider this to be a reasonable compromise between the animal welfare and ethical concerns associated with the killing of these species, and the demand from farmers and other land managers to kill wildlife to protect economic interests, particularly livestock and game.

In relation to foxes, I would expect there to be a provision, analogous to that provided for in s.10 of the Wildlife and Countryside Act 1981, permitting emergency action by an authorised person if a fox was found attacking livestock. However, I would also expect this to be conditional on good *post hoc* evidence. This would also not affect any right a farmer has to protect livestock from domestic dogs, which is provided for elsewhere⁵⁵.

Brown Hares are already protected during a close season, but should be protected all year round, subject to the availability of licences for clear and defined purposes. This is a response to the significant animal welfare concerns associated with the large-scale killing of brown hares that has become routine in some lowland areas to protect crops and horticulture, and there are significant concerns over the population in Scotland and the UK.

Mountain Hares (*Lepus timidus*) are already protected in their close season, but should be protected all year round, subject to the availability of licences for clear and defined purposes. This is a response to the significant animal welfare concerns associated with the large-scale killing of mountain hares that has become routine on grouse moors, and the extremely serious concerns around the conservation status of this species in Scotland.

Given the legislative framework for the protection of mammals that already exists (see above), I would propose to achieve the above outcomes by using my bill to amend the Wildlife and Countryside Act 1981. If this approach is taken then all three species should be added to Schedule 5.

Given that the 1981 Act provides (section 16) for a licensing scheme to allow for the killing of species on Schedule 5, the legislative framework to achieve the intentions of my bill is already, in part, in place. This allows the licensing authority to issue both general or specific licences. However, I believe that the licensing system for wild mammals could be improved by reflecting the following principles:

- 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.

⁵⁵ Dogs (Protection of Livestock) Act 1953 and Animals (Scotland) Act 1987. I am also aware of another Members Bill proposal (from Emma Harper MSP) that seeks to update and improve the law in this area.

- 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 dependant young will suffer.
- Licences should be issued for specific purposes; these purposes should be stated in the legislation and should be purposes that are in the public interest – and outweigh the public interest of the protection that issuing a licence would override.
- Licences should not be issued unless they are a last resort measure and one to be used only when non-lethal measures have been shown to be ineffective.
- The licensing scheme should be transparent and publicly accountable⁵⁶.
- 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.
- Licensing should be run on a full cost-recovery basis.

6 Other impacts of the proposed Bill

6.1 Financial impact

6.1.1 Costs on the Scottish Government

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 red foxes during the closed seasons. However, I propose that the licensing authority charge for licences so that costs can be recovered. I consider this to be fairer than the current arrangement, which places the cost of licensing for the killing of wild mammals on the state and thus all taxpayers.

Should there be an increase in reported breaches of the offences (of hunting mammals with dogs or of killing certain mammals during the closed seasons), then the associated resource implications of investigating and prosecuting these reports will fall on the police, the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service.

6.1.2 Costs on other bodies, individuals and businesses

Individuals and groups wishing to kill protected wild mammals during their closed seasons will need to apply for a licence and may be liable for fees charged for determining and issuing the licence.

⁵⁶ A potential model for this is Marine Scotland's approach to seal licensing. Quarterly statistics detailing the licences issued for the previous quarter are published by Marine Scotland. Whilst there are a wide range of opinions over seal licensing, I believe that the transparency of the system facilitates informed public debate.

There may be a cost on individuals and businesses who choose instead to use non-lethal methods of pest control during the proposed closed seasons for mountain hares and foxes.

There may be cost on individuals and businesses whose livelihoods are currently associated with mounted foxhunting, as these hunts will be disbanded if they do not pursue an alternative activity such as drag hunting.

6.2 Equalities

An initial Equalities Impact Assessment has been undertaken and there have been no particular positive and/or negative impacts of the proposal identified on any of the protected groups (under the Equality Act 2010) at this stage.

6.3 Sustainability

This proposal supports sustainable development by ensuring that mountain hares, a conservation species, will no longer face population decline due to mass hare culling. It will also increase the welfare of wild mammals, particularly foxes, by ending as far as possible, the hunting of wild mammals with dogs.

The proposed Bill may impact on the livelihoods of those involved in activities associated with hunting wild mammals with dogs, or with hosting shoots for hare killing. Where there is evidence that the killing of foxes and hares is necessary and evidence based, these mammals can be killed under a licensing regime. The proposal will also allow the practice of drag hunting to continue, should mounted hunts wish to continue hunting in a manner that does not result in animal cruelty.

