

Scottish Association for Country Sports

**Evidence Submission to Lord Bonomy's Review of the
Protection of Wild Mammals (Scotland) Act 2002**



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Protection of Wild Mammals (Scotland) Act 2002
Review by Lord Bonyon – SACS Evidence Submission

1.0 Introduction

The Scottish Association for Country Sports (SACS) is Scotland's largest representative fieldsports body, being a not-for-profit membership association primarily concerned with the protection and promotion of fieldsports and related matters.

On behalf of its members, SACS respectfully presents its submission to Lord Bonyon.

Our submission seeks to facilitate the review by considering:

- Whether the operation of the Act provides a sufficient level of protection for wild mammals
- Whether the operation of the Act allows effective and humane control of wild mammals where necessary

In line with the remit of the review, our submission disregards the following:

- Whether control is necessary for the protection of livestock or wildlife
- Individual allegations or incidents
- Un-related wildlife legislation
- Efficacy of other forms of pest control

For further clarity, our submission does not consider the control of rabbits or rodents since these species are outwith the provision of the Act.

SACS has carried out a tabulated analysis of the 2002 Act, which is presented as an Appendix and should be read in conjunction with this submission document. Our analysis considers the Act section-by-section to ascertain whether each specific provision provides a sufficient level of protection for wild mammals whilst also allowing effective and humane control of those wild mammals where necessary. As this level of detail is provided in the Appendix, this submission document considers the general operation of the Act in the context of Lord Bonyon's review remit.

2.0 The use of dogs in the control of wild mammals

The working partnership between dog and human can be traced back for many thousands of years. Dogs possess physiological attributes and skills that supplement those possessed by humans so that, when combined, an efficient working team is produced. Modern technology has provided society with advanced firearms, thermal imaging optics, GPS devices and significant tools of progression to assist us in the age-old conflict between the human need for food and other predators' need for that same food; however, no technology has yet produced a comparable alternative to a dog's nose, scent tracking ability and unyielding ability to pursue quarry.

In Scotland, dogs are used to facilitate the provision of food and healthy ecosystems through activities such as the hunting and shooting of game, deer (direct provision) and pest species such as the fox (indirect provision via livestock and ground-nesting bird protection). Without dogs, it is unlikely that these activities would be able to continue. As a consequence of this facilitation of food and habitat management, the use of dogs in these activities also contributes to the stability of the rural economy; the businesses of farmers and other food producers cannot tolerate significant losses of their food products, whether that be lambs, free range eggs or pheasants. Although alternative methods of pest control exist, they cannot be employed generically due to constraints such as ground cover, topography and the presence of human habitation. For these reasons, the use of multiple dogs in the control of wild mammals is essential.

The Protection of Wild Mammals (Scotland) Act 2002 sets out the parameters of how dogs may be used in the control of wild mammals. Section 1 of the Act sets out the offences, with sections 2 to 5 setting out exceptions that, if followed lawfully, will not cause an offence to have been committed.

Section 2 describes the conditions by which a wild mammal may be stalked or flushed from cover lawfully. The reasons for any appropriate person seeking to do so are legally competent and practicably sound. This exception allows the efficient and humane control of wild mammals where this is deemed to be necessary, for example to protect livestock and ground-nesting birds, to provide food, or to control the population of a pest species. There is no limit on the number of dogs that may be used in control under this section of the Act; this reflects the fact that the control process is compromised by the use of two or fewer dogs due to prolonging the search and flushing process, and also due to the inefficiency of control when two or fewer dogs are unable to work a large, dense area of cover – an animal such as a fox can evade one or two dogs, and the presence of such a small number of dogs is unlikely to encourage the animal to flush where it can then be shot humanely. Those groups, such as the League Against Cruel Sports (LACS), that are calling for a maximum limit of two dogs know this to be the case, inferring that their demands are actually a request for the Scottish Government to de facto ban the use of dogs in the control of wild mammals by introducing restrictions that will result in an effective ban in all but name.

Section 2 of the Act also sets out the circumstances under which an unintentional kill of a wild mammal by a dog is not an offence. This is a necessary and a logical part of the stalking and flushing exception; by permitting the use of dogs as described in section 2, it would not be equitable to cause an unintentional kill to be an offence under the Act because the acceptance that dogs are a necessary tool in the control of wild mammals implies an acceptance that dogs have the capacity to kill. Dogs have been bred for this as part of their hunting purpose for thousands of years. It does not follow that an unintentional kill by a dog implies that a person is not in control of that dog; rather, it implies uncommon circumstances in which the quarry animal is in some way impaired and cannot take evasive action as quickly as it should (for example, a survivor of a road traffic accident, or of a dispute with another animal, or it may be diseased) or that it is inexperienced in evading pursuit (if juvenile or has hitherto avoided contact with humans). The removal of this part of the exception, or the introduction of a 'recklessness' provision, would have the potential to criminalise anyone taking part in the lawful control of wild mammals under the current Act, since it is not possible to predict when

the circumstances described above may occur. This, of course, is another thinly-veiled attempt by anti-hunting interests to cause the legislation to become unworkable in practice. The current Act operates on the principle that what is necessary, is legal. An attempt to artificially restrict what is necessary in order to create new illegalities would not be reasonable.

Section 2 includes provision to allow fox and mink to be flushed from below ground by a dog under certain, reasonable conditions. Due to the tendency of these species to retreat underground when pursued, this is an essential pest control exception under the current Act. The purpose of any pursuit of fox or mink is to humanely despatch the quarry as soon as possible. On that basis, having to abandon the control activity once the quarry has gone to ground would prevent the pest control from being effective – as the quarry would be left alive. Due to the reasons for pursuit (as described in s.2 (1) of the Act) this clearly would be unacceptable.

Section 3 of the Act deals with the control of wild mammals using dogs for sport. We argue that the hunting of a wild mammal purely for sport is uncommon, since those quarry species with which the Act deals are predominately pest species that must be controlled for the reasons set out in Section 2. Further, the ultimate aim of wild mammal control activities is the humane despatch of the quarry – regardless of the motivation or the mode of transport of the person carrying out the control. The fox, for example, is not aware of the reason for its pursuit and has no sense of any impending doom. A human riding a horse, or a human riding a quad bike, or a human on foot – none of this is of interest to the fox, since its instinct on seeing any one of these three is simply to retreat. We are aware of beliefs within both Holyrood and the general public that the Act was to have proscribed a person riding a horse and wearing a coloured jacket when using dogs to facilitate the control of wild mammals, but this is not the case. The manner of dress and mode of transport have no bearing on humane, efficient despatch and these are not matters for legislators. The existence of such ignorant beliefs indicates peoples' prejudice against a certain minority group within rural Scotland – and has no relevance to the matters being considered within this review.

Section 4 of the Act has no direct relevance to SACS members, so we have not considered it further.

Section 5 of the Act allows those conducting lawful control of wild mammals using dogs to retrieve a shot hare, locate an animal that has escaped or been released from captivity, and to retrieve or locate a wild mammal that is seriously injured or orphaned. This exception is of particular relevance to people controlling foxes during the spring, when fox cubs are dependent upon the vixen and dog fox. It would not be humane to knowingly leave fox cubs to die from starvation, dehydration or hypothermia once their parents have been despatched. Entering a terrier dog below ground in order to despatch a fox cub is, under these circumstances, unquestionably humane and necessary. Removing this exception would compromise the integrity of the Act.

With regard to hares, it is entirely necessary for the Act to make provision for the retrieval of a shot hare by a dog, in order to avoid spurious accusations of illegal coursing against people conducting themselves lawfully under the Act.

