

22-03-2016

Review of the Protection of Wild Mammals (Scotland) Act 2002

Submission from the Scottish Countryside Alliance to The Right Hon Lord Bonyon

CONTENTS

Background (p. 2)

What does the Protection of Wild Mammals (Scotland) Act 2002 seek to achieve? (p. 2)

What does the Protection of Wild Mammals (Scotland) Act 2002 allow? (p. 4)

Is the Protection of Wild Mammals (Scotland) Act 2002 clear? (p. 6)

Enforcement of the Protection of Wild Mammals (Scotland) Act 2002 (p.8)

Allegations of illegal hunting (p. 9)

Effectiveness and welfare (p. 11)

Public opinion (p. 11)

Summary (p. 12)

Background

The Scottish Countryside Alliance does not accept that the evidence exists that justifies any ban on traditional hunting. There has never been any evidence that hunting with hounds is measurably worse than alternative methods of killing wild mammals, a fact confirmed by Lord Burns as Chairman of the Independent Inquiry into Hunting with Dogs (England and Wales) which reported in 2000.

However, the terms of reference of this current Review preclude, amongst other things, consideration of other types of predator or pest control or whether predator control is necessary at all. As such we have taken it as accepted that fox control is necessary and that the existing legislation reflects this fact. We also make no comparison in welfare terms between what the law currently allows and the other legal alternatives, or between currently legal methods and the use of dogs before the current law was passed.

The Scottish Countryside Alliance understands that this Review is focussed instead on the effect and application of the current law and this is the basis for our submission. It is important, therefore, to identify the mischief at which the Protection of Wild Mammals (Scotland) Act 2002 is directed and whether it does what it was passed to do.

What does the Protection of Wild Mammals (Scotland) Act 2002 seek to achieve?

When the Private Member's Bill to ban hunting was introduced it was examined in great detail by the then Rural Development (now Rural Affairs, Climate Change and Environment) Committee. The Committee took evidence from all sides in the debate. The Committee wanted to identify what the purpose was of those promoting the legislation and sought clarification from anti-hunting organisations as to what it was about the use of dogs that they objected to in terms of animal welfare. Those organisations identified:

- a) the chase, and
- b) the kill

as the two elements which needed to be banned. The fact that there was no evidence that the chase caused unnecessary suffering or the kill itself was worse than natural death (starvation, disease etc.) or death as a result of the use of other methods. As Lord Burns noted in his report:

“Arguably, the precise cause of death is irrelevant. What is more critical is how quickly insensibility and death result and how much suffering, physical or mental, the fox experiences... There seems little doubt, however, that in the vast majority of cases the time to insensibility and death is no more than a few seconds, bearing in mind the great disparity between the size and weight of the fox and the hounds.” (Para 6.48: The Report of Committee of Inquiry into Hunting with Dogs in England and Wales, 2000)

Lord Burns also noted in his speech to the House of Lords on 12 March 2001 the importance of allowing dogs to flush:

“...“lamping” using rifles, if carried out properly, was better for welfare but it was only feasible in certain circumstances. For example, it is not feasible or safe to use lamping in many upland areas, including those with dense forestry. We concluded that if dogs could not be used at least to flush foxes from cover in those areas, it was likely that the welfare of foxes would be adversely affected.” (Hansard)

Again speaking in the House of Lords on 12 October 2004 Lord Burns said:

“We must keep in mind two aspects of the impact of hunting on animal welfare. The first is the clear adverse welfare effects on the hunted animal of the chase and possible kill. The second is how hunting compares with alternative methods of controlling population numbers.

Taking account of both aspects, there is insufficient verifiable evidence to reach views about cruelty, one way or the other, and our committee came to that conclusion. Indeed, the committee pointed to areas where there was scope for more research to clarify some of the areas of doubt. It remains a slight puzzle that people continue to take a very strident position on the issue of cruelty, given what I regard as the lack of available evidence.

The committee did not have sufficient evidence to reach a clear conclusion on whether hunting involves significantly worse welfare effects than other legal methods of control.”(Hansard)

The same organisations who promoted the hunting ban in Scotland explicitly stated that they did not oppose the use of dogs to flush wild mammals from covert because so long as they were shot as soon as possible then the welfare concerns, which they allege result from the chase and kill by dogs, were eliminated. The Bill was amended accordingly, with the support of those promoting the ban.