The proposal supports sustainable development by reflecting the understanding that animal welfare is a public good, and that decreasing violence against animals is beneficial to society. It is also aiming to address the issue that the current legislation (the Protection of Wild Mammals (Scotland) Act 2002) has not had the effect that the legislation, and the Scottish Parliament, originally intended.

7 ANNEX - Foxes and Hares: background information

7.1 Red Fox (*Vulpes vulpes*)

7.1.1 Ecology

The Red Fox is native to Scotland. It is an adaptable animal that is found across all habitats across the country, with the exception of some islands, such as the Orkney isles⁵⁷. Foxes have a varied diet, including small mammals, such as voles and rabbits, carrion, fruit and small birds. Foxes are territorial. They form pairs or small social groups, and one litter will usually be born on each territory in the Spring. Some of these cubs will stay, others will disperse in the Autumn and Winter, which means that fox populations are able to resist high levels of “pest control”, especially in the Winter⁵⁸.

7.1.2 Population

There are an estimated 23,000 adult foxes in Scotland producing around 41,000 cubs each spring⁵⁹. Densities are significantly higher in the lowlands than the uplands, and lower in Scotland overall than the rest of the UK. The British Trust for Ornithology monitors red foxes across the UK as part of its annual Breeding Bird Survey. Their data shows a UK-wide decline of 41% between 1996 and 2016⁶⁰. The GWCT National Gamebag Census shows changes in the number of foxes killed over time on participating estates. This suggests that the number killed in Scotland more than doubled between 1961 and 1994, then declined significantly by 15% between 1995 and 2009. This decline is attributed wholly to a reduction in the numbers killed in the uplands, as lowland bags remained stable in this period⁶¹.

7.1.3 Control and persecution

Fox control is not monitored, but according to evidence given during the passage of the Protection of Wild Mammals (Scotland) Bill⁶², 18,000 foxes were being killed annually by land users in Scotland, using a variety of methods. Other than hunting with dogs, the most common methods of fox control are shooting at night with a rifle, commonly known as lamping, and snaring.

Shooting at night involves the detection of the fox with a lamp or night-vision equipment and then shooting it dead, usually with a rifle. It accounted for 17% of foxes killed according to evidence given during the passage of the Bill, however this method has

⁵⁷ Preventing foxes reaching these islands should be a high conservation priority and underlines the need for biosecurity. If they ever do reach one of these islands, they should then be regarded as an invasive non-native species and there would be a conservation basis for issuing the use of licences under by the bBill (either for close season shooting or use of dogs to find and flush) should be a one conservation purpose included within the schemes.

⁵⁸ Harris (2015) [The utility of killing foxes in Scotland](#)

⁵⁹ Harris (2015) [The utility of killing foxes in Scotland](#)

⁶⁰ BTO, JNCC & RSPB (2017) [The breeding bird survey 2017](#)

⁶¹ <https://www.gwct.org.uk/research/long-term-monitoring/national-gamebag-census/mammal-bags-comprehensive-overviews/fox/>

⁶² Macaulay Land Use Report on Economic Impact of a Ban on Hunting: <https://web.archive.org/web/20021221205832/http://www.scotland.gov.uk:80/library2/doc16/bhwd-08.asp#b24> (para 6.3).

grown in popularity in recent years. Animal welfare charities consider shooting at night to be the least cruel technique for control. There are no specific regulations associated with this practice.

Snaring involves the use of a snare to trap and detain a fox, which is then killed by the trap operator. Snaring is regulated under specific legislation, updated by the Wildlife and Natural Environment (Scotland) Act 2011. Among other things, this requires snare operators to be registered with the Police. As at November 2016, the number of individuals registered with Police Scotland as snare operators is 1502⁶³. Snares are criticised as cruel and indiscriminate by animal welfare groups⁶⁴.