SACS asserts that it is entirely correct that the Act should contain exceptions to allow practicable control of wild mammals using dogs. The landscape of Scotland varies significantly, as does the extent of vegetation cover, the abundance of human dwellings and local geology. Section 7.0 of this submission document details examples of when multiple dogs are the only available method of controlling wild mammals. We are aware that this review disregards the efficacy of other methods of wild mammal control, and yet this is relevant since there are a huge number of areas where night shooting (lamping) and snaring cannot be used due to these aforementioned variances across the country – for example, large forestry blocks, highland cairns, and dense, peri-urban vegetation. It would not be acceptable to remove dogs as a method of control from rural people who have no practicable alternative; furthermore, what is deemed practicable is for these people to judge, rather than for single-interest groups who have no direct, competent experience of land management and for whom the Act has no bearing on everyday life. Ideology must not be allowed to take precedence over the reality of our community's livelihoods. As the Scottish Hill Packs have stated, the control of wild mammals using dogs is a *“community effort in wildlife management.”*

Finally, it is relatively common for foxes and other wild mammals to be flushed by beaters on game shoots. Beaters work vegetation cover with their dogs, frequently Spaniels, Labradors or Hunt-Point-Retrievers, with the aim of flushing quarry birds to be shot by guns standing out in line in the open. Some game shoots expect guns to despatch foxes crossing the line, because of their pest species status. The Scottish Government should be mindful of criminalising this situation if any relevant changes to the current Act are proposed. This potentiality highlights the importance of maintaining the exceptions within the Act, particularly as the lethal control of mammals such as foxes is accepted as necessary.

3.0 Requirement to control wild mammals

Although the Scottish Government accepts that the control of wild mammals such as foxes is necessary for the protection of livestock and wildlife, and consequently this fact is not subject to Lord Bonomy's review, it should be noted that there are situations in which landowners and tenants are required and compelled to undertake control – and this is relevant to the review in the context of any possible recommendations for change.

For example, the Scottish Rural Development Programme (SRDP) contains a Rural Priorities scheme under which Predator Control is an available land management option supported by Government grant funding; this option is designed to benefit ground-nesting birds that are vulnerable to predation from wild mammals such as foxes. As discussed previously, it is not possible to carry out lawful snaring or night-shooting (lamping) in certain types of terrain common across Scotland; therefore, in order to meet the requirements of the SRDP scheme, the land manager's only option in such circumstances is to use dogs to facilitate control of foxes. It is an established fact that efficient and humane fox control is severely compromised by the use of only one or two dogs to flush to guns or to a bird of prey; consequently, any restriction to the current Act has the strong potential to prevent land managers from fulfilling their obligations under the SRDP. Clearly it would not be equitable for the Scottish Government to place land managers in an untenable position by restricting their ability to control foxes while at the same time compelling them to do so.

A further example is restrictions placed upon tenants in leases of land. SACS is in possession of a lease under which a member is the tenant. This lease prevents the tenant from shooting at night using a spotlight during lambing season. This lease was written by a large, national firm of land agents, so we have good reason to believe that this is not an uncommon lease clause used across Scotland. If a tenant is prohibited from lamping foxes, his only fox control options are snaring and the use of dogs. Lawful snaring may not be possible in certain types of terrain or where livestock are present, which would leave the use of dogs as the only remaining control option. As stated above, efficiency and welfare are dramatically increased by the use of multiple dogs to facilitate the control of wild mammals; any restrictions to the current Act exceptions would leave tenants who are a party to these leases unable to exercise their common law right to protect their property. It is notable that the lease does not prohibit the use of dogs to control foxes on the leased land.

Finally on this matter, it is an established scientific fact that any habitat can support a maximum number of any individual species before the death rate begins to exceed the birth rate, food and shelter resources become depleted and the health of individual animals declines. Once the population equilibrium is exceeded, the competition between individual animals for food, shelter and reproduction causes a negative impact on all the animals in that specific population area. Weaker animals would be preyed upon by apex predators (for example, a wolf pursuing a fox), but in Scotland most apex predators no longer exist – with the exception of man (humans are native apex predators). In order to avoid the overpopulation of a wild mammal such as the fox, and the inevitable population crash, spread of disease and decimation of their habitat – to the detriment of other species that occupy and rely upon that same habitat – that are the consequences of overpopulation, it is reasonable for humans to fulfil their apex predator role by controlling the population. We would argue that as well as being reasonable, it is also necessary. Further, for invasive, non-native species such as the mink, it is obligatory to pursue eradication in order to protect native species. For mink control in particular, the use of multiple dogs is vital due to the difficulties of terrain and the characteristics of the quarry species. Mink control projects (supported by Scottish Natural Heritage) using dogs have been proven to be successful, meaning that it would be highly questionable to remove this form of control in the face of clear supporting evidence.

4.0 Animal Welfare

We understand that the reasoning behind this review of the 2002 Act is related to the disparity between legislation in Scotland and England and Wales, and because the Scottish Government is aware of alleged ‘public concern’ around the operation of the 2002 Act – a claim which has been exploited by anti-hunting bodies. We are also aware that the Scottish Labour party believes that *“[traditional] foxhunting is still going on”* (it is not, since it is proscribed under the Act) and that the Scottish National Party believes that *“cubbing involves hunting fox cubs”* (it does not; by autumn foxes are essentially fully grown and largely independent ahead of the breeding season) and *“hunt monitors are having to help enforce the Act”* (they are not; they choose to attend fox control activities because of their opposition to the fieldsports community, and wish to see all killing of animals cease); clearly there is a great deal of misunderstanding around the control of foxes using dogs, as well as a significant amount of prejudice and discrimination against rural interests.

The Scottish Government's Research Briefing on the 2002 Act states that the intention of the Act was to ban the 'hunt and kill', not to ban flushing. The Member who introduced the Bill sought to ban mounted fox hunting, hare coursing and the use of terriers below ground to flush or catch wild mammals below ground; however, after lengthy debate with experts in the control of wild mammals using dogs during the Bill's progression, the current exceptions were agreed. This agreement reflected the stakeholders' acceptance that control was necessary, and that in order to be effective and humane there must not be a limit on the number of dogs used; and further, that the unintentional despatch of a wild mammal by a dog was an inherent possibility – so it would not be equitable to cause this to be an offence. This remains the case today. In the 'Visit & Learn' Scottish Parliament webpage about the 2002 Act, it is stated that the stage 2 debate of the Bill highlighted the differences in opinion between people who owned land or worked in the countryside and mainly urban dwellers who were opposed to the killing of animals. Unfortunately, this current review is a reflection that these differences in opinion still exist, and there are those who would seek to remove or restrict the Act's valuable exceptions despite the overwhelming evidence that it would be inappropriate to do so. The RACCE committee said in 2001 that *"it is not the use of a dog in itself that implies cruelty; but the method and intent with which it is used."* We assert that no-one using dogs in the control of wild mammals wishes to cause unnecessary suffering to quarry, that tried and tested methods follow best practice, and that the intent is nearly always that of pest control; the practical operation of the 2002 Act ensures that this assertion is factual.

In its document 'SNH Position on Wildlife Welfare', Scottish Natural Heritage (a Government agency) states that *"wildlife welfare is different from animal rights"* and:

"SNH recognises that people can believe something to be in the best interests of an animal while biological evidence suggests the contrary. Disentangling these components is an essential first stage in the assessment of welfare. Any approach to wildlife welfare should make an assessment first of the biological function of the animal and then of society's varying values."

Further, in the same document SNH states that:

"An animal's welfare state is generally regarded as a consequence of an animal's ability to adapt to environmental challenge... Examples of this would be flight from a predator or shortage of food at the end of winter."

We believe that SNH's description of animal welfare in the context of wild mammals is correct, and we are pleased to understand that one element of the Scottish Government has grasped this concept effectively. In reviewing the Act, it is important to separate the facts regarding the control of wild mammals with dogs from the misplaced beliefs of people who do not wish to understand it. In June 2001, a paper entitled 'A veterinary opinion on hunting with hounds' was published by LH Thomas & W R Allen and supported by 294 members of the RCVS. In this paper, the authors describe how the 'fight or flight' response of a fox is natural, and a kill by a dog occurs instantaneously via cervical dislocation as hounds have a considerable power weight ratio advantage over the fox. In addition, the authors assert that the powerful

exercise-induced analgesic effects of centrally released endorphins will mitigate any pain. Furthermore, the fox has no forward perception of impending death, as demonstrated by a fox held at bay or flushed below ground showing no signs of fear or severe distress such as involuntary urination/defecation. Using dogs to assist in the control of foxes produces no wounded survivors. Although it is an accepted fact that foxes and other pest species must be controlled, it is worth considering that the alternative natural deaths for a wild mammal are starvation, disease and injury, which cannot be described as humane and are certainly not without suffering. The authors state that *“It is best to strive for accuracy and objectivity”* when analysing these issues, and we agree that this is preferable to reliance on emotive, reactionary falsehoods such as those used by the LACS.