The submission to the Rural Development (now Rural Affairs, Climate Change and Environment) Committee from the Scottish Campaign Against Hunting with Dogs (SCAHD) –(incorporating Advocates for Animals, League Against Cruel Sports (LACS) and International Fund for Animal Welfare (IFAW)) clearly show this:

“Lord Watson MSP ... tabled two amendments to the Bill, to address legitimate concerns that have been raised, thus ensuring that the Bill prohibits specific activities deemed to be cruel. The amendments allow:

*that rough shooting can continue unregulated
that a farmer, landowner or their nominee can protect crops and livestock in a reasonable fashion using as many dogs as he or she needs
that rodents and rabbits shall not be subject to this Bill
that falconers are exempt from the legislation*

The amendments proposed by Lord Watson demonstrate that the Protection of Wild Mammals (Scotland) Bill has the potential to be an effective piece of legislation and that the Bill can be amended, to address the legitimate concerns of MSPs, without loss of its principle purpose.”

This is also seen in the submission to the Rural Development (now Rural Affairs, Climate Change and Environment) Committee from the Scottish Society for the Prevention of Cruelty to Animals (SSPCA):

“The key element is the method of kill and for that reason the Society is not opposed to other activities involving dogs such as retrieving, or flushing for the purpose of shooting...

The Society supports the principles behind the Bill and is concerned that it appears to have been widely misrepresented as attempting to ban activities such as flushing to guns or retrieving of shot game. This is not the Society's interpretation of the text.”

The International Fund for Animal Welfare (IFAW) submission to the Committee also stressed the importance of flushing.

“...the use of dogs to flush foxes to waiting guns can be effective and humane if properly organised...”

IFAW believes that gun packs, operating with dogs under close control, above ground, whereby foxes are flushed to waiting guns can be an effective and humane method of killing foxes. We believe that the gun packs could continue in the event of a ban, by using hounds to flush foxes to guns, in a controlled and humane way.”

The Committee recognised that what people wear and the mode of transport they use when using dogs to flush to guns was of no relevance if the law was about welfare and ending the chase and kill by dogs. Clearly, a Bill to ban the wearing of red coats and riding horses while flushing to guns would have been ridiculed. The Committee therefore accepted as a matter of logic that if the work of the Scottish gun packs was acceptable to those opposed to traditional hunting with dogs, then so long as mounted hunts were required to flush to guns like the gun packs then there were no animal welfare grounds to ban them simply because they were mounted.

The Rural Development Committee - 10th Report 2001, Stage 1 Report on the Protection of Wild Mammals (Scotland) Bill – concluded:

- *“Two possible causes of suffering were described to the Committee: the chase, and the kill.”*
- *“It is not the use of a dog in itself that implies cruelty; but the method and intent with which it is used.”*
- *“We also support continuation of the present operations of the Scottish Hill Packs.”*

What does the Protection of Wild Mammals (Scotland) Act 2002 allow?

The law as drafted reflects the evidence submitted to the Rural Development (now Rural Affairs, Climate Change and Environment) Committee and the welfare arguments of those opposed to traditional hunting. As such it allows flushing to guns recognising the vital role this plays in managing foxes in Scotland while banning what opponents of hunting identified as the perceived welfare concerns- the chase and kill by dogs. If, as proponents of the Act accepted, flushing foxes to guns using dogs is not a welfare concern, and the object of the Act is to end the alleged welfare concerns of the chase and kill, then restricting the number of dogs would have been arbitrary and also unnecessary. It would also have effectively banned the operations of the Scottish gun packs.

The Act clearly sets out the purposes for which dogs may be used to flush, as well as the conditions which apply to the way in which flushing is to be conducted. The conditions for flushing ensure that the purpose of the legislation to end the chase and kill by dogs cannot be circumvented.

1. The flushing must be for 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,

The wild mammal must be shot (or killed by a bird of prey) once it is safe to do so.

2. In flushing a fox or mink from below ground, or a fox from “an enclosed space within rocks or other secure cover above ground” reasonable steps must be taken to ensure that the fox or mink is

- (a) flushed “as soon as possible” and
- (b) “shot as soon as possible” and
- (c) dogs must be “under control”

3. The permission of the owner, or lawful occupier of the land, is also required when operating under the exemptions.

The Act also ensures that the use of dogs in connection with falconry and shooting sports does not fall within the scope of the prohibition and makes important exemptions to deal with such things as injured animals and orphaned cubs. The last provision was made by amendment to the original Bill during its parliamentary passage with the explicit support of the SSPCA, who recognised that any increase in the use of guns could result in more orphaned cubs.

Provision is also made in the Bill to take account of the possibility that occasionally dogs may kill a fox and to ensure that where a person was intending to comply with the law, and doing all that could be done to comply, then they should not be guilty of an offence. This point was addressed by Sherriff Drummond in his judgement in the Trevor Adams case (see below) in which he noted:

“Two provisions, namely sections 2(2) and 5(3) provide for situations where the target species might be killed by a dog in the course of the excepted activity and some brief reference was made to section 2(2) in the submissions before me.

