

## **Operation of the Protection of Wild Mammals (Scotland) Act 2002**

### **Submission by OneKind**

**March 2016**

#### **1 Introduction**

OneKind is an animal protection charity based in Edinburgh and working to end cruelty to animals in Scotland. We welcome the Review of the Protection of Wild Mammals (Scotland) Act 2002 (“the Act”), and are pleased to submit comments to the Review.

#### **2 Background to the Protection of Wild Mammals Act (Scotland) 2002**

OneKind (then known as Advocates for Animals) was one of the three partners in the Scottish Campaign Against Hunting with Dogs (SCAHD) that supported Mike Watson MSP during the progress of the Protection of Wild Mammals (Scotland) Bill from 2000 – 2002<sup>1</sup>.

The Bill had an extremely difficult passage through the Scottish Parliament over the course of almost two years and arguably, as a consequence, it emerged as a less than perfect text. During the legislative process we were concerned that a number of the amendments introduced at Stage 2 had the potential to undermine the effectiveness of the law by introducing inconsistent terminology, a lack of clarity and a number of confusing and complicated exemptions, and in our view these concerns have been justified. This is unfortunate on a number of levels, primarily because of the continued negative impact on hunted animals, but also because many MSPs, including those who opposed the Bill, were at pains to state that they did not support mounted foxhunting with a pack of dogs – rather, their reservations about the Bill stemmed from a concern to protect what they saw as legitimate pest control by gamekeepers.

Nonetheless, we supported and welcomed the legislation, which established that the use of dogs to chase and kill a sentient wild mammal was unacceptable to Scotland’s legislators.

We note the limits of the Review and we agree with these. While remaining convinced that using a pack of dogs to pursue and kill a sentient wild animal is cruel and unacceptable, we do not think it necessary to revisit the arguments that took place during the passage of the original Bill, over a period of almost two years. We believe that the Scottish Parliament had ample

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<sup>1</sup> The others were the League Against Cruel Sports and the International Federation for Animal Welfare.

evidence to decide on the cruelty, or otherwise, of hunting, and it has been established during subsequent legal challenges that it also had competence to legislate on the matter.

In this regard we note the comments by Lord Justice Clerk (Gill) in *Adams v Scottish Ministers*<sup>2</sup>:

“We consider that it was entirely within the competence of the Parliament to make the judgment that the pursuit and killing of a fox by a mounted hunt and a pack of hounds for the purposes of recreation and sport and for the pleasure of both participants and spectators was ethically wrong; that the likely impacts of the legislation did not justify its continuing to be legal; that it was a fit and proper use of legislative power to proscribe such activity; and that the criminal offences, and related sanctions, that the 2002 Act imposes were the appropriate means of doing so.”

This view was endorsed by Lord Hope of Craighead in *Whaley*<sup>3</sup>.

### **3 The impact of fox hunting**

We are aware that the Review does not include animal welfare and the need for pest control or consideration of alternative methods in its terms of reference. We feel it is important, however, briefly to consider these issues given their profile in the public debate around this legislation.

#### **3.1 Animal welfare**

The primary concern of OneKind is to protect animals from unnecessary suffering. Domestic animals under the control of man are protected from the infliction of unnecessary suffering under Part 2 of the Animal Health and Welfare (Scotland) Act 2006, and we believe that sentient wild mammals are entitled, as far as possible, to equivalent protection. 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<sup>4</sup>.

If it is to continue in any form, the use of dogs for hunting foxes must therefore be capable of justification on the grounds of necessity and effectiveness.

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<sup>2</sup> 2004 SC 665

<sup>3</sup> *Whaley and Another (Appellant) v Lord Advocate (Respondent)* (Scotland) [2007] UKHL 53

<sup>4</sup> *Final Report of Committee of Inquiry into Hunting with Dogs*, June 2000

<http://webarchive.nationalarchives.gov.uk/20100512151544/http://www.huntinginquiry.gov.uk/mainsections/huntingreport.htm>

### **3.2 Hunting with dogs as a means of pest or predator control**

OneKind believes that the choice to engage in mounted hunting, albeit in the name of pest control, is largely driven by the desire to engage in sport. It has little impact on overall fox populations and there are alternative methods of control available.