In tandem with the SNH document quoted above, in the 1997 Phelps report into hunting with dogs, it was stated of terrierwork that:

“Anthropomorphically, one imagines the fox would be very frightened by the combination of human-associated sounds, smells and sights that accompany digging out, yet the evidence... suggests not... Any stress levels involved may reasonably be compared to those encountered during territorial or mating aggression.”

This adds further weight to the argument that the process of using dogs in the control of wild mammals such as foxes is not alien to the quarry species, and that it reacts no differently to the presence of humans and dogs than to any other natural predator.

As stated by Jim Barrington, animal welfare consultant to the Countryside Alliance and – significantly – a former Director of LACS, the true aim of the 2002 Act was to ban hunting with dogs based on the false presumption that hunting with dogs is crueller than other methods of control, despite all evidence being to the contrary. As a community, we are sadly familiar with presumptions, perceptions and misconceptions, frequently deliberate and wilful, from people who wish to impose their unrealistic and anthropomorphic views upon us as a minority group. The fieldsports community is one of the few remaining minority groups against whom it is socially acceptable to show prejudice and to propagate ignorance; there are elements within the current Scottish administration who foster this attitude, forgetting that our community is entitled to fair representation and governance.

Finally, former hunt saboteur Miles J Cooper has stated that:

“It is better for animal welfare for practices to be conducted in an open and verifiable manner.”

From the outset of the 2002 Act, those people carrying out the control of wild mammals using dogs have conducted themselves in an open, transparent and verifiable manner, cooperating with the Authorities, abiding by voluntary codes of best practice according to their specialism (i.e. terrierwork, houndwork, marksman) and keeping records of their activities. This transparency and co-operation reflects the spirit of the Act – that the regulated community accept the provisions of the Act and seeks to abide by it. Although this review period represents a stressful time for those who will be affected by any potential change, the reaction to the SACS call for evidence (examples of which are included in Section 7.0) for this

submission demonstrates that our community has nothing to hide and stands by its assertion that there is no cause for change.

5.0 Enforcement

Aileen McLeod MSP has stated that *“legislation must be enforceable to be effective.”* Police Scotland has not identified any barriers to enforcement of the 2002 Act, and has refuted the LACS claim that the Act is regularly flouted.

In their paper ‘Mythbuster - Clarification of our position on flushing wild mammals to guns’ the IFAW, LACS and RSPCA state:

“This suggests to us that the [2002] Act may need to be re-assessed since it has failed to secure any successful prosecutions [of hunts], in contrast with the Hunting Act 2004 in England & Wales which has secured hundreds.”

“However we do understand there has not been one successful prosecution for illegal mounted hunting since the ban came in Scotland and there is a general perception that some hunts do exploit the exemption of using packs to flush wild mammals to guns.”

Perception is not fact, and despite the operation of several active hunt saboteur groups in Scotland, capturing many hours of film footage, no reputable or substantive evidence of unlawful activity has been provided to the Police. The infamous LACS footage that purports to show a hunt taking place without guns present fails to take account of the need for shooters to be effectively concealed from the foxes’ view; therefore, it is unsurprising to those who understand practical pest control and who manage the countryside competently, that guns are not always visible to inexpert ‘monitors’ who are enslaved to a prejudiced, personal agenda. At the RACCE committee meeting on 13 January 2016, Det. Ch. Sup. Sean Scott confirmed to Alex Fergusson MSP that there is no evidence that mounted hunts operate outwith the law. We believe that the obsessive focus on mounted fox control packs in particular, rather than foot packs and terrierwork, indicates a strong bias associated with the embedded misconception that only ‘posh’ people participate in fieldsports, and mounted packs are therefore a legitimate target for political ‘class warriors’.

Further, we argue that one of the primary purposes of legislation is to regulate, since legislation clarifies the extent of lawful activity and of unlawful activity; it sets out the parameters of lawful behaviour for those participating in an activity. It is not competent or logical to suggest that the 2002 Act has failed simply because it has not procured any successful prosecutions against hunts. It is a notable point that the 2002 Act is practicable for wildlife managers, enabling them to manage pest species efficiently within a legislative parameter that proscribes unnecessary suffering for quarry animals. In contrast, the 2004 Act in England & Wales is notoriously impracticable for wildlife managers; it is poorly-drafted law, which is reflected in the high number of failed prosecutions against hound packs. The “hundreds” of prosecutions alleged in the IFAW, LACS and RSPCA statement overleaf is incorrect with regard to pest control activities. Figures analysed by the Countryside Alliance show that 94% of Hunting Act 2004 convictions between 2005 and 2014 did not involve registered hunts. Figure 1, below, shows Hunting Act 2004 prosecutions involving hunts

registered with the Council of Hunting Associations by year, and figures for all Hunting Act 2004 prosecutions (provided by the Ministry of Justice) shown in brackets:

Year	Cautioned	Persons Proceeded Against	Found Guilty
2005	0 (1)	0 (2)	0 (2)
2006	0 (0)	0 (11)	0 (5)
2007	0 (8)	4 (62)	3 (48)
2008	0 (4)	3 (44)	2 (33)
2009	1 (8)	11 (92)	0 (57)
2010	0 (11)	4 (49)	1 (36)
2011	0 (1)	2 (72)	2 (56)
2012	0 (1)	11 (84)	7 (48)
2013	0 (2)	16 (110)	6 (56)
2014		9 (64)	3 (35)
Total	1 (36)	60 (590)	24 (376)

Figure 1 – Hunting Act 2004 prosecution data, Countryside Alliance, February 2016

Figure 1 shows clearly that the IFAW, LACS and RSPCA claim referred to overleaf is a deliberate mistruth – there have not been hundreds of prosecutions of hunts in England and Wales, since the 376 figure refers to all prosecutions of persons convicted under that legislation; the jurisdiction of that legislation extends far beyond the traditional hunting community.

The ‘Wildlife Crime in Scotland Report’, published on 30 September 2015, states that:

“The 2002 Act is commonly used in connection with hare coursing, although it has also been used for incidents relating to foxes, deer and badgers. It does not prohibit the hunting of rabbits by dogs.”

With regard to offences under the 2002 Act, the report states that:

“... advice from police wildlife crime officers indicates that a vast majority of these offences related to hare coursing or, to a lesser extent, deer coursing.”

Taken from this report, Figure 2, overleaf, confirms that the 2002 Act is, in fact, used to obtain prosecutions – but there have been no successful prosecutions against mounted hunts.

The figures show that there have been ten cases of hunting foxes with dogs reported to COPFS since the 2002 Act was introduced, but only five of these were associated with mounted fox hunt activities. Three prosecutions resulted in a conviction but none of these were associated with mounted hunts.

Table 19: Cases Reported to COPFS involving fox hunting allegations, 2002-03 to 2013-14

Year	Total cases reported	Cases marked no action**	Prosecutions discontinued**	Prosecutions resulting in an acquittal	Prosecutions resulting in a conviction
2002-03	3 (2*)	1*		1*#	1
2003-04	2 (1*)		1*		1
2004-05					
2005-06	1*	1*			
2006-07					
2007-08	1			1†	
2008-09	1			1	
2009-10					
2010-11	1				1
2011-12					
2012-13					
2013-14	1*			1*	
	10 (5*)	2*	1*	4 (2*)	3

Source: Crown Office and Procurator Fiscal Service

Figure 2 – extract from The Wildlife Crime in Scotland Report, 30 September 2015

Since the 2002 Act has evidently secured prosecutions, it cannot be argued that it ‘does not work’. This argument, used by anti-hunters, is fabricated in order to lobby for further restrictions on the control of wild mammals – restrictions which, if introduced, would effectively end pest control in many parts of Scotland due to their premise in ideology rather than practicality. Anti-hunting groups are clear that they oppose the killing of animals and their submissions to Lord Bonomy must be read in this context, since they condemn what they do not understand. In contrast, SACS exists to protect the lawful rights of members to carry out a wide range of activities – including pest control – that are part of Scotland’s indigenous culture and integral to the operation and survival of rural communities and the economy. We oppose any new restrictions to the exceptions in the 2002 Act, because there is no evidence that change is required, and because the current law allows our members to operate efficiently and humanely, carrying out a necessary task without being criminalised. There is no evidence that the Act in its current state cannot be enforced. What is necessary, is legal.