Finally, there is some debate as to whether control is the most effective option, and indeed whether it works at all. A review by Professor Stephen Harris of Bristol University, commissioned by the League Against Cruel Sports, concluded that:

*“Early work in Scotland showed that widespread fox control in winter was ineffective in reducing lamb losses, and that targeted control at fox breeding dens in spring was more effective. More recent studies on carnivore populations generally have shown that livestock losses appear to be unrelated to predator density, and that there is no logic in trying to reduce predator numbers to reduce livestock losses.”*⁶⁵

7.2 Mountain Hare (*Lepus timidus*)

7.2.1 Ecology

The Mountain Hare (*Lepus timidus*) is Britain’s only native lagomorph (the group of animals that includes rabbits and hares). In Scotland, the species is restricted to upland and moorland areas, and is commonest in the central and eastern Highlands. Its natural habitat is sub-alpine scrub but hares also thrive on grouse moors, because they benefit from the same management measures aimed at delivering high densities of red grouse, including heather burning, the legal removal of predators such as foxes, and illegal raptor persecution. The Mountain Hare is an important part of the upland ecosystem, shaping its habitat through grazing and providing a range of predator species, including golden eagles and wildcats, with an important food source.

7.2.2 Population status

There are only two national-level datasets that provide an indication of Mountain Hare numbers: the Game & Wildlife Conservation Trust (GWCT)’s game bag statistics from the National Gamebag Census (NGC), and the British Trust for Ornithology’s Breeding Bird Survey (BBS) incidental mammal sightings data. Scottish Natural Heritage has

⁶³ <https://www.gov.scot/publications/review-snaring-scottish-government-prepared-snh/pages/4/> (para 3.4).

⁶⁴ League Against Cruel Sports & Onekind (2016) [Cruel and indiscriminate- why Scotland must become snare-free](#)

⁶⁵ Harris (2015) [The utility of killing foxes in Scotland](#) (page 5)

developed a new methodology for counting mountain hares⁶⁶, which is being trialled in partnership with the GWCT.

The NGC data is considered to be purely indicative, and cannot reveal accurate population numbers – although it does indicate relative changes or changes in killing effort. According to Scottish Natural Heritage⁶⁷:

- The NGC data shows a non-statistically⁶⁸ significant decline of 40% in the number of mountain hares reportedly killed by estates in the period 1995 to 2009.
- The BBS mammal data also suggests a non-statistically significant⁶⁹ decline of 26% over the 18-year period up to 2012.
- More recently, however, there has been an upturn in the numbers reported by schemes, which may reflect the cyclical nature of hare populations.

The apparent declines in population shown by NGC and BBS data are “non-statistically significant” for a number of reasons, including the small sample size, which means that we can’t say with confidence that they reflect the national population trend.

Scottish Natural Heritage has advised the Scottish Government that these two datasets are effectively inconclusive. However, a recent paper published in August 2018 found that hare populations on grouse moors in the North-East Highlands have declined by 99% since 1954 and concludes that:

“intensification of game bird management has resulted in severe, recent declines in mountain hare numbers”⁷⁰.

One of the lead authors, Professor Jeremy Wilson, RSPB’s Head of Conservation Science in Scotland, commented that:

“These data reveal severe recent declines on grouse moors that are strongly correlated with the start of mountain hare culls for which there is no clear scientific justification. Urgent action is needed if the future conservation status of mountain hares is to be secure.”⁷¹

⁶⁶ Newey, S., Fletcher, K., Potts, J. & Iason, G. 2018. Developing a counting methodology for mountain hares (*Lepus timidus*) in Scotland. Scottish Natural Heritage Research Report No. 1022.

⁶⁷ Newey, S., Fletcher, K., Potts, J. & Iason, G. 2018. Developing a counting methodology for mountain hares (*Lepus timidus*) in Scotland. Scottish Natural Heritage Research Report No. 1022.

⁶⁸ The -40% decline in this period is subject to confidence intervals of -70% to +22%; this means that the figure is extremely uncertain and while the “headline” of -40% is correct, the data is such that we can only be 95% certain that the true figure lies somewhere between -70% and +22%. This is probably because of small sample sizes, and/or imprecise returns from estates.

⁶⁹ Similar issues to above, presumably, apply.

⁷⁰ Watson A, Wilson JD. Seven decades of mountain hare counts show severe declines where high-yield recreational game bird hunting is practised. *J Appl Ecol.* 2018;55:2663–2672. <https://doi.org/10.1111/1365-2664.13235>

⁷¹ <https://www.rspb.org.uk/about-the-rspb/about-us/media-centre/press-releases/severe-declines-of-mountain-hares-on-scottish-grouse-moors/>

Under Article 17 of the EU Habitats Directive, every six years the UK must report on its implementation, including assessments of the conservation status of protected species. The last report reported mountain hares as in favourable conservation status. The next report is due in 2019. With reference to Watson & Wilson (2018) the Scottish Government has been advised by Scottish Natural Heritage that “*taking this data into account, it is possible this will result in an unfavourable assessment*”⁷².