Independent studies indicate that the fox population has declined significantly in the UK over the last 20 years<sup>5</sup>, and that the impact of fox predation on lamb losses is considerably lower than other causes<sup>6</sup>. 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 must die each year<sup>7</sup>. Approximately 540 foxes were killed by hunts in the year before the 2002 Act, and the hunts claim this has increased to about 900 per annum since then<sup>8</sup>. This means that fox hunting is unlikely to have any impact on the overall population of foxes, particularly as they are hunted in winter 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 immediately ready to take its place.

Proponents of hunting with dogs argue that local control by hunting is necessary to control individual foxes thought to be preying on livestock or game birds. If that is the case, there are more humane alternatives to employing mounted hunts using dogs to seek and flush foxes from cover.

Where fox control is considered necessary, non-lethal methods should be preferred. These include cage traps, habitat management, exclusion fencing, novel disturbances and increased shepherding<sup>9</sup>. If lethal control is unavoidable, alternative methods such as shooting foxes as they emerge from their den are arguably more humane.

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<sup>5</sup> Harris, S.J., Massimino, D., Newson, S.E., Eaton, M.A., Balmer, D.E., Noble, D.G., Musgrove, A.J., Gillings, S., Procter, D. & Pearce-Higgins, J.W. 2015. *The Breeding Bird Survey 2014*. BTO Research Report 673. British Trust for Ornithology, Thetford

<sup>6</sup> White, P.C.L., Groves, H.L., Savery, J.R., Conington, J. & Hutchings, M.R. (2000) *Fox predation as a cause of lamb mortality on hill farms*. *Veterinary Record*, 147, 33-37  
<http://veterinaryrecord.bmj.com/content/147/2/33.full.pdf+html>

<sup>7</sup> Harris, S (2015) *The utility of killing foxes in Scotland*, report for League Against Cruel Sports  
[http://www.league.org.uk/~media/Files/LACS/Publications/1407-LACSS-A4-The-Utility-of-Killing-Foxes-in-Scotland-Report-AW-\(2\).pdf](http://www.league.org.uk/~media/Files/LACS/Publications/1407-LACSS-A4-The-Utility-of-Killing-Foxes-in-Scotland-Report-AW-(2).pdf)

<sup>8</sup> <http://www.telegraph.co.uk/news/uknews/1477175/Twice-as-many-foxes-killed-in-Scotland-since-ban-introduced.html>

<sup>9</sup> Ross, S and Harris, S *Alternatives to Snaring* in OneKind Report on Snaring  
[http://www.snarewatch.org/images/resources/onekind\\_report\\_snaring\\_2010.pdf](http://www.snarewatch.org/images/resources/onekind_report_snaring_2010.pdf)

## **4 Protection of Wild Mammals (Scotland) Act 2002**

Given the varied interpretations of the Act, we summarise below the main sections of the Act to which we refer in this submission, and our understanding of these.

### **4.1 Section 1 Offences**

S.1(1) of the Act makes it an offence deliberately to hunt a wild mammal with a dog. 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.

S.1 (2) makes it 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).

S.1(3) makes it 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).

### **4.2 Section 10 Meaning of expressions**

S.10(1) of the Act states that “to hunt” includes to search for or course. Pest species are defined in this section as foxes, hares, mink, stoats and weasels. These species are therefore covered by s.2(1) (e) as animals whose numbers may be controlled, and by s.2(2) with reference to flushing below ground, but these are the only operational references to “pest species” in the Act.

S.10(1) excludes rabbits and rodents from the scope of the Act. S.10(1) concludes with the provision that 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. This provision has allowed hunts in Scotland to continue using a full pack, rather than being limited to two dogs as in England and Wales.

S.10(4) provides a definition of a dog “under control”.

### **4.3 Exceptions to s.1 under ss.2, 3, 4 and 5**

The general prohibitions under s.1 are subject to a number of complex and, to some extent, inconsistent exceptions:

S.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, control of pest species 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. The subsection also refers to “searching”, a provision which has attracted some comment, and which we suggest amending (please see Section 6 Recommendations).

S.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).

S.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)).

