



OneKind

Parliamentary Briefing: Hunting with dogs in Scotland

**The need for reform of the Protection of
Wild Mammals (Scotland) Act 2002**

January 2016

Summary

Hunting wild mammals with dogs has been established as seriously compromising the welfare of the hunted animal. This led the Scottish Parliament to pass the Protection of Wild Mammals (Scotland) Act 2002, intended to ban hunting with dogs.

The Act is now in urgent need of review to render it more effective and enforceable. At present it allows too many exemptions and too many loopholes, which can be exploited to allow the chasing and killing of foxes by a full pack of dogs. This is reflected in the fact that the number of mounted fox hunts in Scotland remains the same as it was before the ban in 2002, and there has been no successful prosecution of a mounted fox hunt since the Act was passed.

Fieldwork by animal welfare organisations has recorded hunt activities that appear to contravene the law, as well as other apparently legal behaviour that should immediately be banned on account of the animal suffering that it causes.

With the hunting legislation for England and Wales under threat at Westminster, Scotland must ensure that its laws are robust and fit for purpose. OneKind has therefore welcomed the Scottish Government's announcement of a review of the 2002 Act by Lord Bonomy, a retired Court of Session and High Court judge, which will collect evidence from February to March 2016. The Scottish Government has also committed to bringing forward legislation after May 2016 if the review concludes that it is required.

OneKind calls for the review to be robust, comprehensive and to probe hunt activities and enforcement since 2002. We believe that new legislation or a significantly amended version of the 2002 Act is required so that hunting foxes and other mammals with dogs is genuinely banned. At the absolute minimum this means:

1. An end to the use of packs of dogs to 'flush' foxes and other mammals
2. Reviewing the many confusing and inconsistent exemptions that act as loopholes that allow hunts to continue
3. Making reckless behaviour leading to "accidental" hunting a clear offence

Introduction

OneKind, formerly Advocates for Animals, is a Scottish animal protection charity that aims to end cruelty to all animals in Scotland. We were closely involved with the passage of the Protection of Wild Mammals (Scotland) Act 2002 and supported the passage of the Hunting Act 2004 covering England and Wales. We believe that using a pack of dogs to chase and kill a sentient wild mammal is inherently inhumane and that the 2002 Act requires review and revision in order to close a number of loopholes and improve enforcement of the law.

Animal welfare and hunting with dogs

The report of the Committee of Inquiry into Hunting with Dogs in England and Wales (the Burns Inquiry) in June 2000 to the UK Government remains the most authoritative review of the animal welfare implications of hunting with dogs. It concluded that hunting with dogs “seriously compromises the welfare of foxes, deer, hares and mink.”¹

Pest control and hunting with dogs

Proponents of hunting with dogs argue such practices are critical for pest control. However, there are more humane alternatives to using mounted hunts using dogs to seek and flush foxes from cover. Where fox control is considered necessary, non-lethal methods should be preferred. If lethal control is unavoidable, alternative methods such as shooting foxes as they emerge from their den are arguably more humane. Other alternatives include cage traps, habitat management, exclusion fencing, novel disturbances, shooting and increased shepherding.²

Independent studies indicate that the fox population has declined significantly in the UK over the last 20 years³, and that the impact of fox predation on lamb losses is considerably lower than other causes⁴. Furthermore, fox population trends and ecology suggest that hunting cannot be considered an effective means of controlling the population. There are about 23,000 adult foxes in Scotland, producing around 41,000 cubs each spring. This means that if numbers are to remain constant then around 41,000 foxes die each year⁵. Approximately 540 foxes were killed by hunts in the year before the 2002 ‘ban’, and the hunts claim this has increased to about 900 per annum since then⁶. This means that fox hunting will have no impact on the overall population of foxes, particularly as they are being hunted in winter, which is when the previous year’s cubs are dispersing and looking for new territories. If an adult fox is killed by a hunt, there is a resource of younger foxes who will immediately take its place.

Hunting in Scotland – the law

Section 1 of the Protection of Wild Mammals (Scotland) Act 2002 bans the hunting of wild mammals with dogs. This includes fox hunting, hare coursing, mink hunting and the use of dogs to fight foxes underground. Hunting deer with dogs is not covered by the legislation as it has long been illegal in Scotland. Rabbits and rodents (such as rats and squirrels) are also excluded (s.10(1)). The term “dog” can be read as meaning one, two or more dogs (s.10(1)). It is this provision which has allowed hunts in Scotland to continue using a full pack, rather than being limited to two dogs as in England and Wales. The general prohibition is subject to a number of complex and, to some extent, inconsistent exemptions:

Section 2(1) exempts the use of a dog under control for stalking and flushing from cover above ground for purposes including the protection of livestock, ground-nesting birds, timber, fowl, game birds and crops, the provision of food, the protection of human health, the prevention of disease, pest control and population control for welfare purposes. Under these circumstances, the wild mammal must be shot or killed by a bird of prey “once it is safe to do so”. There is no definition of the permitted duration of flushing or stalking and the phrase has been interpreted by some hunts as allowing a lengthy chase.