7.2.3 Control and persecution

Mountain hares are protected in the close season between 1 March and 31 July each year under the Wildlife and Countryside Act 1981, during which they can only be killed under licence. Outside of the close season they can be freely killed. They are also listed in Annex V of the EU Habitats Directive (1992) which requires EU member states to maintain populations in favourable conservation status, and are a priority species for conservation action under the UK Biodiversity Action Plan. However, the effectiveness of having a close season in order to maintain mountain hare populations is highly questionable (see ‘Problems with the current legislation’ section).

7.3 Brown Hare (*Lepus europaeus*)

7.3.1 Ecology

Brown Hares live in open landscapes and thrive on arable land in the lowlands. They were introduced to Britain from continental Europe during the Iron Age, and are now widespread through much of the UK. They are replaced by mountain hares in the uplands of Scotland.

7.3.2 Population

No comprehensive data exists for the brown hare population in Scotland, but data from the Gamebag Census, the BTO and some national surveys suggest that the Brown Hare population has undergone a considerable decline since the early 1960s across the UK, and that this long-term decline may be continuing⁷³. Brown hares are now a Priority Species in the UK Biodiversity Action Plan.

7.3.3 Control and persecution

Brown hares are a quarry species, meaning they can lawfully be killed as game, but are protected in the close season between 1 February and 30 September under the Wildlife and Countryside Act 1981, during which they can only be killed under licence. Outside of the close season they can be freely killed. The reasons for such killing include recreation, consumption and protection of crops.

Brown hares were (and sometimes are) the victims of ‘hare coursing’, which is the pursuit and killing of hares using greyhounds, lurchers and other sighthounds for recreational purposes. Hare coursing is banned by the Protection of Wild Mammals Act (Scotland) 2002, and whilst it appears to have been greatly reduced there are concerns

⁷² Unpublished

⁷³ JNCC/Tracking Mammals Partnership (2005) [UK Mammals: Species Status and Population Trends](#)

that it persists and is even growing in some areas⁷⁴. There were 53 hare coursing crimes recorded by Police Scotland in 2015/16, with 14 reports made to the Crown Office and Procurator Fiscal Service (COPFS)⁷⁵.

Brown hares are considered by some to be a pest, largely when they exist in high numbers and threaten damage to crops, particularly horticulture or young trees⁷⁶. In such circumstances they can be shot freely in the open season or under licence within the close season.

⁷⁴ <https://www.bbc.co.uk/news/uk-scotland-38949595>

⁷⁵ Scottish Government (2017) [Wildlife crime in Scotland: annual report 2016](#)

⁷⁶ GWCT (2010) [Conserving the brown hare](#)

8 QUESTIONS

About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
 - on behalf of an organisation? – in which case go to Q2B
- 2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)
- Politician (MSP/MP/peer/MEP/Councillor)
 - Professional with experience in a relevant subject
 - Academic with expertise in a relevant subject
 - Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
 - Commercial organisation (company, business)
 - Representative organisation (trade union, professional association)
 - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 - Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:
- I am content for this response to be published and attributed to me or my organisation
 - I would like this response to be published anonymously
 - I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. Data protection declaration

- I confirm that I have read and understood the privacy notice attached to this consultation which explains how my personal data will be used.

Your views on the proposal

Aim and approach

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?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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”?

- Fully supportive
 Partially supportive
 Neutral (neither support nor oppose)
 Partially opposed
 Fully opposed
 Unsure

Please explain the reasons for your 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?

- Fully supportive
 Partially supportive
 Neutral (neither support nor oppose)
 Partially opposed
 Fully opposed
 Unsure

Please explain the reasons for your response

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)?

- Fully supportive
 Partially supportive
 Neutral (neither support nor oppose)
 Partially opposed
 Fully opposed

Unsure

Please explain the reasons for your 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?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response, including any activity that you believe should be excepted from the ban.

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 offences 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 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.

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)

- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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):

- 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 dependant young will suffer.
- Licences should be issued for specific purposes; these purposes should be stated in the legislation and should be purposes that are in the public interest.
- Licences should not be issued unless they are a last resort measure and non-lethal measures have been shown to be ineffective.

- The licensing 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.
- None of the above
- Unsure

Please explain the reasons for your response.

Financial implications

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

(a) Government and the public sector

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(b) Businesses

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

(c) Individuals

- Significant increase in cost
- Some increase in cost
- Broadly cost-neutral
- Some reduction in cost
- Significant reduction in cost
- Unsure

Please explain the reasons for your response.