6.0 Practical Examples

SACS is privileged to represent a significant number of members who carry out control of wild mammals using dogs. Below are examples of real-life control activities submitted to us by SACS members; these examples demonstrate the necessity of maintaining the current Act Exceptions. The names of the members were disclosed to us at the time of submission, but we have anonymised their responses in this document due to problems of intimidation, harassment and violence perpetrated by hunt saboteurs and their associates.

Member A: Tenant Farmer, small arable and sheep enterprise, Fife

His land is surrounded by commercial forestry plantations; these are bounded by stock proof fences, but badgers resident in the forestry dig under the fences thereby allowing access for foxes, too. He has to lamb outside as he does not have enough shed provision for indoor lambing and cannot get planning consent for further shedding. He loses between 50 and 100

lambs every spring to foxes. There are no shoots nearby so he does not benefit from local fox control, and he cannot use snares effectively due to restrictions within the new snaring legislation. He has permission from the landowner to use hound packs when cubs are above ground; he pays up to £400 per pack visit – it is a foot gun pack with terriermen to deal with any fox that goes to ground. It is not for sport – purely for control, and all foxes are shot as soon as possible after being flushed. They usually shoot around 20 foxes per day, using 10 couple of hounds to flush (plus terriers when needed). He also loses several adult ewes to badgers every winter.

Member B: Professional Terrierman, Lanarkshire

Works for estate owners, keepers and farmers. He works seven terriers purely for fox control purposes; he has intimate local knowledge of his clients' ground, which reduces the amount of time spent in locating and flushing foxes to be shot. He does not participate in 'sport' – it is purely a professional pest control activity, which is his only livelihood.

Member C: Land Manager, Ayrshire

His lawful snares are frequently vandalised by members of the public in areas where public access is common; it is worse in urban/peri-urban areas but also happens in more remote areas too. Lamping is not always possible where foxes have become lamp-shy, or it is not possible to shoot during darkness due to cover, topography or sabotage. He believes that hounds are an essential part of the fox control toolkit. Also, support for fox control is offered by the SRDP for SSSI and Natura sites in order to protect populations of vulnerable ground nesting birds; it would not be appropriate to restrict one method of fox control (using dogs) as this would compromise scheme members' ability to fulfil the requirements of the mammal control option.

Member D: Professional Fox and Mink Controller, Aberdeenshire

“The use of a group of dogs bred for purpose to flush foxes and mink to be shot at the first safe opportunity is vital for many situations from shepherds losing lambs to attacks by foxes on poultry farming and attacks on game birds and the predation of wild birds. Many commonly occurring factors produce circumstances where the use of dogs bred for purpose can provide an efficient, swift accurate locating and flushing of foxes and mink that have eluded capture. Not only the existence of thick vegetation (i.e. forestry/gorse/deep heather/rock scree/crags) but also in the case of lamp and trap shy tendencies steadily increasing over time through the successful survival of these tendencies.”

“It is also clear that despite the large number of foxes accounted for by farmers, keepers, packs of hounds, recreational hunters and road deaths the fox population across the whole of the British Isles, excluding some of the associated islands, is consistently high and only drops dramatically when disease is permitted to propagate. The law which has been created to protect wild mammals, if tightened even further, would surely result in a negative for the strength of genetics and populations as a whole, which without the wolf (its main natural predator) is reliant on new controlling factors. Man working with trained dogs bred for purpose as its most natural predator (i.e. in-keeping with the animal's evolution and historical natural predators) has a duty to fulfil the role in a positive continuation of the evolution of and monitoring and control of the species.”

“Despite a huge amount of observation both video and personal the Scottish Police currently have no evidence the law in this matter is being broken. My personal experience of pest control under the current law is that people generally see current penalties as severe and operate firmly and clearly within that law.”

“Many times each season I hear ‘keepers talking about fox prints in snow, showing foxes walking up to and around snares. The control of trap shy foxes, just as with lamp shy foxes, is often only possible with the use of dogs bred and trained for purpose. Whilst these lamp and trap shy foxes are a common reason to call on hounds I will give one example. A call out from a keeper in the Deeside area. A fox had been seen regularly around a chicken farm in an area of lowland in the Dee valley. The countryside was not extreme and woods, windblow and broom and gorse patches whilst numerous were not extensive. The ground itself was undulating with many small fields, stone walls and a scattering of houses and steadings. Despite the best efforts of the keeper plus several others that had been called on for assistance this fox very quickly became trap shy and lamp shy, a behavioural tendency that was accelerated by the considerable attempts mounted to despatch it. Hounds were called in and drew a cover close to the chicken farm. Although the cover was blank, hounds showed signs of a cold [scent] line of the fox going out of cover earlier in the day. They were stopped and after a discussion the team of marksmen agreed to remain mostly mobile and enable a gun line to be moved quickly into position. Hounds were allowed to follow up this very cold line and indicated [the presence of a fox in] a cover that was not scheduled for the day. The gun line moved quickly into place and hounds entered the cover, found and flushed a pair of foxes, and they were shot within 10 minutes of hounds entering the cover that they had indicated held a fox. This was for all intents and purposes an uncatchable fox by any means apart from flushing and tracking with multiple dogs bred for purpose, and had already used massive resources and man hours, yet was accounted for in under 1 hour from first sign to clean kill [by being shot] by a pack of hounds.”

“The use of experienced marksmen along with local knowledge of terrain are usually more than enough to ensure a very rapid despatch of the quarry. Foxes and mink behave in a way which can be learned and to an extent predicted by an experienced hunter. Also as most packs gain experience of covers and the used lines through repetition of many dogs over many years it is perfectly possible to maintain a very high and rapid kill rate. There is always the potential for human error, however if hounds are allowed to continue to follow the scent of a missed or wounded fox, guns can be easily repositioned to account for the quarry.”

“A young, old, diseased or impaired individual animal may be caught by dogs but death in these circumstances has already been proven through post mortem to be virtually instantaneous and in comparison with the suffering caused by wounding or being hit by a car on the road the accidental killing of a fox by any type of dog is obviously a more natural ending for a wild animal and made far quicker and far less suffering if the dogs are multiple and bred for purpose.”

“The use of small dogs bred for purpose to flush mink and foxes from underground or rock cairns or very dense cover is absolutely essential and a massively effective form of control and a most important tool to maintain a humane despatch. An individual that has been wounded but not killed during flushing will often go into a hole. If a person was not allowed to use dogs

to first identify the right hole and then again to re-flush that individual to be shot cleanly they would be forced to leave a wounded animal to die slowly and potentially in pain and distress.”

“Any further restrictions on the use of dogs in pest control would only result in negatives across the board and would only be suggested for political reasons. It would in no way serve the wildlife of this country. Further restrictions would only complicate the existing legislation and probably make it more difficult to effectively prosecute an individual who had broken the law.”

Member E: Gamekeeper, Stirlingshire (agricultural and sporting estate)

He uses a small pack of hounds on a 20,000 acre estate and other surrounding estates. Before using a hound pack, he suffered significant predation of pheasants and lambs with an average of 35 litters of fox cubs every year. The year after introducing hounds to facilitate flushing foxes to guns, the number of fox litters was reduced to nine. He only selects experienced marksmen to shoot and all foxes are shot humanely; he has never seen a hound catch a fox, with hounds typically being minutes behind a despatched animal. Using dogs, he accounts for up to 60 foxes every year, which prevents up to 21,900 fox kills per year (ground nesting birds as well as livestock). His land cannot be snared under current legislation and it is proven to be inaccessible for lamping. Without the exceptions in the Act, there would be a catastrophic effect on farmers and wildlife. His method of fox control is highly efficient and extremely humane – he knows some people view it as barbaric, but the hounds do not pursue a fox for long periods and nor in his experience do they usually catch it; from the point of locating a fox to the moment it is humanely despatched is a matter of minutes. There is a good reason why there is high demand for fox control with hounds from neighbouring farmers.