Broadly speaking, it appears that s.2(1) is intended to apply “above ground” “(including an enclosed space within rocks, or other secure cover) above ground”, while s.2(3) applies “below ground” but also refers to “an enclosed space within rocks or other secure cover above ground”. It is difficult for the lay reader to distinguish between these two forms of secure cover above ground.

S.3 allows the use of a dog under control 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.

S.4 allows the use of a dog under control to search for a wild mammal provided there is no intention to harm the wild mammal. An example of this would be the use of dogs to search for hedgehogs in the Uists, so that they can be trapped and relocated to the mainland.

S.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.

## **5 Behaviour of fox hunts since 2002**

There has been no successful prosecution of a mounted fox hunt since the Act was passed and the number of mounted fox hunts in Scotland remains the same as it was before the intended ban in 2002. OneKind believes that the root cause of this phenomenon is not that hunts are

behaving in full compliance with the Act, but rather that the numerous, confusing exceptions are being exploited to allow the chasing and killing of foxes by a full pack of dogs.

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. Some of this evidence raises the question of whether it is even possible to use a full pack to flush foxes to guns. According to our recollection of the Bill's passage, this exemption was intended to allow traditional pest control by gamekeepers using one or two dogs, usually terriers or lurchers, rather than the use of a pack of hounds by mounted hunts.

OneKind is one of a number of animal welfare organisations that have carried out monitoring and observation of hunts to assess compliance with the law. Visits were made intermittently to hunts over a number of years. Concerns arising from these visits included:

- Hunts pushing foxes out from cover, with guns clearly in the wrong position (in fields surrounded by sheep, by roads and two guns standing very close to one another), then hunting the fox on.
- Foxes being flushed with no guns in place at all in some cases. This was mainly due to foxes being hunted to another cover and the guns turning up half way through or at the end of a flush.
- A dig where the huntsman and other members of the hunt watched whilst a terrierman dug down to a fox as his terrier dog was keeping it at bay underground.
- An unsolicited admission by a life long hunt supporter that his hunt only used guns when under observation by hunt monitors.
- A fox breaking cover and running in front of a gun, a matter of feet away, and no shot fired.

OneKind believes that the flushing exception is not working as intended and may indeed be unworkable, and that the Act is now in urgent need of amendment to render it more effective, more consistent and more enforceable.

Further information about hunt observations is given at Annex 1.

## 6 Recommendations

Based on our observations of enforcement issues since 2002, on evidence gathered by OneKind staff, on evidence published by other animal welfare organisations and on our understanding of the will of the Scottish Parliament when it passed the legislation, we believe that new legislation - or a significantly amended version of the 2002 Act - is urgently required so that hunting foxes and other mammals with dogs is genuinely banned.

Specifically, OneKind believes that the Act would be improved and rendered more effective by making the following changes:

### **6.1 A clearer definition of hunting**

OneKind suggests that it would be helpful to clarify the definition of hunting within the Act and apply the intended exemptions consistently, using consistent terminology throughout.

For example, the meaning of hunting under the Act already includes searching (s.10) (see comments on searching below). The definition at s.10 should be extended to cover flushing, both above and below ground, and stalking. Where it is considered necessary to exempt an activity, the exemption should use only terms included within the revised s.10 and be clear about which activity is covered by the provision. Thus, for example, s.2 might refer to searching, flushing and stalking as activities exempted under certain specified circumstances. We assume that there would be no exemptions for coursing, for which we cannot see any possible use or justification.

### **6.2 Review the confusing and inconsistent exemptions in the current Act that act as loopholes**

In our view the s.2 exceptions should, like all statutory exceptions, be interpreted narrowly.

We believe that the s.2 exceptions are only intended to allow a fox to be flushed by a dog to guns that are waiting reasonably near to the point of flushing from cover. We suggest that the requirement at s. 2 (1) for the person using the dog to ensure that, once the fox emerges from cover, "it is shot, or killed by a bird of prey, once it is safe to do so" was intended to mean that the fox should normally be shot when it emerges from cover (provided that it is safe to do so), and not after a long chase to distant guns. However it is clear to us that that is not the interpretation being applied by mounted hunts in Scotland and therefore we suggest that the phrase should be amended.