Equalities

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?

- Positive
- Slightly positive
- Neutral (neither positive or negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response.

Sustainability

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?

- Yes
- No
- Unsure

Please explain the reasons for your response.

General

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?

HOW TO RESPOND TO THIS CONSULTATION

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/WildMammals/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above, or at the end of this document.

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:
alison.johnstone.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Alison Johnstone MSP
Room MG.19
Scottish Parliament
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the Privacy Notice (set out below).

You may also contact my office by telephone on (0131) 348 6362

Deadline for responses

All responses should be received no later than **15 September 2019**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website <https://greens.scot/alison-johnstone-msp>. Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The Privacy Notice (below) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The Privacy Notice (below) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The Privacy Notice (below) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspubliknowledge.info.

Privacy Notice

This privacy notice explains how the personal data which may be included in, or is provided with, your response to a MSP's consultation on a proposal for a Member's Bill will be processed. This data will include any personal data including special categories of personal data (formerly referred to as sensitive personal data) that is included in responses to consultation questions, and will also include your name and your contact details provided with the response. Names and contact details fall into normal category data.

Collecting and holding Personal Data

The Scottish Parliamentary Corporate Body (the SPCB) processes any personal data you send to it, or that the MSP whose consultation you respond to shares with it (under a data-sharing agreement) according to the requirements of the General Data Protection Regulation (EU) 2016/679 (the GDPR) and the Data Protection Act 2018 (the DPA)

Personal data consists of data from which a living individual may be identified. The SPCB will hold any personal data securely, will use it only for the purposes it was collected for and will only pass it to any third parties (other than the MSP whose consultation you respond to) with your consent or according to a legal obligation. Further information about the data protection legislation and your rights is available here:

<https://ico.org.uk/for-the-public/is-my-information-being-handled-correctly/>

Sharing Personal Data

The data collected and generated by Smart Survey will be held by the Non-Government Bills Unit (NGBU), a team in the Scottish Parliament which supports MSPs progressing Members' Bills, and shared with the MSP who is progressing the Bill and staff in the MSP's office. Data submitted by other means (e.g. by email or hard copy) will be held by the MSP's office and shared with NGBU for the purpose of producing a summary of responses to the consultation. The MSP and NGBU are joint data controllers of the data. Under a data-sharing agreement between the MSP and the Scottish Parliament, access to the data is normally limited to NGBU staff working on the Member's Bill/proposal, the MSP and staff in the MSP's office working on the Member's Bill/proposal; but data may also be shared by NGBU with the Scottish Parliament's solicitors in the context of obtaining legal advice.

Publishing Personal Data

"Not for publication" responses will not be published and will only be referred to in the summary of consultation responses in the context of a reference to the number of "not for publication" responses received and, in some cases, in the context of a general reference that is considered by you to be consistent with the reasons for choosing "not for publication" status for your response.

Anonymous responses will be published without your name attached, your name will not be mentioned in the summary of consultation responses, and any quote from or reference to any of your answers or comments will not be attributed to you by name.

Other responses may be published, together with your name; and quotes from or references to any of your answers or comments, together with your name, may also be published in the summary of consultation responses.

Contact details (e.g. your e-mail address) provided with your response will not be published, but may be used by either the MSP's office or by NGBU to contact you about your response or to provide you with further information about progress with the proposed Bill.

Where personal data, whether relating to you or to anyone else, is included in that part of your response that is intended for publication, the MSP's office or NGBU may edit or remove it, or invite you to do so; but in certain circumstances the response may be published with the personal data still included.

Please note, however, that references in the foregoing paragraphs to circumstances in which responses or information will not be published are subject to the Parliament's legal obligations under the Freedom of Information (Scotland) Act 2002. Under that Act, the Parliament may be obliged to release to a requester information that it holds, which may include personal data in your response (including if the response is "not for publication" or anonymous).

Use of Smart Survey software

The Scottish Parliament is licensed to use Smart Survey which is a third party online survey system enabling the Scottish Parliament to collect responses to MSP consultations, to extract and collate data from those responses, and to generate statistical information about those responses. Smart Survey is based in the UK and is subject to the requirements of data protection legislation.

Any information you send by email or in hard copy in response to a consultation on a proposal for a Member's Bill may be added manually to Smart Survey by the MSP's office or by NGBU.