Section 2(2) exempts the killing by a dog of a wild mammal of a pest species, defined as foxes, hares, mink, stoats and weasels, if it occurs in the course of flushing from cover or below ground in

order that it may be shot or killed “by lawful means” (undefined).

Section 2(3) exempts the use of a dog under control to flush a fox or mink from below ground or a fox from an enclosed space within rocks or other secure cover above ground. The exemption only applies if the action is for the purposes specified in s.2(1). The fox or mink must be “flushed as soon as reasonably possible after it is located and shot as soon as possible after it is flushed” (s.2(3)(b)). The person must be in possession of a firearm for which he holds a valid firearms or shotgun certificate (s.2(3)(d)) and must have the landowner’s permission for the activity (s.2(3)(e)).

Section 3 allows the use of a dog above ground for sport shooting or falconry and here too there is a requirement for the wild mammal to be killed as soon as possible.

Section 5 provides further miscellaneous exemptions grouped under the heading of retrieval and location. These include the retrieval, but not killing, of a wounded or orphaned animal and the killing below ground of an orphaned fox by a single dog only.

A person guilty of an offence under the 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 (s.8(1)).

Hunting in Scotland - current activity

There are currently ten registered fox hunts in Scotland – nine mounted hunts and one foot pack. Contrary to predictions made during the passage of the Bill, no

hunt has closed permanently and there has been no widespread loss of jobs or destruction of hounds or horses. Social aspects of hunting such as point-to-points, pony clubs, hunt balls and other events appear to have been unaffected by the legislation.

The mounted fox hunts are: Berwickshire Hunt; Duke of Buccleuch's Hunt ; Dumfriesshire and Stewartry Foxhounds (a successor to the Dumfriesshire Hunt which closed after the ban on hunting with dogs and the foot and mouth epidemic); Fife Foxhounds; Jed Forest Hunt; Kincardineshire Foxhounds; Lauderdale Hunt; Lanarkshire & Renfrewshire Foxhounds; Liddesdale Hunt⁷.

There is a new registered foot pack, the Strathappin Foxhounds. The Horse and Hound directory also lists two linked private packs, the Barony pack of French basset hounds hunting rabbits and lines, and the Three Dales minkhounds, both based in Dumfriesshire.

There are also a number of fox destruction clubs using dogs that formerly received grant aid from government. OneKind is seeking to establish the current status of these clubs.

Compliance by mounted fox hunts

Hunt representatives such as the Scottish Countryside Alliance (SCA), while continuing to oppose any restriction on hunting, have nevertheless stated that they are able to comply with the Act. The SCA has claimed that three times as many foxes are being killed due to the introduction of guns⁸. OneKind has consistently stated that if the hunts are

concerned that they are now killing too many foxes, they should reduce their activities.

Trevor Adams, the huntsman of the Buccleuch Hunt and the only member of a mounted hunt to be prosecuted under the Act, has been quoted as saying:

“I think we have got to work with the law we have got in the end. We certainly have adapted to the new law where we flush out foxes and offer a pest control. It is a sensible compromise. The regulations seem to have kept everyone happy which is not easy in this day and age.”⁹

Animal welfare organisations are, however, concerned that the exemptions in the law are over-exploited and that lack of enforcement activity may be allowing widespread evasion of the law, allowing unnecessary animal suffering to continue.

OneKind fieldwork since 2002 has identified numerous incidents of what appeared to be non-compliance, mainly involving prolonged chases. One hunt follower in the Borders actually told the OneKind field officer that the hunt was “doing it by the rules” on a particular day as “the antis are out”. On another occasion the field officer filmed a fox being chased out of cover and past the waiting marksman who appeared to make no attempt to shoot it.

In Fife, the field officer reported the apparent digging of a badger sett by hunt terriermen. Shovels and other equipment were found at the site but the case did not proceed.

Similar concerns about non-compliance were raised in June 2015 by the League Against Cruel Sports Scotland, which monitored five Scottish hunts over three

months and concluded that hunts were not even complying with the requirement to carry guns when flushing from cover.

Representatives of Scottish hunts refuted this claim saying that individuals acting as guns would conceal themselves and blend into their surroundings¹⁰.

In addition to monitoring carried out by OneKind and the League Against Cruel Sports Scotland, the following cases have been reported by the Hunt Saboteurs Association (HSA) Grampian and Perthshire Branches from hunt monitoring exercises during 2015.