S.2 (2) seems to refer to the occasional, accidental, killing of a fox by a dog in the course of flushing that fox to waiting guns. It does not appear to permit the regular killing of foxes by

dogs; if that is happening, it would indicate that the dogs are not “under control” as required by s. 2(1) and s.2(3).

Somewhat inconsistently, s.2(3) requires reasonable steps to be taken to ensure that the fox or mink (from below ground) or a fox (from an enclosed space within rocks or other secure cover above ground) is “flushed as soon as reasonably possible after it is located and shot as soon as possible after it is flushed”, which would definitely appear to rule out a long chase to distant guns.

OneKind believes that it would preferable for all relevant provisions to use the expression “as soon as possible” rather than “once it is safe to do so” or “as soon as reasonably possible”. The meaning of “as soon as possible” does encompass the concept of safe shooting and we assume that the concept of reasonableness must underpin any interpretation - but at the same time this phrase would place a responsibility on the hunt to minimise the length of any chase. It would also reflect the sound animal welfare principle that killing an animal should be as quick a process as possible. It is less subjective than “once it is safe to do so” and reduces the likelihood of safety being used as a pretext for allowing a chase by the hounds. The phrase “as soon as possible” would also create a responsibility to reduce the length of digouts by terriermen.

OneKind believes that it was the intention of the Scottish Parliament that shooting of flushed animals should take place as soon as possible. We have seen reports on hunt websites as well as video evidence taken by field officers indicating that chases are relatively long duration (ten to twenty minutes or more). We therefore request that the Review offer a firm view on whether chases of this duration are lawful under the Act, or not.

### **6.3 Clarify references to “searching” within the Act**

S.1 prohibits deliberate hunting with a dog and s.10 provides that “to hunt” includes “to search for or course”. S.2 provides limited exceptions which allow a dog to be used to flush a fox to waiting guns. As hunting includes searching it would therefore appear that searching for a fox with a dog is prohibited under s.1, and the question then arises as to how much searching is permitted under the exceptions provided by s.2, entitled “Exception: stalking and flushing from cover”.

S.2 provides that “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)” in certain circumstances. However, there is in fact no other reference to “searching” within the entire section. This was commented on by

Sheriff K T Drummond in his judgment in the prosecution of Trevor Adams, the huntsman of the Buccleuch hunt<sup>10</sup>.

It might be thought that there are two indirect references to searching:

- S.2(1) stipulates what must be done “once the target wild mammal is found” and
- S.2(3)(b) stipulates what must be done “after [the fox] is located”

but in our view these could not be relied on in any discussion of exceptions covering searching.

OneKind recommends clarification of the type of searching prohibited by s.1 and the type and duration of searching permitted under s.2, with all text revised to be consistent with these definitions, throughout the Act. As already stated, we would not expect there to be any exceptions for coursing.

#### **6.4 Reduce permitted number of dogs under exemptions to two**

One of the simplest and most enforceable ways to reduce the animal welfare impacts of fox hunting would be to reduce the number of dogs that may be used for flushing (or stalking or searching, as applicable in a revised Act) to a maximum of two. The definition of “a dog” at s.10 should be reviewed and altered so that the activities exempted under ss.2 and 3 may only be carried out by a maximum of two dogs. This would immediately reduce the risk of animals flushed from cover enduring a prolonged chase by a full pack of up to 20 minutes’ duration.

South of the Border, English hunts have adopted the new sport of trail hunting in order to use a full pack of hounds (the Westminster Hunting Act 2004 only allows two dogs to be used for hunting foxes). This has led to numerous incidents where a full pack has pursued and killed a fox. If this takes place accidentally, the hunts claim that their activities are compliant; however, video reports of these incidents give the clear impression that the accidents were all too avoidable.

