



Review of the PROTECTION OF WILD MAMMALS (SCOTLAND) ACT 2002

Submission by Animal Aid



The problem with the Act is that it is virtually unenforceable, with regards to hunting with dogs for sport, as is the Hunting Act 2004, which covers England and Wales. Like almost all wildlife protection laws, the 'offence' is a simple sentence, followed by clause after clause of 'exceptions' that allow people to avoid prosecution for setting dogs onto wild animals.

In 1997, when Tony Blair's Labour Party became the government, a coalition of animal welfare groups sought to persuade Worcester MP Michael Foster (who drew first place in the ballot for Private Members' Bills) to submit a Bill to outlaw the hunting of wild mammals with dogs. On behalf of the League Against Cruel Sports, I joined lawyers from the International Fund for Animal Welfare (IFAW) and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) in a 'legal team' drafting the Bill and acting as advisers to Mr Foster and his fellow supporters of the Bill. After canvassing the public in his Worcester constituency, Mr Foster agreed to submit the Bill.

At its crucial Second Reading in the House of Commons, the Bill was passed by a vote of 411 to 151, the largest majority for a controversial bill in living history. The 'offence' written into the Bill was based on wording taken from the Protection of Animals Act 1911, and stated: 'A person who causes or permits a dog to hunt a wild mammal commits an offence.' This was followed by a definition of hunting, such as chase, attack, injure or kill, and added that entering a dog into the refuge of a wild mammal would also be an offence. Thus, the owner or person in charge of the dog or dogs would be responsible for the actions of the dog – just as the owner or person in charge of a dog or dogs would be if that dog or those dogs chased, attacked, injured or killed livestock, domestic pets or people.

Shortly after the Second Reading in the House of Commons, Michael Foster contacted our 'legal team' to ask us to join him at the Home Office following a request from Home Secretary Jack Straw. The three of us accompanied him to the Home Office, where we were ushered into a room and Michael was ushered away with a junior Minister. An hour later, Michael Foster rejoined us, and outside told us that the Government had decided to

support his Bill, provided that in the Committee Stage he would put down any suggestions by the Home Office, as if they were his own amendments. The first requirement of the Home Office was that the 'offence' be amended to 'A person who hunts a wild mammal with a dog.'

This change in the wording of the definition of the 'offence' may appear to be subtle, but to achieve a successful prosecution following evidence that a pack of hounds had hunted a wild mammal, it would need to be proved that the person in charge of the hounds had intended the hounds to hunt that animal. Due to ferocious filibustering by Conservative MPs, the Foster Bill ran out of time in the summer of 1998. Labour back-benchers insisted on the government returning to the issue and following a Home Office-initiated public enquiry (by Lord Burns), various bills were designed by the government to allow MPs three options on the levels of the prohibition – one being a licensing scheme. When, in 2003, it was clear that the House of Commons was intent on 'banning' the sport of hunting wild animals with dogs, around 40,000 hunt supporters publicly signed a 'Declaration' stating that they would disobey any law that prohibited the activity. When that threat failed to deter the House of Commons from enacting the ban in Labour's second term, the hunters forgot their 'Declaration' that they would ignore the law, and, instead, they very cleverly invented a new sport – the hunting with hounds of a 'scent' laid across the countryside by a hunt member. As for using the hounds in so-called management of wildlife, the hunts were given an exception that allowed them to use no more than two hounds to flush out wild animals, either for shooting or for 'birds of prey' to capture. In Scotland, the Scottish parliament had given hunters a clause to allow a full pack of hounds to flush out wild mammals for shooting or for birds of prey to kill. Interestingly, British falconers had never requested such a provision and indeed have since made it clear that they do not support using birds of prey with packs of hounds. This did not deter some Fox Hunts from purchasing captive-bred birds of prey, such as eagle owls or golden eagles, to carry them around in a van or strapped to the hand of a rider, so that they can claim that they are using the 'exception' that genuine falconers have never used! In the 11 years that the Hunting Act 2004 has been in place in England and Wales, and the 13 seasons in Scotland, no-one on either side has witnessed a bird of prey being released by fox hunters to capture a wild mammal, flushed out by either two hounds or a full pack.

