

From: [Humane Wildlife Solutions](#)
To: [2002 Act Review](#)
Subject: Review of the Protection of Wild Mammals (Scotland) Act 2002
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This document is to highlight where we have seen failures and loopholes in the Scottish hunting law that we feel need to be closed and dealt with by the Scottish parliament. The examples listed here show the law that is meant to stop these practices from happening, the examples of how these laws do not work and are being broken and also loopholes that flaunt the law that is meant to stop hunters hunting.

- Use of terriers & terriermen
- Interference with badger setts
- Flushing and use of guns
- When a fox runs beyond the
guns
- Killing in cover
- Losing control of a pack and how
this is a loophole
- Usage of full packs
- Hounds are bred to kill, not just
chase
- Chasing of deer and other
wildlife

For each of these, we state the following

1. The current law
2. What really happens
& examples of how it is broken
3. What needs to be
changed

Use of terriers and terriermen

1. Terriers may be used in Scotland to be put down earths to flush foxes out of them. They are not supposed to cause injury to the fox or be injured themselves but to alert the terrierman as to where the fox is and to flush it out where it can be caught in nets to be shot. Terriermen should be present on hunts if foxes are being chased because for a hunt to be legal in Scotland, the fox must be flushed to waiting gunmen who can shoot them when they have left the woodland in which they have been found. If the fox goes to ground the terriermen can intervene as the hounds should not find the fox and make the kill. Sections 2 & 5 of the Protection of Wild Mammals (Scotland) Act (2002) permit the use of a dog to flush both mink and foxes from below ground providing that -

- Reasonable steps are taken to ensure that the fox or mink is flushed as soon as reasonably possible after it is located and is shot as soon as possible after it is flushed.
- Reasonable steps are taken 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 possible.
- The person is in possession of a firearm for which they hold a valid

firearms or shotgun certificate;

- The person is the owner or lawful occupier of the land on which the activity takes place, or is acting on their behalf and with their permission.

2. The terriermen we have witnessed on fox hunts have been using terriers **not to flush but to catch and attack foxes**. The hunt have been seen putting 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. There is some speculation as to whether these were simple after-death nerve twitches which we cannot be 100% sure about, an incident was reported to the police and the SSPCA were shown the footage, but it was deemed that although what took place was clearly 'harsh' and incredibly scary and painful to the fox, nothing illegal had taken place, despite laws regarding the need for soft terriers to be put down holes (ie ones that do not bite). We believe no law was seen to have been broken due to one of the many loopholes in the Protection of Wild Mammals Act (2002).

3. The fact that terriers can be used at all is a problem, because unless someone can be on site to check every single dig out, there is no way of knowing that a soft terrier is being used every single time and that a terrier never injures a fox by latching on to its face as happened on this occasion. Even if it could be policed at every single hunt on every single day, the matter of a clean kill is another issue. As mentioned above, one member of the hunt told another to shoot the fox in the stomach, which would not have killed it immediately, causing prolonged suffering, which is simply not necessary.

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Interference with Badgers Setts

1. Badger setts are protected under the Protection of Badgers Act (1992) (as amended by the WANE Act 2011). Badgers are a protected species unless licensed to be killed, meaning that active badger setts cannot be interfered with by hunts or anyone else without government approval. This includes allowing terriers to enter the holes. Badger setts can be proven active by the presence of active latrines, scat, fresh bedding and footprints around the holes.

It is an offence to:

- wilfully kill, injure, take or attempt to kill a badger;
- possess a dead badger or any part of a dead badger;
- cruelly ill-treat a badger;
- use badger tongs in the course of killing, taking or attempting to kill a badger;
- dig for a badger;
- possess, sell or offer for sale any live badger;

- mark, tag or ring a badger.

It is also a crime to interfere with a badger sett by intentionally or recklessly causing or allowing:

- damage to a sett or any part of it;
- destruction of it;
- sett access to be obstructed, or any entrance of it;
- a dog to enter it;
- disturbance to a badger when it is occupying it.

A person attempting to commit an offence under the Act is guilty of that offence.

2. We have seen Scottish hunts on a number of occasions trying to dig out and put terriers down badger setts to flush a fox . We have seen fox hunts dig out a fox from a badger sett.

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1. 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.

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; (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

2. Due to this loophole mentioned above, hunts can use hounds to kill the fox. Fox hunts we have seen on at least three occasions the hunt going through thickets and saying that they can do this because the hounds are allowed to kill in cover. However, when they go to these thickets to kill in cover and say that this is what they are doing, we have seen no gunmen waiting outside of the thicket to shoot if something does get flushed, meaning that if they are trying to use the loophole of being allowed to kill with a hound then they do not have a gunman in position which would make this loophole lawful.

3. One of the sections of the Act mentioned above states that if a hound is to kill a pest species which is being flushed from cover before it can

be shot this will not result in an offense being committed. This loop hole can be easily exploited so that if this is witnessed then the hunts can say that the killing of the animal by the hound was an accident and so was not a breach of the law, even if done on purpose. For this reason hunts can say that they flush to guns without actually having to do so since the death of a fox by hounds will not lead to them being charged with breaking the Protection of Wild Mammals Act. This needs to be strengthened as it is very difficult to distinguish between a genuine accident and the hunt not attempting to shoot the fox at all, as they can claim a number of different reasons as to why they were not able to shoot, causing the hound to make the kill.