OneKind has not been able to find robust peer-reviewed evidence relating specifically to the welfare of foxes when flushed from cover by different numbers of dogs. In the absence of hard data, the general approach suggested by the European Food Safety Authority when conducting a risk assessment for animal welfare is to use expert elicitation to form the best working position<sup>11</sup>. With a greater number of dogs, the real possibility of good control over them, especially when working out of sight under dense cover, declines and the likelihood of the dogs accounting for the fox increases. On this basis, if flushing foxes from cover with dogs is to be

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<sup>10</sup> <https://www.scotcourts.gov.uk/search-judgments/judgment?id=6af686a6-8980-69d2-b500-ff0000d74aa7>

<sup>11</sup> European Food Safety Authority (2012), Guidance on risk assessment for animal welfare, *EFSA Journal* 10: 2513 30pp

undertaken, the welfare interests of the fox are best served by reducing the number of dogs to two.

### **6.5 Create an offence of reckless conduct leading to killing/taking/injuring/harassing a wild mammal with dogs**

The original Protection of Wild Mammals (Scotland) Bill lodged by Mike Watson MSP in 2001<sup>12</sup> set out the main offence of hunting with dogs in two parts at Section 1(1) and (2).

#### 1. Prohibition and offences

- (1) A person must not hunt a wild mammal with a dog.
- (2) A person who deliberately contravenes subsection (1) commits an offence.
- (3) An owner or occupier of land who permits another person to enter or use it to hunt in contravention of subsection (1) commits an offence.
- (4) An owner or keeper of a dog who permits another person to use it to hunt in contravention of subsection (1) commits an offence.
- (5) A person who owns or keeps one or more dogs intending any of them to be used to hunt in contravention of subsection (1) commits an offence.

Exceptions to the prohibition were provided by a proposed system of licensing. Necessary control of a particular type of wild mammal was to be specified on the licence, and there was no mention of so-called 'pest' species.

One of the sources of objection to the Bill came from dog walkers, apparently concerned that they could be criminalised if their dog chased a wild mammal. At Stage 2 of the Bill, there was extensive discussion by the Rural Development Committee of the concept of intent as a component of the main offence<sup>13</sup>. Despite describing the concerns as 'somewhat exaggerated', Mike Watson MSP agreed to amend the Bill 'to make it as clear as possible that the main issue is intent'. S.1 of the Act therefore now contains additional references to deliberate conduct:

#### 1. Offences

- (1) A person who deliberately hunts a wild mammal with a dog commits an offence.
- (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).

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<sup>12</sup>[http://www.scottish.parliament.uk/S1\\_Bills/Protection%20of%20Wild%20Mammals%20\(Scotland\)%20Bill/b10s1.pdf](http://www.scottish.parliament.uk/S1_Bills/Protection%20of%20Wild%20Mammals%20(Scotland)%20Bill/b10s1.pdf)

<sup>13</sup><http://archive.scottish.parliament.uk/business/committees/historic/x-rural/or-01/ra01-2302.htm#Col2274>

(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)

It is hard to say that this apparently greater emphasis on intent made a significant difference to the offence, given that hunting is by its very nature deliberate. As with other offences, such as robbery and assault, it cannot be committed negligently or recklessly<sup>14</sup>.

As demonstrated in the Annex to this document, however, and in reports regularly published by, among others, the League Against Cruel Sports and local Hunt Saboteurs groups, there are many anecdotal reports of hunting in Scotland that is either illegal (e.g. not making any attempt to shoot the fox)<sup>15</sup> or demonstrably cruel but still within the law (e.g. fox digging with terriers)<sup>16</sup>.

Taking into account the difficulty of gathering high quality evidence of (deliberate) illegal hunting, we feel that the addition of an offence of intentionally or recklessly allowing a fox to be killed, taken, injured or harassed by dogs would significantly aid enforcement.

Alternatively, there could be an offence of behaving, intentionally or recklessly, in such a way that it leads to the killing, taking, injuring or harassing a wild mammal with a dog. Thus, a hunt relying on the exemption at s.2(1)(a) to flush a wild mammal from cover above ground for one of the specified purposes could be behaving recklessly if it does not ensure that sufficient guns are in place to shoot a flushed animal once it is safe to do so.

The expression 'intentionally or recklessly' is well known to the Scottish courts and is used in various contexts in other wildlife legislation including the Protection of Badgers Act 1992 (disturbance of setts); Wildlife and Countryside Act 1981 modified by Nature Conservation (Scotland) Act 2004, Schedule 6 para.2 (disturbance of Schedule 1 birds); Marine (Scotland) Act 2010 (taking or killing of seals); and the Conservation (Natural Habitats &c) Regulations 1994 (as amended) (killing, injuring, capturing, disturbing or harassing whales, dolphins or porpoises).