All fox hunts, however, have enthusiastically adopted 'trail hunting'. The 'scent', according to the hunt officials, is derived either from fox urine imported from foreign fox farms (fur farms being outlawed in the UK) or from liquid derived from boiling dead foxes. It is doubtful that any hunt has gone to the trouble of importing fox urine from foreign fur farms – and, in more than a decade of hunting by more than 300 fox, deer, hare and mink hunts, voluntary hunt monitors have never witnessed the realistic use of such 'scent trails'. This is despite many thousands of hours of filming. Indeed, when hunt monitors have arrived at a

hunt with their video cameras, a hunter may produce a yellow duster tied onto the end of a hunting whip and drag it along a road side verge for a few yards – as if any responsible person would lay a scent to be followed by a pack of two or three dozen hounds on a road used by vehicles. In May 2012, three members of the Crawley and Horsham Hunt were convicted of illegally hunting foxes at two hunt meets in January 2011. Hunt monitors had filmed the hounds chasing foxes in full cry at both meets. The Hunt claimed that they were ‘trail hunting’, but the judge accused the hunters of using the cover of trail hunting as a ‘cynical subterfuge’.

SCOTTISH VERSION

The purpose of the Scottish version of a hunt ban is to make it an offence to ‘deliberately hunt a wild mammal with a dog.’ The England and Wales version states that it is an offence if a person ‘hunts a wild mammal with a dog’. The word ‘deliberately’ was considered unnecessary by the House of Commons, as clearly it is not possible for a person to accidentally hunt a wild mammal either with or without a dog. Essentially, however, both laws are speaking the same language – that using dogs to chase, attack, injure or kill wild mammals is unacceptable unless it is considered necessary for over-riding human interests.

The obvious fact is that the elected legislators in both Parliaments have accepted that using dogs to harm wild mammals as a ‘sport’, is unacceptable in modern Britain and, in particular, to chase wild animals such as foxes across miles of countryside for the pleasure of people riding behind the hounds until the fox succumbs to exhaustion and is savaged to death. It is clear, however, that both Parliaments have failed either to commit to sufficiently robust legislation, or to instruct the state law enforcement bodies to take the issue sufficiently seriously.

The reasons for this absence of commitment are complex. Many powerful politicians support the idea of hunting wild animals for fun. David Cameron enjoyed hunting foxes with the Heythrop Fox Hounds – even after the Hunting Act had been passed by the House of Commons, but before its official enactment date a couple of months later in February 2005. A few years later, when the police and CPS were provided with filmed evidence of the Heythrop Hunt unlawfully hunting foxes, three charges of illegal hunting were levelled at the Heythrop professional huntsman. He complained to his Member of Parliament (his friend, David Cameron - then leader of Her Majesty’s opposition) who intervened with a letter to the Attorney General. As a result of his intervention, correspondence was forwarded to the two prosecuting CPS offices, who in turn passed it to the CPS ‘Complex Case’ unit in Bristol, after which all charges were dropped. The facts of David Cameron’s intervention in a state prosecution of his huntsman friend became known when a CPS lawyer referred to it during a break in another trial. This prompted a Freedom of Information request resulting in confirmation that, following a meeting with ‘a constituent’, Mr Cameron had written to the Attorney General about the Heythrop Hunt in June 2008. The Attorney General’s office refused to release copies of the correspondence, firstly on the grounds that it followed a private meeting between Mr Cameron and his constituent, and secondly, when the applicant suggested that the name of the constituent be redacted, the Attorney General’s office said that the file had been coincidentally destroyed the day after the Freedom of Information request was received.

This abandonment of the prosecution of the Heythrop Hunt’s huntsman clearly emboldened the hunt and, despite being closely monitored with cameras by opponents of hunting, the hunters

clearly believed that David Cameron’s promotion to Prime Minister rendered their blatant hunting of foxes immune from prosecution. The first two ‘police ministers’ appointed by David Cameron were hunting fanatics – one being a Master of Hounds! With the police and CPS ‘uninterested’, the persistent hunt monitors handed their films and evidence to the RSPCA. The RSPCA examined hundreds of hours of video film gathered by a band of mostly elderly voluntary monitors (who were frequently assaulted and abused and had cameras and their vehicles disabled by hunt supporters). Eventually, the RSPCA (whose role as a cruelty prosecution body was endorsed by Parliament in 1932) decided to prosecute the Heythrop as a corporate body, rather than target individual hunt members. Eventually, out of around 50 alleged cases of illegal hunting, the RSPCA pressed ahead with a handful of specimen cases to save court time. The Hunt was duly convicted and fined, to the outrage of the *Daily Telegraph* and the *Daily Mail*, who accused the RSPCA of playing politics. Neither newspaper scolded the hunt for its criminal and cruel activities.