Member F: Professional Pest Controller, Lanarkshire

He controls foxes on farms, estates and shoots. Dogs are the only way to effectively flush predators like fox and mink from vast areas of wooded and covered areas in a relatively short period of time. It is about competent land management, not eradication and killing. Dogs play a vital role. Further restrictions to the Act would cause a detrimental impact on livestock, causing financial losses to farmers in an already difficult climate.

Member G: Semi-professional Fox Controller and Spectator of mounted packs, Falkirk

“Does it matter to the fox if people derive pleasure while participating in fox control with hounds. The ethical considerations are subjective while the animal welfare, economic and safety considerations are not.”

“There is no evidence of material breaches or enforcement issues with the existing legislation and is a position reinforced by police to the RACCE Committee. The fact that this matter is still subjected to formal review would suggest the process has been hijacked by animal rights interests. The League Against Cruel Sports has previously presented ‘evidence’ of breaches, including lengthy video footage, to the Scottish parliament. The fact that this was dismissed as meaningless and no police action has resulted should be enough to close this matter. Gun packs around the country are followed most weeks by saboteurs and hunt monitors from a range of anti-hunting organisations, armed with camera and videos. In addition, there is often police present. Despite this unprecedented level of surveillance there has only been enough evidence to warrant one prosecution of a foxhound pack in Scotland and this did not result in

conviction. There are claims of 'token' guns however my personal experience of a mounted pack is that far more foxes are killed under flushed shooting, 'shunting', than when traditional hunting was performed. Furthermore, police have stated there is not an issue with enforcement of the law. As such, how much more evidence of compliance is necessary?"

"I have previously conducted firearms fox control for farms, estates and in built-up areas for an international, public listed pest control company. I have experience of all forms of fox vermin control including snaring. [These activities] are conducted within an acceptable framework of animal welfare as defined by the Scottish Government's own Protection of Wild Mammals (Scotland) Act 2002 legislation. If this framework was acceptable to legislators at the time [of enactment] then I would ask what has changed?"

"During a 'shunt'(flush) large areas of ground may be covered and shooters rely on fieldcraft to know where to position for the greatest chance of a fox. Antis have presented video footage to parliament showing hounds flushing but with no guns visible. This is largely based on the complete ignorance of the antis as there is little purpose of a shooter armed with a shotgun (effective range of most shooters being 45 yards) standing in the middle of an open field where he will be highly visible to the fox. There is more chance of getting a fox escaping along feature lines such as along a dyke or a hedgeline and this presents a likely point of intercept. The guns are also invariably dressed in modern camouflages, often in digitally printed patterns with far higher concealment value than military specification camouflage DPM so it would be difficult for the casual observer to even see where they have positioned. The lack of a gun standing in the middle of the field is considered damning evidence by antis. In reality it merely demonstrates the ignorance and misunderstanding that clouds their ideologically-motivated opposition to the current legislative framework."

"[Exception 2(2)] is not just reasonable but entirely necessary. Conducting control with any animal; whether it being horse, hound, terrier, ferret or falcon, requires complete symbiosis between animal and hunter. A terrier in a hole for foxes (as with a ferret for rabbits) is intended to flush. Failure to do so requires considerable labour in digging and is a complete nuisance for people involved. However, occasional underground kills are inevitable and this legislative exception is necessary. The key pest control advantage of hunting with hounds is the ability to sweep wide areas for the presence of target species, which could never be achieved without the use of multiple, specially bred hounds. Even with modern flushing with hounds, removing terrier work would drastically reduce the ability to provide control of foxes."

"Traditional hunting underwent detailed investigation by two royal commissions; the Scott Henderson and Burns enquiries, both of which supported its continuance under the traditional model. The decision to ban it was completely contrary to the exhaustive, evidence-based approach. I believe the current act does allow hunting to fulfil its traditional cultural role while delivering a vital pest control service. This has continued in a tightly controlled and highly scrutinised environment and the fact that further governmental review has been called for is nothing to do with evidence-led governance and all to do with cheap populist politics."

Member H: Crofter, Isle of Skye

His croft and common grazing land is rough hill and mountainous, with a large number of rock cairns, screes and sandholes. It is a vast area and fox control is carried out by local crofters assisted by professional terriermen who are skilled at navigating the enormous rockfalls where vixens raise their cubs. Fox predation of lambs on Skye is exacerbated by white tailed eagle predation, meaning crofters are doubly hit so it is even more important to control foxes (since eagles are protected by law with no exceptions). Once vixens are 'at home' in the cairns and have cubbed, the crofters and terriermen survey the hills for dens and inspect them for signs of occupation; terriers are invaluable for identifying the presence of foxes at this time, before dens become 'messy' following weeks of lamb predation; after a while, parts of lamb carcasses begin to be left above ground making it easier to identify occupied dens, but by this time cubs are generally well advanced and the idea is to stop predation of lambs before the impact on the crofters' livelihood becomes significant. A terrier is entered to the cairn in order to flush a resident fox to waiting guns; sometimes only one gun may be present due to the inherent danger in discharging firearms in a rocky environment (risk of ricochet). Introducing a requirement for a minimum number of guns present for flushing would not therefore work in this situation. The use of terriers in rocky West Coast, Island and Highland environments is critical to ensuring crofters are able to continue working their native land.

In addition to the member examples above, a significant number of other SACS members who are directly involved in the control of wild mammals contacted us in support of the current Act's Exceptions. The general consensus is that there is no need for change, due to the Act allowing the control of foxes and other wild mammals by using dogs to locate and flush while setting strict parameters that encourage best practice. All members concerned agree that the enforcement elements of the Act are robust and a sufficient deterrent; they agree that using dogs is a vital and incomparable control method for difficult terrain; they ensure that despatch occurs rapidly after flushing by communicating using radios, mobile phones, and by using fieldcraft, forward-planning and in-depth knowledge of their ground; and finally, they are adamant that the elements of the Act governing terrierwork must remain in place, unchanged, in order to avoid fatally compromising the ability to control wild mammals where necessary.

7.0 Summary

SACS has undertaken an in-depth study of the Protection of Wild Mammals (Scotland) Act 2002 in order to consider whether the operation of the Act provides a sufficient level of protection for wild mammals while at the same time allowing effective and humane control of wild mammals where necessary.

In addition to researching evidence presented to the Scottish Government at the time of the original Bill's progression through the Scottish Parliament, we have also gathered evidence pertaining to the operation of the Act from our members, who operate at the coalface of wild mammal control and consequently have an unrivalled understanding of the Act's practicalities. As the voice of our members, we have collated and incorporated this evidence into this submission document in order to assist Lord Bonomy with his review. Finally, we

have sought out and included such other information as we believe to be relevant to the review remit. In summary, we set out the following pertinent points:

- It would not be reasonable or practicable to restrict the number of dogs to be used under the current Act exceptions. Multiple dogs have clear benefits for efficiency of control, thereby ensuring humane control by comparatively rapid flushing to guns or to a bird of prey.
- The Act prohibits the chase of wild mammals, so it is not correct for anti-hunting interests to claim that the Act does not prohibit this. The manner of dress and mode of transport of those conducting control activities is irrelevant.
- An unintentional kill of a wild mammal by a dog is an inherent possibility due to the nature of dogs and predominately due to instances of an impaired, ill or inexperienced wild mammal failing to outpace dogs when being flushed. In accepting that dogs are an essential tool for necessary control of wild mammals, an unintentional kill must remain lawful under the Act.
- It would not be humane to leave orphaned fox cubs to die of starvation, dehydration or hypothermia; therefore, the continuation of competent terrierwork is essential.
- A proposal to introduce a 'recklessness' provision would potentially criminalise anyone attempting to control wild mammals with dogs; this would not represent an equitable position for the Scottish Government given the fact that wild mammals must be controlled.
- In areas such as large forestry blocks, highland cairns and dense vegetation in urban or peri-urban areas, it is frequently impossible to use snares or night-shooting to control wild mammals such as foxes and mink. It is essential that multiple dogs, and terriers, may be used to facilitate control in such areas.
- When control of wild mammals using dogs is taking place, there are always a sufficient number of guns (or a bird of prey) present. It is a fact that, due to the landscape features that wild mammals will seek to retreat along, shooters may not always be visible to people who are not involved with (or physically removed from) the control activity. In Highland cairn locations, only one gun may be necessary; in forestry plantations, several guns may be necessary. It would not be appropriate to introduce provision for an arbitrary lawful number of guns, since this decision can only be taken by the person in control of the activity on a case-by-case basis dependent upon safety and practical constraints.
- Wild mammals are not aware of the motivation and reason for being pursued by humans. Regardless of this, the end result (humane despatch by gun or bird of prey) is the same.
- There is no evidence to suggest that the Act is not being enforced. Those people involved in the control of wild mammals using dogs have a culture of being open, transparent and cooperative with the Police; the Police have refuted claims from anti-hunting groups that the Act is being regularly flouted. Gun packs are almost constantly monitored by film, yet there is no genuine evidence of the law being flouted.