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<sup>14</sup> The word 'deliberate' is not used in the Hunting Act 2004 covering England and Wales and arguably it is unnecessary, as prosecutors and courts know that the offence cannot be committed in any other way. Both the Crown Prosecution Service<sup>14</sup> and DEFRA guidance to the Hunting Act<sup>14</sup> state that: "Hunting is an intentional activity and there can be no such thing as unintentional hunting."

<sup>15</sup> Most recently, a new video published by the League Against Cruel Sports Scotland shows hounds apparently being urged on by members of the Jedforest Hunt to chase foxes, hunts seemingly pretending to flush to guns with no guns in use and hounds following scent in the open with no guns. <https://www.league.org.uk/news-and-opinion/press-releases/2016/mar/police-charge-jed-forest-hunt-staff-with-illegal-hunting>  
<https://www.youtube.com/watch?v=QzjCGV37lwk&feature=youtu.be>

<sup>16</sup> For example, a report by the Hunt Saboteurs Association (HSA) Grampian and Perthshire Branches of extreme suffering caused to a fox during and after a digout in December 2014.  
[https://www.youtube.com/watch?v=F8Dm4OX\\_k](https://www.youtube.com/watch?v=F8Dm4OX_k)

## **7 Conclusion**

OneKind believes that compassion, respect and protection of animals are the responsibility of everyone, from government policy makers to wildlife managers.

Polling by Ipsos MORI on behalf of the League Against Cruel Sports Scotland showed that 84% of people were opposed to fox hunting being legal in Scotland<sup>17</sup>.

Where the actions of a minority (such as mounted fox hunts) conflict with the views of the majority and with scientific knowledge (for example, of welfare and animal sentience) it is necessary for government to take a lead by legislating to provide the necessary protection for animals. It is quite clear that the Scottish Parliament intended to introduce a ban on fox hunting – above all, on mounted fox hunting – in 2002 and it is now time to amend the Protection of Wild Mammals (Scotland) Act 2002 so that it can function as intended, in the interests of animal welfare and the will of the Scottish Parliament.

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<sup>17</sup> Scottish Public Opinion Monitor – November 2015. Results based on a survey of 1,028 respondents (adults aged 16+) conducted by telephone. Fieldwork dates: 9th – 16th November 2015

## Annex 1

### A. Incidents of non-compliance – OneKind field work

Along with other interested organisations, OneKind embarked on a limited amount of monitoring covering Scottish hunts as soon as the Act came into force in 2002. Over the years we have recorded, and on some occasions drawn the attention of the relevant police forces to, a number of incidents. Some examples are given below.

These are of necessity anecdotal, but the evidence can be verified from the monitors' notes and, in some cases, video footage. OneKind appreciates that the terms of reference for the Review preclude the taking of a view on any particular incident or allegation: we suggest, however, that these examples indicate a wider culture of non-compliance, particularly when taken in conjunction with reports from other organisations such as the League Against Cruel Sports and local hunt saboteurs' groups.

A monitoring exercise co-ordinated by the OneKind field officer in 2007 recorded several hunts operating both within and outwith the law as we understood it:

#### **1. The Duke of Buccleuch's Hunt, 10 November 2007**

The field officer observed hunt officials and terriermen digging for a fox that had gone to earth, for over 25 minutes. Later in the day, the observer saw and filmed hounds running uphill from a wood in cry, searching around a badger sett or fox earth and then a gorse covert. The hounds were in cry for at least fifteen minutes. Two guns were seen at the top of the gorse area and as the hounds searched in the undergrowth, a fox broke cover and ran in front of one of the guns, and then back into the gorse. The observer formed the view that "The man holding the gun clearly saw the fox, but chose not to shoot."

The field officer and other monitors were questioned on the day about their presence at the hunt and whether they were "antis".