It appears to me that those two provisions are designed to address further exceptional, and in one sense, accidental consequences, of actions arising during an excepted activity. They plainly, in my opinion, do not provide broad exceptions to the general scheme which could be used as a justification for the intentional killing of a target species with a dog or dogs.”

Is the Protection of Wild Mammals (Scotland) Act 2002 clear?

The judgement of Sheriff Kevin Drummond in the case of Procurator Fiscal, Jedburgh v Trevor Adams is instructive in the light of claims that the Act is 'full of loopholes' and that the exemptions are unclear.

This case was a case brought against Mr Adams, then huntsman of the Buccleuch Foxhounds and was the first case brought under the Protection of Wild Mammals (Scotland) Act. Sheriff Drummond stresses in his preamble that in deciding the Trevor Adams case he is aware that there was at least one other case pending and that as such this was an important test case. He went out of his way to complete an exhaustive examination of all aspects of the Act and how it should be interpreted. He states that:

"...the mode of transport adopted by a participant is irrelevant: it matters not that the activity is carried out on foot, by motor vehicle or on horseback."

Sheriff Drummond concluded:

"In the light of one or two of the broad areas of dispute and the fact that the present is being treated as a test case it appears to me that it might be appropriate if I were to make an observation on the general scheme of the Act: some brief reference was made to that in the course of submissions. I do so without having read or taken into consideration any debates of which this Act is the product.

I only look at the law as it is enacted by the legislature and I attempt to give effect to the intention of Parliament as it is reflected in the words of statute.

It is an Act which is designed to protect wild mammals from being hunted with dogs.

In order to give effect to that intention the Act creates in section 1 the straightforward offence of deliberately hunting a wild mammal with a dog or dogs. That is the only offence which is created by the Act...Sections 2, 3, 4, 5, and 6 all are headed "Exception" and of those five, four make reference to the use of a dog or dogs in carrying out the particular activity which is there excepted from criminal liability.

Two provisions, namely sections 2(2) and 5(3) provide for situations where the target species might be killed by a dog in the course of the excepted activity and some brief reference was made to section 2(2) in the submissions before me.

It appears to me that those two provisions are designed to address further exceptional, and in one sense, accidental consequences, of actions arising during an excepted activity. They plainly, in my opinion, do not provide broad exceptions to the general scheme which could be used as a justification for the intentional killing of a target species with a dog or dogs.

The clear intention of Parliament as expressed in the Act is the humane despatch of target or pest species by shooting.

It appears to me, therefore, that while Parliament in terms of the Act has recognised that there is certain and limited and defined scope for the legitimate use of dogs in activities which are specified in each of the Sections which I have mentioned, namely and broadly speaking, stalking searching and flushing, that activity will require to be accompanied by realistic and one would expect, effective arrangements for the shooting of pest species. The use of what might be termed "token guns" or what was described by the Crown as paying lip service to the legislation is not available by virtue of sections 2(2) or 5(3) as a justification for the continuation of what was referred to in evidence before me as traditional fox hunting."

The decision was not appealed and it is our understanding that the Court papers were passed to Crown Counsel to consider an appeal but the conclusion had been that there were no grounds for an appeal against Sherriff Drummond's judgement and as such his interpretation of the Act was correct as a matter of law, as well as the way in which the law had been applied to the facts in the particular case. The Scottish Countryside Alliance would respectfully suggest that Sherriff Drummond is consulted as part of this Review, given that arguments are being advanced that the legislation needs to be amended.

After the judgement, the Buccleuch Foxhounds Spokesman Joe Scott-Plummer was quoted by the Guardian newspaper as saying:

"This confirms our belief that the fox control service we have been offering landowners and farmers over the past two and a half years has been undertaken within the bounds of the law as we and our advisers have interpreted it..."

All hunts in Scotland had to restructure as a result of the legislation and, in consultation with police forces, agreed a form of pest control permitted by the act" (Guardian, 10 December 2004).

Significantly, at the time the Act was passed, the League Against Cruel Sports magazine, Wildlife Guardian (2002) stated that:

"League staff attended every Parliamentary committee meeting and briefed MSPs about the dangers of dozens of pro-hunt amendments... and...there are no gaping loopholes or flaws."

Stanley Brodie QC confirmed in a letter to the Scotsman in 2002 that the Act achieves what it was designed to do:

"What is not allowed is hunting foxes if the deliberate purpose is to flush out, chase and kill them by the dogs alone..." (Scotsman, 16 December 2002).