- In addition to the penalties available to the Authorities under the Act, the likelihood that anyone convicted of an offence under the Act will have their Firearms Certificate and/or Shotgun Certificate revoked means that there is considerable incentive to comply with the law.

- The act of using dogs to flush a wild mammal to waiting guns or to a bird of prey is a natural part of the quarry animal's life; wild mammals do not react any differently to humans with dogs than to any other form of threat. There is no evidence to suggest that using dogs to flush or to despatch in line with the Act's relevant exceptions is any crueller than any other method; in addition, we are aware that anti-hunting groups also wish to see snares banned from use, making it clear that their aim is to achieve a total prohibition on the killing of any wild mammal. While no-one in our community enjoys the death of an animal, it is a fact that certain species of wild mammal must be controlled for the health of their ecosystem, population and for the benefit of the economy.

Using multiple dogs of any suitable breed to facilitate the control of wild mammals is an essential land management tool. There is no evidence to suggest that the current operation of the Act is inappropriate in any way; as stated previously, what is necessary is legal and SACS considers that there is no just cause for any change that would negatively impact our members.

We would ask Lord Bonomy to consider the implications of further restrictions on conservation, farming, sporting and other rural businesses – the businesses that are responsible for managing rural Scotland and creating the landscape that the public loves, providing communities with employment and fostering and preserving indigenous cultural activity. The current Act sets clear parameters for the control of wild mammals, prohibiting any form of unnecessary cruelty, while at the same time accepting and legislating for the control of wild mammals where this is necessary.

Appendix – Tabulated Analysis of the Protection of Wild Mammals (Scotland) Act 2002

Table commences overleaf.

Section	Is it providing a sufficient level of protection for wild mammals?	Is it allowing effective and humane control of wild mammals where necessary?
1 Offences		
(1) A person who deliberately hunts a wild mammal with a dog commits an offence.	Anyone hunting a wild mammal with a dog is acting unlawfully; this affords the highest level of protection possible to wild mammals in law.	Despite making the hunting of wild mammals with dogs unlawful, this section of the Act is subject to various, specific Exceptions in subsequent sections.
(2) It is an offence for an owner or occupier of land knowingly to permit another person to enter or use it to commit an offence under subsection (1).	This qualifies 1(1), so that any owner or occupier of land allowing unlawful hunting is also criminalized; this is a further deterrent, thereby offering additional protection to wild mammals.	This section of the Act is also subject to specific Exceptions that allow effective and humane control where necessary.
(3) It is an offence for an owner of, or person having responsibility for, a dog knowingly to permit another person to use it to commit an offence under subsection (1).	Having made the hunting of a wild mammal with a dog unlawful, and the act of allowing such hunting to take place on any land also unlawful, a further level of protection is created by 1(3). Now, the person hunting, the land owner/occupier and the owner of the dog used are all committing an offence by hunting (or permitting another to hunt) a wild mammal with a dog.	Again, this section is subject to specific Exceptions in order to permit effective and humane control where necessary.
2 Exception: stalking and flushing from cover		
(1) A person who is, or who has the permission of, the owner or lawful occupier of the land on which the stalking, searching or flushing referred to in this subsection takes place does not commit an offence under section 1(1) by using a dog under control to stalk a wild mammal, or flush it from cover (including an enclosed space within rocks, or other secure cover) above ground for the purpose of— (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;	2(1) recognises that there are certain circumstances when a dog may be required to facilitate the control, management or harvesting of a wild mammal. In allowing an exemption to 1(1), section 2(1) states that a wild mammal may be stalked or flushed from cover by a dog(s) if it is shot or killed by a bird of prey as soon as this is safe to do. This means that it is not lawful to chase or pursue with dogs a wild mammal beyond the point at which humane despatch first becomes safely possible. It may seem that there is an obvious contradiction in allowing a wild mammal to be killed whilst also seeking to provide it with a sufficient level of protection; however, we believe	This Exception is very important in allowing the effective and humane control of wild mammals in certain, necessary circumstances. There are types of cover and topography in Scotland where only the use of dogs enables land managers to control, manage or harvest wild mammals – so the control is effective. The qualification that the wild mammal must be despatched as soon as it is safe to do so ensures that the control process is as short as possible – so the control is also humane. Further, the ability to use a number of dogs, rather than just two, enables the wild mammal to be located and flushed from cover more quickly; this has the effect of reducing the length of time during which the wild mammal is hunted.

Section	Is it providing a sufficient level of protection for wild mammals?	Is it allowing effective and humane control of wild mammals where necessary?
<p>(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, but only if that person acts to ensure that, once the target wild mammal is found or emerges from cover, it is shot, or killed by a bird of prey, once it is safe to do so.</p>	<p>that this section does provide a sufficient level of protection because of the requirement to despatch the mammal as quickly as possible once it has been stalked or flushed. Due to stark variance in terrain and cover, it must be for the gun, rifle or falconer to decide at which point despatch becomes 'safe'; we do not believe that this provision can be tightened without compromising the value of the Exception.</p>	
<p>(2) Where a person is using a dog in connection with the despatch of a wild mammal, being of a pest species, with the intention of flushing the wild mammal from cover or from below ground in order that it may be shot or killed by lawful means, that person does not commit an offence under section 1(1) by virtue of the dog killing that wild mammal in the course of that activity.</p>	<p>In recognising that there are necessary exceptions to 1(1), it is unavoidable to accept that the protection of wild mammals must take place within a practical land management context – and that means lethal control when necessary. Exception 2 sets out clear parameters in which a pest species may be killed unintentionally by a dog prior to a person being able to safely despatch it. This recognises the practicalities of pest control, which often takes place in difficult terrain. The use of dogs in these situations is frequently the only practicable method of necessary control available. Dogs cannot be muzzled because they need to be able to protect themselves against aggressive quarry when necessary. If a dog then 'connects' with the quarry and despatches it in the course of flushing, then the control activity is completed more quickly. This Exception recognises that the aim of control is to despatch the wild mammal as soon as possible by humane means; consequently, it does provide a sufficient level of protection.</p>	<p>In certain circumstances, it is reasonable to expect that a hunting dog will 'connect' with its quarry before the person in control of the hunt is able to despatch it by gun or other lawful means. Many of the most common dog breeds used in hunting were originally bred to kill; when comparing the physical characteristics (weight, size, bite reflex) of these breeds to those of the pest species, it is clear that this is an effective and humane method of despatch since death is usually instantaneous. For these reasons, it would not be appropriate to criminalise the people involved in an unintentional kill by dog by removing or restricting this Exception. It should be recognised that in most circumstances, the wild mammal will choose to bolt; consequently, it will be despatched by gun or bird of prey well before a dog has time to catch up with it.</p>