#### **2. The Duke of Buccleuch's Hunt, 12 November 2007**

A monitoring team saw foxes twice on the day, and reported:

"Both animals looked exhausted (running sluggishly with their tongues hanging from their mouths) and had come from the direction where the hunt had been drawing and had picked up a scent. From the side of a hill, [...] and [...] had a good view of a square wood surrounded by a wall. They could hear hounds in full cry, which went on for at least twelve minutes.

"No guns could be seen on two sides of the wood, while down one length of the wood only one rider was seen pointing (watching for any foxes that bolt). Suddenly, the hounds broke from

the wood and ran across a field and into another wood. It is likely that the fox had bolted from the first wood and run along one of the stone walls in the field, and was out of our view. The hounds hunted on up into another wood, clearly following a scent line, but no shots were heard. After about ten minutes the hounds fell silent.”

The monitors then saw a fox run past them at a distance of a few yards from where they were standing. “The animal looked exhausted and its tongue could clearly be seen hanging out.” On seeing the monitors, the fox turned and ran into a small glen. A minute or so later, the hounds appeared, running towards the monitors but the hunt riders stopped on seeing the monitors. The hounds ran on and into a wood and a quad bike, with a gun, followed them. The rider of the bike dismounted and stood by the wood but within a short time the hunt had called it a day and headed back to the meet.

It is of course impossible to say whether the hunt suspended its activities because it became aware it was being observed, but that was the impression formed by the monitors.

### ***3. The Duke of Buccleuch's Hunt, 14 November 2007,***

The monitoring team was aware that its presence was known and that a document was circulating warning the hunt and followers to look out for [the name of the OneKind monitor] who was a “spy”. Guns were seen being deployed during this hunt. As time went on, the hunt set off towards a river between Kirk Yetholm and Town Yetholm.

“A gun was positioned at the same end of the draw where the hounds had been sent in, so the hounds drew away from the gun. They picked up a fox almost straight away and chased the fox along the riverbank, across some hills and back towards the direction of the meet at Cherrytrees where [...] and [...] were positioned.

“Up to this point the chase had so far lasted approximately twenty minutes and had taken the hunt round the whole village. The hounds had gone out of sight and had fallen silent when [...] and [...] saw an exhausted fox run past them, a few hundred yards from their position down the hill. The animal jumped a wall and headed away towards the direction of the meet. After about four minutes the hounds entered the same field and ran the same line as the fox, jumping over the wall in the exact location where [...] had seen the fox jump. The hounds were onto the scent as the huntsman, [...] arrived on the scene.”

At this point the huntsman called the hounds back to him, for reasons which were unclear but the monitors thought it might be because he had spoken to the foot support nearby and was aware that the monitors had filmed the fox.

#### **4. The Duke of Buccleuch's Hunt, 14 November 2007**

Later on the same day, the monitors were observing the hunt near a wood close to Din Marsh, when a foot follower engaged them in conversation, apparently unaware of the warning circulated about "spies". Part of the conversation suggested that the hunt was only observing the rules because it was aware of the presence of the monitors:

(HS=Hunt Supporter, OK= OneKind Field Officer)

HS: There's two antis out today, with cameras.

OK: With red vehicles?

HS: I don't know but they were here on Monday as well, like, so they kind of watch what they're doing today, like, 'cause they know these cameras now can bring them up, like up close and that.

OK: Really?

HS: They're trying to hunt by the rules today, like.

OK: Oh, right.

HS: But they gave me the number of the car this morning, hope I'm not speaking to him now, am I?

OK: Ha, ha. What's the number of the vehicle? (Reads from note handed to him by HS)  
"Beware spies" ... No, that's certainly not our vehicle, no, we were invited out.

HS: No, I'm not saying that, but you have to ... I mean, that's what we got this morning and we saw them like, they were up on the, you know the ... You up on top of the hill, was you?

OK: We arrived at the top of the hill, a bit later on in the day.

HS: Uh huh

OK: So ...

HS: But, eh, they've got a, he's got a big camera on his back like, and there's a man and a woman, like.

OK: I think it's the vehicle over there.

HS: Oh, maybe. So that's kinda why we obey by the rules, you see, and that's why they fire guns, you see. They are supposed to flush them out and shoot them.