Both the Scottish and English and Welsh laws on the issue of hunting with dogs, provide ‘exceptions’ that allow people to set dogs onto wild animals. This practice of creating ‘exceptions’ has been eagerly seized upon by fox killers, using the excuse of protecting farm livestock, and of protecting ‘game-birds’ so that people can slaughter these birds in the name of fun. Animal Aid, in common with the entire animal protection community, considers that killing wild mammals such as foxes to increase the number of game-birds to be slaughtered for amusement, particularly when more than 30 million factory-farmed, non-native pheasants are released on shooting estates annually, is just as immoral as the illegal setting of dogs onto foxes. The shooting lobby has an outrageous history of mass destruction of British native predators of game-birds to enhance the numbers of targets for gun fanatics. It is exactly the same degraded morality as American gun fanatics shooting the nation’s sparse numbers of wolves to prevent the predators killing deer – who the gunmen wish to kill for sport.

FOXES AND LAMBS

In both Scottish and English/Welsh ‘hunting bans’, ‘exceptions’ are made for people to use dogs in the persecution of foxes in the name of farm livestock protection. The existence of these ‘exceptions’ which legally allow people to use dogs to flush foxes out of cover to be blasted with shotguns, or to enter terriers into a fox’s den to fight it (a form of subterranean dog fighting), or chase out terrified fox cubs for the purpose of training young hounds to kill (while pretending it is done to allow a bird of prey to kill them), implies that foxes are serious agricultural pests. In fact, all the scientific investigations by a plethora of Universities, including Bristol, Oxford, York and Aberdeen – many commissioned by government agriculture departments – show that, in fact, foxes are at worst ‘neutral’ and at best ‘positive’ in their impact on the UK’s farming industry. In 1997, the School of Biological Sciences of Bristol University reported that the then Ministry of Agriculture, Fisheries and Food figures revealed that, on average, every fifth lamb dies either from abortion or stillbirth (40 per cent); exposure or starvation (30 per cent); disease (20 per cent); congenital defects (5 per cent); and, ‘misadventure’ and predation by dogs and wild predators (5 per cent).

Sheep farmers were asked by the team of scientists how many lambs they thought were lost to foxes. 70 per cent said ‘none’, 16 per cent said ‘fewer than five lambs’, and 14 per cent said ‘more than 5 lambs’. 80 per cent of the farmers admitted that ‘they had no evidence of foxes taking lambs’.

A study in the Highlands of Scotland, conducted by Aberdeen University in the late 1980s, on a sheep rearing estate where all fox control was suspended for four years, only 1 per cent of lambs were found to have been killed in each of the four years by foxes (fewer than in previous years when foxes were 'controlled'). The study also showed that the fox population did not increase over those four years, despite an absence of 'fox control measures'.

Dr Ray Hewson, of the Department of Agriculture and Fisheries for Scotland, who supervised the study, had previously pointed out, 'Much of the case against foxes as pests of agriculture in Scotland stems from the finding of lamb carcasses at fox dens. It is often assumed by farmers and shepherds that these represent predated viable lambs and it is sometimes maintained in west Scotland that fox cubs are raised almost exclusively on such lambs. In fact, lambs, sheep and field voles are the main food of fox cubs in west Scotland, but many lambs are taken as carrion.'

Shepherd John Barrington, who tended 1000 Blackface sheep on four square miles high above Loch Katrine, wrote an article in *Scottish Farmer* (7 April 1979) saying that 'Foxes also help to conserve valuable grazing for the sheep, by reducing the populations of small grazing rodents and lagomorphs. Voles can often occur at a density of 100 per acre. At this rate they will remove more than two tons of grass from every acre of pasture. On this basis, one fox is capable of saving more than 100 tons of grass as grazing for the hirsel.'