Section	Is it providing a sufficient level of protection for wild mammals?	Is it allowing effective and humane control of wild mammals where necessary?
<p>(3) A person does not commit an offence under section 1(1) by using a dog under control to flush a fox or mink from below ground or by using a dog under control to flush a fox from an enclosed space within rocks or other secure cover above ground, but only if that person—</p> <p>(a) does so for one or more of the purposes specified in paragraphs (a) to (f) of subsection (1);</p> <p>(b) takes reasonable steps to ensure that the fox or mink is flushed as soon as reasonably possible after it is located and shot as soon as possible after it is flushed;</p> <p>(c) takes all reasonable steps to prevent injury to the dog including steps to prevent the dog becoming trapped underground and, if it does become trapped underground, steps to ensure it is rescued as soon as is practicable;</p> <p>(d) is in possession of a firearm for which the person holds a valid firearms or shotgun certificate; and</p> <p>(e) either—</p> <p>(i) is the owner or lawful occupier of the land on which the activity takes place; or</p> <p>(ii) has the permission of the owner or lawful occupier of that land to undertake that activity.</p>	<p>This section is qualified by a number of tightly-defined further restrictions within the existing restrictions placed on hunting with dogs under section 1(1). Exception 2(3) recognises that there are circumstances under which it is necessary to use a dog below ground or within secure cover to flush a fox or mink; in many parts of Scotland, for example the West Coast and Highlands, this is an essential method of pest control. To further restrict or ban the method referred to in section 3 would be to effectively ban the control of these species in these areas, which would have a severe detrimental impact upon the conservation, agricultural and fieldsports interests that form the bedrock of rural communities and economies in such areas.</p> <p>The implementation of subsection 3(a) to (e) ensures a sufficient level of protection for fox and mink, since quarry must be flushed and despatched as soon as possible after being located; there is also the reiteration of statutory compliance in terms of gun use, and the reinforcement of the requirement for consent of the land owner/occupier.</p>	<p>This exception is of fundamental importance to the effective and humane control of foxes and mink in Scotland. The use of dogs – frequently terrier breeds – below ground and in secure cover is a tried and tested method for difficult terrain. There exists within Scotland a knowledgeable and professional community of working terrier people who understand the intricacies of pest control in this environment. This community possesses a formidable skill set and knowledge base, which in turn ensures effective and humane control of these species. Due to the history of terrier bloodlines and value of these working dogs, the fulfilment of subsection 3(c) is not in doubt.</p>

Section	Is it providing a sufficient level of protection for wild mammals?	Is it allowing effective and humane control of wild mammals where necessary?
3 Exception: use of a dog in connection with falconry and shooting		
<p>Where an occupier of land (or a person acting with the occupier’s permission) is using a bird of prey, or a firearm or shotgun, for the purpose of sport, that person does not commit an offence under section 1(1) by using a dog under control to stalk a wild mammal, or flush it from cover above ground, for the purpose of providing quarry for the sport, but only if—</p> <p>(a) that person acts to ensure that, once a wild mammal is found or emerges from cover, it is shot, or killed by a bird of prey, as soon as possible;</p> <p>(b) where a firearm or shotgun is used, that person holds a valid firearms or shotgun certificate or a valid visitor’s firearm or shot gun permit; and</p> <p>(c) where a wild mammal is shot and injured, that person takes all reasonable steps to retrieve it and, once retrieved, to kill it as humanely as possible.</p>	<p>We would argue that the hunting of a wild mammal purely and only for sport is uncommon, since those species most commonly pursued are predominately pest species that it is necessary to control, manage or harvest for the reasons outlined in 1(a) to (f); however, recognising that there are occasions when sport will be a significant reason for carrying out the activity, this exception restricts the activity in line with Exception (2) in order to ensure a sufficient level of protection for wild mammals.</p> <p>In addition, the wild mammal is not aware of the reason for its pursuit (sport or pest control), and as the ultimate aim of the pursuit is humane despatch of the animal, the motivation of those carrying out the pursuit is largely irrelevant within the remit of Lord Bonomy’s review.</p>	<p>Recognising that it is necessary to control wild mammals for the reasons outlined in 1(a) to (f), Exception 3 clearly allows this control to take place effectively by using multiple dogs, and humanely due to the requirement for the mammal to be despatched as soon as possible by an appropriate means.</p>
4 Exception: search by authorised person		
(1) An authorised person does not commit an offence under section 1(1) by using a dog to search for, or catch, a wild mammal if that person does so with no intention of harming the wild mammal.	This Exception is not relevant to SACS members.	-
(2) In subsection (1) “authorised person” means— (a) an officer of a local authority acting in pursuance of any function of the local authority; (b) any person authorised by such an officer to search for, or catch, a wild mammal; and	-	-

Section	Is it providing a sufficient level of protection for wild mammals?	Is it allowing effective and humane control of wild mammals where necessary?
(c) a constable.		
5 Exception: retrieval and location		
<p>(1) A person does not commit an offence under section 1(1) by using a dog under control in order to—</p> <p>(a) retrieve a hare which has been shot;</p> <p>(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); or</p> <p>(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).</p>	<p>This Exception recognises that it is necessary to retrieve or locate a wild mammal that is, or has been, the subject of control activities. To leave a seriously injured or orphaned wild mammal, rather than locating and capturing it in order to humanely despatch or treat, would not represent a sufficient level of protection – and may be in breach of animal welfare legislation.</p> <p>Those engaged in the control of wild mammals do not seek to inflict unnecessary suffering upon quarry species; this Exception allows an injured or orphaned wild mammal to be dealt with in a humane way, thereby ensuring a sufficient level of protection.</p>	<p>The effective and humane control of wild mammals focuses on despatching the quarry species by an appropriate means as soon as possible after it has been located. Those carrying out control of wild mammals do not wish to see an injured or orphaned animal left to suffer; therefore, this Exception allows such an animal to be retrieved or located so that it can be despatched if appropriate. Without this Exception, the welfare of the wild mammals as set out in this Act would be severely compromised.</p> <p>It should be noted that those carrying out control of wild mammals work with empathy and respect for quarry. It would never be their intention to cause unnecessary suffering; there is no pleasure in the death of any animal, but there is satisfaction in a job completed competently, efficiently and humanely by using ancient, indigenous hunting skills.</p>
<p>(2) Subsection (1)(b) does not apply if the mammal—</p> <p>(a) is a fox or hare;</p> <p>(b) is a deer, boar or mink, unless it has escaped from a farm or zoo; or</p> <p>(c) has been raised or released for the purpose of being hunted.</p>	-	-
<p>(3) A person who is an occupier of land (or is acting with the occupier’s permission) does not commit an offence under section 1(1) by using a dog under control below ground on that land in order to locate a fox which that person reasonably believes is orphaned, but</p>	<p>As stated above, and having accepted that it is necessary to control foxes for the reasons outlined in Section 2, 1(a) to (f), allowing an orphaned fox (i.e. a fox cub) to remain underground alone would not represent a sufficient level of protection for that animal, as it is highly likely that it would starve</p>	<p>It is clearly necessary to account for orphaned foxes, not only because despatch by firearm or by dog is more humane than death by starvation or dehydration, but also because the primary purpose of pursuing foxes is to control their population in balance with their local habitat and to prevent foxes from</p>

Section	Is it providing a sufficient level of protection for wild mammals?	Is it allowing effective and humane control of wild mammals where necessary?
<p>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.</p>	<p>to death or die of dehydration. It is significantly more humane to locate and despatch quickly an orphaned fox; therefore, this Exception subsection does ensure a sufficient level of protection for foxes.</p>	<p>having a detrimental impact upon vulnerable ground nesting birds and livestock. As such, people carrying out fox control activities aim to despatch those foxes that they locate at any one time; this includes cubs below ground. Taking this into account, this subsection does allow effective and humane control of foxes where necessary. To introduce further restrictions to this subsection would be inhumane.</p>
<p>6 Excepted activities</p>		
<p>(1) A person does not commit an offence under section 1(1) by participating in an excepted activity.</p>	<p>It is correct for the Act to recognise and legislate for necessary wild mammal control activities via appropriate, defined Exceptions. These Exceptions were formulated after careful consideration of the practicalities of wild mammal control, which is why they are workable Exceptions for land managers.</p>	
<p>(2) For the purposes of subsection (1), an “excepted activity” is an activity excepted under any provision of this Act, and such other activity as the Scottish Ministers may, by order made by statutory instrument, specify.</p>	<p>-</p>	<p>-</p>
<p>(3) No order is to be made under subsection (2) unless it has been laid in draft before, and approved by resolution of, the Scottish Parliament.</p>	<p>-</p>	<p>-</p>
<p>(4) Before laying a draft order before the Parliament under subsection (3), the Scottish Ministers must— (a) lay the proposed draft order before the Parliament and make it publicly available for consultation for a period (“the consultation period”) of at least 12 weeks; (b) during the consultation period, consult such persons and bodies as they consider likely to be affected by, or otherwise to have an interest in, the proposed draft order; and</p>	<p>-</p>	<p>-</p>