When a fox runs beyond the guns

1. When a fox runs past the guns so that it cannot be shot the hounds must be called off or else this is illegal hunting.
2. We have seen Foxhounds flush a fox past guns where they openly pursued the fox across open fields before chasing it into a badger sett. At the time the gunmen were standing in a field having had the fox run nearby without being shot. The hounds were allowed to continue to chase before the fox was chased to a badger sett and dug out
3. While hounds should be under control at all times it is common for hounds to riot which means that they chase foxes without command or other species such as deer, rabbits, hares etc. In video 4 below we can see that the hounds at the Fife hunt chase deer without being instructed to do so, showing that they are not always under complete control and may chase a fox without being given permission to. Not only are they hunting deer but they are hunting them in open fields, not simply flushing them. For this reason, if a fox is to run past the guns the hounds may continue to hunt the fox even if called off, which would be illegal but something that the huntsman can not necessarily control. There is no way to guarantee that a fox will not be hunted across open land if the hounds are instructed to stop chasing as they may not listen. The only way to be sure that the hounds will not make a kill is for their use to be discontinued or for them to be muzzled. Foxhounds as a breed of dog have been bred over decades to hunt and kill a fox rather than to simply flush. It is in their instinct to chase and kill their quarry, which brings up the question as to why they are still used when there is a risk of them killing.

Killing in Cover

1. Protection of Wild Mammals Act Section 2 Paragraph 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.
2. There have been many instances where no guns have been seen at Fox hunts. On these occasions, the hunt has been drawing in bushy, thicketed areas. We have been told that it is legal for them to kill in cover, another supposed loophole in the law which is meant to be

protecting wildlife. Foxhounds say that they can kill in cover and they can but only if they intend fully to flush first: if they kill in cover whilst trying to flush they can use the loophole to do this, but when the huntsman and master say they can kill in cover they can only do so if there are guns waiting to shoot a flushed fox, which we have not seen. If the hounds are not meant to kill foxes then making hounds wear muzzles would solve the problem and stop them from killing but allow them to follow a trail.

3. This loophole should be closed to prevent purposeful killing in cover to be allowed because the hunts may use this as a way around the Wild Mammals Act to be able to kill foxes whether saying that it is accidental or not. This loophole means that the law of flushing to guns has very little weight to it and needs to be revised fully.

Losing control of the pack

1. There is no law regarding this as far as we are aware.
2. As mentioned above, it is easy for hounds to riot and ignore commands. We have seen hounds chasing deer at more than one hunt and on more than one occasion. It is known that hounds have killed deer before on hunts due to lack of control. As well as this, we have seen instances of sheep scaring before by hounds, with farmers looking for the hunt angrily to tell them to get them out of his field. Foxhounds also regularly put road user at risk by allowing the hounds to run across busy roads.
3. Again, the law needs to be revised so that if hounds do go out of control they cannot make a kill. We also believe that huntsmen need to be fully responsible for their hounds at all times so that they do not pretend that they have lost control of their pack just to get around the law. As individual dog walkers are responsible for their dogs when walking in the countryside and expected to have them under control, so should a huntsman.

Using a full pack

1. In Scotland a full pack of hounds can be used, unlike in England where only two can be used to hunt foxes. Usually a pack of hounds in Scotland is about thirty hounds strong.
2. Having such a large number of hounds in a pack increases the likelihood of the hunt breaking the law since there are more to control and keep an eye on. It does not require thirty hounds to flush a fox from cover when two can do this.
3. The number of hounds that are allowed to be used should be decreased to lower the likelihood of losing control of any individual hounds or the pack as a whole.

Hounds are bred to kill not flush

Hounds are bred and trained to chase, scent and kill foxes and the fact that the hounds are used in large numbers (full packs) in Scotland shows that they are trying to hunt the animal not just flush it. Otherwise if they only wanted to flush the fox two hounds would be enough for them to achieve the flushing of the fox. They also still train and breed hounds to chase, scent and kill foxes. When the fox was dug

out of the badger sett last November the fox's body was then thrown to the hounds for them to rip up. This encourages the hounds to want to catch and kill foxes (video 1).

So to eliminate any confusion only two hounds should be allowed to go out with Scottish Fox hunts.

Chasing of deer and other wildlife

1. Offences (1) A person who deliberately hunts a wild mammal with a dog commits an offence. Deer (Scotland) Act 1996 17 Unlawful killing, taking and injuring of deer. (1) Subject to section 25 of this Act, any person who, without legal right to take or kill deer or without permission from a person having such right, takes or wilfully kills or injures deer on any land shall be guilty of an offence. (2) Subject to section 25 of this Act, any person who, without legal right to take or kill deer on any land or without permission from a person having such right, removes any deer carcass from that land shall be guilty of an offence. (3) Subject to section 25 of this Act, any person who wilfully kills or injures any deer otherwise than by shooting shall be guilty of an offence. (4) In subsection (3) above "shooting" means discharging a firearm of a class prescribed in an order under section 21(1) of this Act.
2. Fox hounds have been seen to chase deer on more than one occasion.
3. There needs to be clarification and clear guidelines that show that chasing deer even by accident or due to rioting hounds should be illegal.

Recommendations

- Complete ban on hunting with dogs
- Proper enforcement on the current law
- No use of Terriers

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