OK: Yeah

HS: Which is ... that's worse than bloody hunting, that, isn't it? At least the fox got a chance to get away, but this flushing out and shooting them ..

OK: So normally you would chase it? Like our hunt, back south?

HS: Usually have a great run at it, like.

OK: Run it what, till you catch it with the hounds?

HS: That's right, aye.

OK: But it's just because of the antis here that they are actually shooting them?

HS: Well, they have to watch the rules, they can flush them out, right, but they are supposed to shoot them when they bring them out.

After further exchanges, the hunt supporter realised that he was indeed talking to the monitor referred to in the circular and became anxious about what he had said but did not retract any of his statements.

#### ***5. The Lauderdale Hunt, 17 November 2007***

Monitors observed hounds following the scent of a hunted fox, and heard the huntsman encouraging the hounds while he brought the pack up the field, on the line of the fox. Having got the pack back on the line he looked over and saw he was being watched, and disappeared into a wood. Meanwhile the guns were waiting in another location, in no position to shoot the hunted fox.

#### ***6. The Fife Foxhounds, 27 January 2010***

The monitor followed the Fife Hunt around various locations, watching them hunt a number of woods although there did not appear to be a kill that day. However, the monitor reported:

"I can absolutely confirm that on this day there were no guns present. On a hunt where there are guns, they would be visible at the end or edges of the cover being flushed. Without guns present and hounds being drawn through cover then this would constitute an illegal hunt as no flushing is taking place and so only hunting could be occurring.

"The only people I did see out today who might carry guns were the two terrier men, but they were both in their vehicle at all times. [...] Though I heard more than I saw today, I could hear that on at least two occasions the hounds were crying/chasing quarry in open ground."

## **7. The Fife Foxhounds, 20 January 2010**

In 2010, OneKind reported the Fife Hunt for disturbing a badger sett. Shovels and other equipment were found at the site and the case was investigated by the police but did not proceed as their questioning of the terrier men was thought to have breached the procedures implemented following the Cadder judgment<sup>18</sup>.

### **B. Incidents of non-compliance – reports from the public**

The following two reports to OneKind from members of the public this year further illustrate that hunting continues in Scotland to this day. We accept that this information cannot be verified, but believe it was given in good faith and reflects the views of many in the countryside who witness hunt activities.

#### **1. Report of hunt near Stow, January 2016**

OneKind supporter ██████ reported to OneKind that on 23 January 2016 he came across a mounted fox hunt while mountain biking near Stow in the Borders.

“A steep gravel path led to a gate and then continued to rise sharply into dense coniferous forest. A few hundred meters up the path I was thrilled to see a large fox come out the trees to my left and run across the track, disappearing down into another copse on my right. I continued along my way, but then noticed further movement from where the fox had emerged moments before – two dogs clearly following the fox scent. The penny dropped. I had stumbled into the path of a hunt. As this was dawning on me, another three or four dogs raced past, disappearing into the dense pine trees.

“I couldn’t do anything but continue along the path, and I soon encountered yet more dogs - at least 30 - and a man on a horse wearing a velvet jacket and cap trotted past and said ‘Good day!’... Yet more dogs passed in pursuit of the fox, along with half a dozen more mounted hunters.”

█████’s account gives the clear impression that a chase was underway, rather than flushing to guns. His account concluded with this comment:

“The law is clearly failing. It is basically unenforceable: how can it ever be enforced when it is so complex and when the hunting happens in remote areas, unwitnessed unless by chance? Scotland is an amazing country and I’m proud to call it my home, but I’m ashamed that this

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<sup>18</sup> *Cadder v HM Advocate* [2010] UKSC43

ridiculous and cruel practice continues to have any place here, leaving us adrift from England and Wales. Wherever you stand in the political landscape, this is not part of a progressive Scotland.”

## ***2. The Lauderdale Hunt, March 2016***

An individual contacted OneKind on 30 March 2016 to say that she had witnessed the Lauderdale Hunt openly flouting the hunting ban, in her view, but had been too frightened to report this. The witness continued: “I just wanted to make you aware they are still hunting, chasing and killing foxes in a barbaric way. The whole valley echoes with dogs baying for blood on the days they meet.”