Professor David Macdonald, Director of the Wildlife Conservation Unit and member of Natural England's Board, with decades of experience studying both urban and rural foxes, has pointed out: 'The loss of lambs is so small and scattered that it simply must be the case that only the minority of foxes do any damage.'

HG Lloyd gave 32 years' service with the Mammals and Birds Research Laboratory of MAFF at Worplesdon. In his book *The Red Fox* (BT Batsford Ltd 1980), he wrote, 'The timing of fox control to coincide with the anticipated period of lamb damage may be misconceived. In sheep-rearing areas, foxes have been killed at or about the lambing season perhaps for centuries, and the disruption of the family units of foxes at that time may exacerbate losses.....Apart from better husbandry, with a view to producing stronger lambs and more important, well-nourished ewes at the lambing period, damage by foxes could be considerably reduced by keeping lambs under cover, since most losses occur when lambs are under twenty-four hours of age.'

It is a scandal that annually in the UK, between 2 million and 6 million lambs die in the first three days of their life. 95 per cent of those deaths are due to hypothermia, malnutrition, disease and congenital defects – arguably from inadequate animal husbandry. The remaining five per cent of lamb deaths are down to 'misadventure' and predation by wild predators and attacks by dogs. Interestingly, the 8th Duke of Beaufort, Master of the Beaufort Foxhounds, in his book, *Hunting* (1901), wrote, 'In almost every case where a fox is found eating a lamb, it has been killed by a dog, and generally a sheep dog; more often than not the lamb's own shepherd's dog. I do not say foxes never kill lambs but I say that such an occurrence is very rare.'

A subsequent Duke of Beaufort who became the President of the British Field Sports Society, wrote a letter to the *Sunday Times*, (March 13th 1955), saying, 'My ewes are lambing in a field bordering one of my own coverts where foxes abound, and so far I have not lost a single lamb, although owing to bad weather, some are weak.'

Twenty-one years later, when the issue of foxes and lambs

was raised again, he even took the trouble to state in a letter: 'I certainly stand by my article in the *Sunday Times* in March 1955. This year, once again, we have not suffered any loss of lambs by foxes.' (19th May 1976)

It should be noted that as well as the huge mortality of lambs, 80,000 sheep are stolen from farms annually (26 August 2015, BBC News). In January 2016, Chief Superintendent Gavin Robertson, chair of the Scottish Partnership Against Rural Crime, welcomed the Teeside Crown Court's sentencing of two farmers in the North of England found in possession of 155 sheep worth £25,000. Mr Robertson commented, 'This case clearly shows that the threat of livestock theft can also come from within the farming industry/rural community itself.' (*Police Scotland*, 6 January 2016)

FOX DIET

In 2010, the Centre for Agriculture and Biosciences International (CABI) estimated that 40 million rabbits cost British agriculture and infrastructure a staggering £260m a year. Bristol University's School of Biological Sciences reported in 1997 that 45 - 70 per cent of the diet of foxes in rural areas is rabbits.

Similarly, voles and other small mammals are accused by farmers and foresters of consuming pasture and damaging young plantations. These country industries should be aware that in upland areas foxes eat more field voles than any other live prey. In commercial forests and young plantations where field voles and rabbits are at their highest densities, foxes, kestrels and weasels account for 85 per cent of field voles.

There is no evidence that causing dogs either to chase, attack, flush out or savage foxes to death is of any benefit to vital human interests, although the widespread and continuous year-round persecution of foxes with terriers, snares and guns in the interests of bloodsports such as game-bird massacres, may well contribute to a few more feathered targets for the people who think that shooting birds out of the sky is such fun that they willingly pay thousands of pounds for the pleasure.

The DEFRA policy on urban foxes states: 'Previous attempts to kill urban foxes to achieve a sustained population reduction have not been successful in the long-term because of the mobility of foxes and their ability to produce offspring in large numbers; territories made vacant by culling resident foxes are rapidly colonised by new individuals.'

Urban foxes are the same species as rural foxes. The dispersal of fox cubs from their parents' territories to seek territories of their own, happens in town and country. In urban areas, the main predator is the car. In rural Britain, it is unjustified persecution by hunters, shooters and farmers.