1. Suffering caused by terrier work not considered illegal

The HSA reported terriermen on one hunt in November 2014 using terriers not to flush but, they believed, to catch and attack foxes¹¹. In this incident, the hunt put a terrier down the hole and the terrier was used to locate and trap the fox by attacking the fox until it was caught and dragged out to be shot. The terrier was biting the face of the fox as it was dragged out and had to be pulled off, causing injury to the fox's face. As the fox was dragged out of the hole, the end of its tail was ripped off. The whipper-in of the hunt stood on the fox's throat to hold

the fox in position while it was still alive, before it was shot. The fox appeared to still be moving after having been shot and thrown to the hounds.

The incident was reported to the police and the Scottish SPCA reviewed the footage, but the HSA understands that, although what took place was clearly 'harsh', it was not illegal under the 2002 Act.

2. Interference with badger setts

HSA monitors have reported Scottish hunts trying to dig out and put terriers down badger setts to flush a fox. The OneKind field officer has also reported behaviour of this sort to the police.

On one occasion HSA monitors were engaged in a prolonged confrontation where they attempted to stop terriermen digging an active badger sett¹² (its status was subsequently confirmed by an independent badger expert). During this incident, which lasted over three hours, no member of the hunt agreed that the sett was active, which the monitors felt demonstrated inadequate knowledge of protected wildlife and posed a risk to other active badger setts in the surrounding area where hunting took place.



Scottish hunts still use full packs of hounds, unlike in England and Wales. Pictured are the Fife hunt in 2015 (left) and the Jed Forest Hunt in 2009

Enforcement

The 2002 Act has proven effective against some forms of wild mammal persecution using dogs. It has most commonly been used in connection with hare coursing, for example, and there have been three successful prosecutions under the Act for other forms of fox hunting, such as terrier work. However, there appear to be real difficulties in enforcement where mounted fox hunts are concerned.

The latest Scottish Government report into wildlife crime¹³ shows that there were 160 hunting with dogs crimes recorded by police over the five years from 2009/10 – 2013/14, and proceedings were taken against 44 persons. At 50%, the conviction rate for hunting with dogs over the five-year period was the lowest of all the wildlife crimes. (For example, fish poaching enforcement efforts saw 481 crimes recorded and 109 persons proceeded against, with a 78% conviction rate.) The single hunting with dogs case in court last year resulted in acquittal.

The report also states that out of ten cases of hunting foxes with dogs reported to the Crown Office and Procurator Fiscal Service (COPFS) since the 2002 Act was introduced, only five were associated with mounted fox hunt activities, none of which resulted in conviction.

Hunting with dogs is also covered by other legislation such as the Deer (Scotland) Act 1996, the Badgers Act 1992 and the WCA. A total of 16 cases reported to COPFS in 2013-2014 involved the use of dogs.

Legislation in England and Wales

The legislation in Scotland has not been reviewed since it was introduced. In England and Wales, by contrast, there has been considerable political upheaval associated with a potential repeal of the Hunting Act 2004, which is a Conservative Government manifesto commitment.

On 9 June 2015, the Government published the draft Hunting Act 2004 (Exempt Hunting) (Amendment) Order 2015¹⁴, scheduled for House of Commons debate on 15 July 2015. On 13 July 2015 the SNP group announced that it would vote on the proposed amendments to the Hunting Act in view of the enormous number of representations it was receiving from people in England. OneKind welcomed this decision, which supported our position that animal welfare is an ethical, cross-border issue that goes beyond the boundaries of constituencies.

The draft amendment was accompanied by a statement from DEFRA that: “A small number of technical amendments to the Hunting Act have been proposed to more closely align legislation in England and Wales with that in Scotland, while maintaining safeguards.”

These comments further highlighted the concern about the exemptions that allow Scottish hunts to use full packs for flushing foxes, without any pretence of merely “trail” or “drag” hunting, providing the fox is shot or killed by a bird of prey as soon as it is safe to do so. The exemption has made it almost impossible to differentiate

between legal and illegal hunting with hounds. The amendment was withdrawn on 14 July 2015 and no date for future consideration has been announced.

Review of Scottish legislation

In September, the Scottish Government Programme for Government¹⁵ included a commitment to review the 2002 Act “to ensure that it is providing the necessary level of protection for foxes and other wild mammals, while at the same time allowing effective and humane control where necessary.” On Boxing Day 2015 it was announced that the review would be conducted by Lord Bonomy, a retired Court of Session and High Court judge, and that written evidence would be collected in February and March 2016. The Scottish Government has committed to bringing forward legislation after May 2016 if the review concludes that changes are required.

OneKind believes that the 2002 Act must be strengthened in a number of ways in order to improve enforceability and its ability to protect animal welfare. Amendments to the law are required to ensure that it is no longer possible to hunt with a full pack under cover of the current confusing and inconsistent exemptions for flushing, and that reckless behaviour leading to “accidental” hunting is a clear offence.

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