The privacy policy for Smart Survey is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

While the collected data is held on Smart Survey, access to it is password protected. Where the data is transferred to our own servers at the Scottish Parliament, access will be restricted to NGBU staff through the application of security caveats to all folders holding consultation data.

Access to, retention and deletion of personal data

As soon as possible after a summary of consultation responses has been published, or three months after the consultation period has ended, whichever is earlier, all of your data will be deleted from Smart Survey. If, three months after the consultation period has ended, a summary has not been published, then responses may be downloaded from Smart Survey and saved (with all the information that would normally not be published – including contact details – removed) to SPCB servers and retained until the end of the

session of the Parliament in which the consultation took place. If the MSP lodges a final proposal, he/she is required to provide a copy of your response (unless it was “not for publication”), together with your name (unless you requested anonymity), but not your contact details, to the Scottish Parliament Information Centre (SPICe), where it may be retained indefinitely and may be archived.

Purpose of the data processing

The purpose of collecting, storing and sharing personal data contained in consultation responses is to enable Members to consider the views of respondents to inform the development of the Bill, with the support of NGBU. Personal data contained in consultation responses will not be used for any other purpose without the express consent of the data subject.

The legal basis

The legal basis for collecting, holding, sharing and publishing your personal data is that the processing is necessary for the performance of a task carried out in the public interest, or in the substantial public interest, in accordance with Art 6(1)(e) GDPR, s8(d) DPA, or Art 9(1)(g) GDPR, s10 of and paragraph 6 of Schedule 1 of the DPA. The task is the support of Members seeking to introduce Members’ Bills to the Parliament. This is a core task of the SPCB and therefore a Crown function. The adequate support of the Members Bill process and the ability to seek, use and temporarily store personal data including special category data is in the substantial public interest.

If the person responding to the consultation is under the age of 12 then consent from the parent or guardian of the young person will be required to allow the young person to participate in the consultation process (however, the legal basis for the processing of the personal data submitted remains as the public interest task basis identified above).

Your rights

Data protection legislation sets out the rights which individuals have in relation to personal data held about them by data controllers. Applicable rights are listed below, although whether you will be able to exercise data subject rights in a particular case may depend on the purpose for which the data controller is processing the data and the legal basis upon which the processing takes place. For example, the rights allowing for erasure of personal data (right to be forgotten) and data portability do not apply in cases where personal data is processed for the purpose of the performance of a task carried out in the public interest. The right to object to the processing of personal data for the purpose of a public interest task is restricted if there are legitimate grounds for the processing which override the interest of the data subject. This would be considered on a case by case basis and depends on what personal data is involved and the risks further processing of that data would pose to you. As described above, the collection, storage, sharing and publishing of personal data contained in consultation responses is a task carried out in the public interest, which means that these three data subject rights do not apply here or only in a restricted scope.

Access to your information – You have the right to request a copy of the personal information about you that we hold.

Correcting your information – We want to make sure that your personal information is accurate, complete and up to date and you may ask us to correct any personal information about you that you believe does not meet these standards.

Objecting to how we may use your information – Where we use your personal information to perform tasks carried out in the public interest then, if you ask us to, we will stop using that personal information unless there are overriding legitimate grounds to continue.

Restricting how we may use your information – in some cases, you may ask us to restrict how we use your personal information. This right might apply, for example, where we are checking the accuracy of personal information about you that we hold or assessing the validity of any objection you have made to our use of your information. The right might also apply where this is no longer a basis for using your personal information but you don't want us to delete the data. Where this right is validly exercised, we may only use the relevant personal information with your consent, for legal claims or where there are other public interest grounds to do so.

Please contact us in any of the ways set out in the *Contact information and further advice* section if you wish to exercise any of these rights.

Changes to our privacy notice

We keep this privacy notice under regular review and will place any updates on this website. Paper copies of the privacy notice may also be obtained using the contact information below.

This privacy notice was last updated on 22 May 2019 (version 3).

Contact information and further advice

If you have any further questions about the way in which we process personal data, or about how to exercise your rights, please contact:

Head of Information Governance

The Scottish Parliament

Edinburgh

EH99 1SP

Telephone: 0131 348 6913 (Text Relay calls welcome)

Textphone: 0800 092 7100

Email: dataprotection@parliament.scot

Complaints

We seek to resolve directly all complaints about how we handle personal information but you also have the right to lodge a complaint with the Information Commissioner's Office:

- Online: <https://ico.org.uk/global/contact-us/email/>
- By phone: 0303 123 1113