THE USE OF TERRIERS TO ATTACK FOXES UNDERGROUND

In the early 1990s, as wildlife research officer for the League Against Cruel Sports, I investigated the descriptions of 'terrier work' as described by the owners of the dogs themselves. Bloodsports magazines *Shooting News* and *Working Terrier* carried such reports in every issue and the accounts are explicit enough to show that as well as the terror and pain suffered by the foxes, the dangers, suffering and deaths that these willing little dogs endure are more than sufficient to justify outlawing entering dogs into the subterranean dens of foxes.

One prominent terrier enthusiast, David Harcombe, frequently contributed articles to such magazines, having earlier written a book *Badger Digging with Terriers*. In one article in *Working Terrier*, he described how one of his dogs, Rusty, was shot dead

by a fellow terrier-man who mistook it for a fox. A more common danger to which terriers are subjected is becoming trapped underground. Many dogs die this way, abandoned by their owners when they fail to return to the surface. In 1989 a gang of terrier-men in Kent had entered a Jack Russell and a Lakeland Terrier into a deep fox earth early on a Sunday morning. On Monday morning the RSPCA received an anonymous telephone call and with the help of the fire-brigade eventually recovered the dogs – with the Jack Russell being dead.

Another typical account from a terrier-man reads, 'Well after four hours of digging we had managed to get down eight feet, and still no sign of Toby. All of a sudden he showed at the mouth of the earth we had left open. I quickly grabbed him. He had taken a lot of punishment.'

George Thomson, again in *Working Terrier*, boasted of his dog Skipper, 'He's so fanatical and tenacious about his work that he often dug in after his quarry and became stuck. He was trapped three times for a period of two days and once for four days. Skipper died to ground when he was six years old.'

The same writer told of the death of another of his terriers, 'When the three terriers were eighteen months old I got Shandy trapped and after three days of digging, using a machine in the end, we dug Shandy out dead.'

Below I reproduce more examples of terrier-work as described by their owners.

'So three good terriers all bitten, two needing at least a week off and Griff needing a month off. It is a good job I have terriers to take their place while they are healing.'

'Lucy was the last to come out, flopping down onto the chippings to try and cool herself, her head was well covered in blood. When I checked over her to make sure the damage wasn't too severe (I had a terrier almost bleed to death from a ripped ear in the past), I found much of the blood coming from her muzzle and under her eye.'

'Over the years of keeping and working terriers I have lost four below ground on separate occasions.'

'At approximately 6pm in total darkness we opened up to the two terriers, still working away at the quarry. Both dogs were lifted, one of them collapsing through total exhaustion and the other

terrier wasn't in much better shape.'

'We broke through and found the limp silent body of Tarka buried in the soft sand. Stuart pulled Tarka out and the once strong body of the plucky terrier was lifeless.'

A regular contributor to *Shooting News* was Daergi, a terrier-man to a Welsh Fox Hunt. In every issue he filled his page with graphic exploits of his terriers and the digging out and killing of foxes. For example, his dog, Josy'she'd been working the fox for ten hours. Two days later Josy was in action again but was killed – not by the fox, but by the hounds! She'd had been chopped by the hounds and sustained terrible injuries.'

Shooting News had earlier campaigned to raise funds for a court appeal on behalf of a gang convicted of badger digging. *Shooting News* came up with the idea of a terrier-show at which it offered a trophy for the 'best battle-scarred veteran terrier-dog'. People who are proud that their dogs have been injured fighting foxes are unfit to own a dog.

NO EXCUSE FOR CRUELTY

The above few descriptions of 'terrier-work' tell of the suffering of the dogs who do their owners' bidding, and it is a nonsense to suggest that such levels of cruelty to both dogs and foxes can be justified by the claimed negative impact of foxes on agriculture. Indeed, and on balance, the evidence suggests their impact is beneficial. As long ago as 1994, the then Ministry of Agriculture, Fisheries and Food stated: 'While it undoubtedly accounts for a number of foxes, the Ministry does not consider hunting to be a major controlling factor in the fox population'.

RECOMMENDATIONS

Animal Aid believes that hunting contributes absolutely nothing except unnecessary suffering to hunted wildlife, calls for all hunting of wild animals with dogs to be banned by law, and for so-called 'trail hunting' to be subject to a 'recklessness' clause to force hunters to abandon their 'cynical subterfuge.'

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