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(c) take into account any comments on the proposed draft order expressed during the consultation period and make such changes to the draft order as they consider appropriate.		
7 Arrest, search and seizure		
<p>(1) A constable who suspects with reasonable cause that a person has committed or is committing an offence under this Act may without warrant—</p> <p>(a) arrest that person;</p> <p>(b) stop and search that person, if the constable suspects with reasonable cause that evidence in connection with the offence is to be found on that person;</p> <p>(c) search or examine a vehicle, animal or article which appears to belong to, or be in the possession or control of, that person, if the constable suspects with reasonable cause that evidence in connection with the offence is to be found in or on it;</p> <p>(d) seize and detain for the purpose of proceedings under this Act a vehicle, animal or article which may be evidence in connection with the offence or which may be made the subject of an order under Part II of the Proceeds of Crime (Scotland) Act 1995 (c.43).</p>	<p>The powers available to the Authorities under section 7 of this Act are sufficiently robust to ensure that those people carrying out control of wild mammals do so within the remit of the law.</p> <p>Further, the requirement for certificated firearms/shotgun owners means that the provisions of the Firearms Act provide an additional level of power for the Authorities and a strong incentive for good practice and statutory compliance by those carrying out the control of wild mammals.</p>	
<p>(2) A vehicle, animal or article seized under subsection (1)(d) above shall be returned to the person from whom it was seized as soon as any proceedings under this Act are concluded without the conviction of the person accused.</p>	-	-
<p>(3) A constable may enter land (but not a dwelling house) in order to exercise a power given by subsection (1).</p>	-	-

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8 Proceedings and penalties		
(1) A person guilty of an offence under this Act is liable on summary conviction to imprisonment for up to 6 months or a fine of up to level 5 on the standard scale or both.	The penalties set out in section 8 of this Act are a sufficient deterrent; when combined with the high likelihood that a person guilty of an offence under this Act would lose their firearms and/or shotgun certificate(s) as well, it is clear that there is a clear incentive to act within the remit of the law. It should be noted that, for many people involved in carrying out the control of wild mammals under this Act, loss of firearms/shotgun certificates would also mean loss of job, livelihood and way of life.	
(2) If an offence by a body corporate is proved to have been committed with the consent or connivance of, or as a result of neglect by, an officer of the body, the officer as well as the body is guilty of the offence.	-	-
(3) "Officer" means a director, manager, secretary or other similar officer, and includes a person purporting to act in that capacity or in accordance with whose directions or instructions the officers of the body are accustomed to act.	-	-
(4) Where the affairs of a body corporate are managed by its members, subsection (2) applies to the conduct of a member in connection with the member's functions of management as if the member were an officer.	-	-
(5) If an offence committed by a partnership is proved to have been committed with the consent or connivance of, or as a result of neglect by, a partner, the partner as well as the partnership is guilty of the offence.	-	-
(6) In proceedings for an offence under section 1(2) or (3), it is a defence for the person charged to prove that at the time of the alleged offence such person reasonably believed that section 5(1) applied (or would apply) to the hunting in question.	-	-
9 Disqualification orders		

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<p>(1) The court convicting a person of an offence under section 1 may, in addition to dealing with the offender in any other way, make either or both of the following orders (“disqualification orders”)</p> <p>(a) an order for the care or disposal of a dog which was in the offender’s custody when the offence was committed or which has been in the offender’s custody at any time since then;</p> <p>(b) an order disqualifying the offender, for such period as it thinks fit, from having custody of any dog.</p>	<p>The potential for a person convicted of an offence under this Act to be subject to a disqualification order is a sufficient deterrent. People owning, breeding and utilising dogs for the control of wild mammals take great care over the welfare of their dogs; the possibility of losing their dogs would seem to most people within this community to be the worst penalty resulting from a conviction.</p>	
<p>(2) Where the court makes an order under subsection (1)(a) above, it may—</p> <p>(a) require any person who has custody of the dog to deliver it up to a specified person;</p> <p>(b) require the offender to pay specified amounts to specified persons for the care of the dog from the time it is delivered up (or detained under section 7(1)(d)) until permanent arrangements are made for its care or disposal.</p>	-	-
<p>(3) A disqualification order shall not deprive a dog’s owner of custody of that dog where that dog was used by another person in the commission of an offence under section 1, unless the owner knowingly permitted the use of that dog contrary to that section.</p>	-	-
<p>(4) A person who—</p> <p>(a) has custody of a dog in contravention of a disqualification order; or</p> <p>(b) fails to comply with a requirement imposed on that person under subsection (2), commits an offence.</p>	-	-
<p>(5) A dog shall not be disposed of pursuant to an order under subsection (1)(a) above—</p>	-	-

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(a) until the end of the period within which notice of appeal to the court against the order can be given; and (b) if notice of appeal is given in that period, until the appeal is determined or withdrawn, unless the owner of the dog gives notice to the court which made the order of the owner's intention not to appeal against it.		
(6) A person against whom an order under subsection (1)(b) above has been made may, no earlier than one year after the date of the order, apply to the court which made the order for a direction ending the disqualification from such date as the court thinks appropriate; and if the application is refused, no further application in relation to that order may be made earlier than one year after the date of the refusal.	-	-
(7) In considering an application under subsection (6), the court must take account of all the circumstances including the applicant's character and the applicant's conduct since the order was made.	-	-
(8) If a disqualification order imposes a requirement in relation to a dog not owned by the offender, the owner may appeal to the High Court against that requirement.	-	-
(9) An appeal under subsection (8) is competent only if lodged within 7 days of the date of the order (or such longer period as the High Court thinks just, taking particular account of the date on which the order came to the owner's attention).	-	-
10 Meaning of expressions		
(1) In this Act— "to hunt" includes to search for or course; "occupier" includes any person who has control of land;	-	-

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<p>an “orphaned” fox means a fox, the mother of which is dead, which is too young to survive on its own; “owner” (of land) does not include a creditor in a heritable security who is not in possession of the security subjects; “pest species” means foxes, hares, mink, stoats and weasels; “wild mammal” — (a) includes a wild mammal which has escaped, or been released, from captivity, and any mammal which is living wild; (b) does not include a rabbit; (c) does not include a rodent; and references to hunting with, or the use of, “a dog” are to be interpreted as also applying to hunting with, or (as the case may be) the use of, two or more dogs.</p>		
<p>(2) The Scottish Ministers may, by order made by statutory instrument, modify the definition of “pest species” in subsection (1) so as to add to, or remove from, the species which that definition comprehends such species as they think fit.</p>	-	-
<p>(3) A statutory instrument containing an order under subsection (2) above is subject to annulment in pursuance of a resolution of the Scottish Parliament.</p>	-	-
<p>(4) For the purposes of this Act, a dog is “under control” if— (a) the person responsible for the dog is able to direct the dog’s activity by physical contact or verbal or audible command; or</p>	<p>It is important to recognise that breeding of a dog is also significant, in addition to training. The various breeds of dog used in the control of wild mammals have been bred for, in some cases centuries, the pursuit of wild mammals such as foxes. This is an important point when considering the use of dogs to control wild mammals.</p> <p>A person in control of such dogs may do so from considerable distances across country or underground. It must be noted that a dog entered to tight cover or below ground in order to flush a wild mammal may</p>	

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(b) the dog is carrying out a series of actions appropriate to the activity undertaken, having been trained to do so.	despatch that mammal despite this not being the intention; this does not mean that the person is not in control of the dog, since there are circumstances when the dog must engage the quarry in order to protect itself. Similarly, if a dog despatches a fox (etc) in the process of flushing to guns, this is not an indication that the person is not in control of that dog; it is an indication that the quarry animal is either in poor health or that it is inexperienced in evading pursuit. As such, the definition of 'under control' in this subsection 4 must take account of these points.	
11 Consequential amendments and repeals		
The consequential amendments and repeals set out in the schedule have effect.	-	-
12 Short title and commencement		
(1) This Act may be cited as the Protection of Wild Mammals (Scotland) Act 2002.	-	-
(2) The preceding sections of this Act come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.	-	-
(3) Different days may be so appointed for different purposes.	-	-