Enforcement of the Protection of Wild Mammals (Scotland) Act 2002

The Protection of Wild Mammals (Scotland) Act 2002 has been in force for over thirteen years. In that time there have been few, if any, calls for the Act to be revisited or a suggestion that the Act was in some way unfit for the task for which it was passed. Indeed, those opposed to hunting have repeatedly praised the legislation. On 15 February 2002 following the passing of the Act, the then Chief Executive of the League Against Cruel Sports (LACS), Douglas Batchelor, said:

“We are 100 per cent confident that the bill is well-written and is compliant with the European Convention on Human Rights and it will efficiently and effectively ban hunting with dogs in Scotland. This is not just our legal opinion, it’s also the legal opinion of the Scottish Executive which was reported by the Scottish Minister to the Scottish Parliament yesterday” (LACS Press Release 15 February 2002).

Moreover, the hunts in Scotland have been closely monitored by those opposed to hunting since the Scottish Hunt Crimewatch campaign was launched in 2005. Douglas Batchelor, then Chief Executive of the League Against Cruel Sports, stated that:

“The Protection of Wild mammals (Scotland) Act is very clear. It is against the law to engage in a prolonged chase of a fox with a pack of dogs. The League Against Cruel Sports is determined to see the law obeyed and enforced” (LACS Press Release 8 September 2005).

In 2006 Gordon Miller, Scottish Campaigner for LACS commenting on the re-formation of the Dumfriesshire Hunt noted:

“... The Scottish Hunt Crimewatch monitors, who monitor Scottish hunts, gathering evidence of illegal fox hunting, will be keeping a close eye on the hunt. We are also confident that the police will be doing the same” (LACS Press Release 20 February 2006).

In 2014 the LACS were stating that “the Act” is a hugely important piece of legislation” and far from suggesting that there was any problem with the legislation itself, they were arguing that what they wanted was “for more enforcement...therefore ensuring that the legislation delivers protection to animals, as intended back in 2002” (LACS Press Release 13 February 2014). Yet as far as the police are concerned they will, and do, enforce the legislation and prosecute when there is evidence (see below). In over 10 years of monitoring there has been no evidence produced which has supported a successful prosecution of a hunt using a pack of hounds, whether or not it involved horses. Far from suggesting the law is not working, it would suggest that foxhound packs have complied with the new law.

Where there is the necessary evidence then a prosecution can succeed. The Protection of Wild Mammals (Scotland) Act is no different from any other criminal law. When there is evidence of illegal hunting then successful prosecutions have been made under the Act. Official statistics show that there have been 210 charges brought under the Protection of Wild Mammals (Scotland) between 2002 and 2014, involving some 87 convictions. Of those charges which proceeded to trial 53% resulted in a conviction.

Much has been made of the fact that no “mounted hunts” have been successfully prosecuted, but the Act does not require an individual to be transported in any particular manner for them to be

committing an offence. If the evidence was sufficient to bring successful hunting prosecutions against those who were breaking the law unmounted then a successful prosecution is equally possible against anyone breaking the law mounted. In either case a prosecution will only succeed if the evidence exists to support it.

Allegations of illegal hunting

Since the Protection of Wild Mammals (Scotland) Act was passed the use of a pack of dogs to flush to guns has taken place on thousands of days. This is an activity which is open, takes place in public and open to scrutiny. The hunts have co-operated closely with the police and have amended their practices in the light of the change in the law. There has been little, if any, suggestion that the law was not working.

Despite recent claims that the ban on hunting in Scotland is being widely flouted and that as such the Act should be amended, an examination of the facts, of the arguments of those who promoted the legislation in Scotland and of the legislation itself, reveals that there is no reason to revisit the law.

Calls for the Act to be reviewed only began in the light of recent proposals from the Westminster Government, for the Hunting Act in England and Wales to be amended to bring it into line with the law in Scotland. As recently as June 2015 the Scottish Government had no intention of reviewing the 2002 Act. In correspondence the Minister wrote:

“The offences laid out in the 2002 Act are clear and as you have read, there is no intention to amend the legislation. Let me be clear however, the enforcement of the law is a matter for Police Scotland and I would urge anyone with evidence of the law being flouted, to report it immediately”

This position suddenly changed when the decision was taken that SNP MPs would vote on this matter at Westminster contrary to their frequently repeated policy position that they would not vote on the Hunting Act as it was the clearest example of a measure having no effect in Scotland. In February 2015 when First Minister, Nicola Sturgeon, was asked for an example of legislation that the SNP would abstain from voting on in Westminster, she replied:

“The SNP have a longstanding position of not voting on matters that purely affect England – such as foxhunting south of the border, for example – and we stand by that” (BBC, Question Time 8 February 2015).

Those opponents of hunting who argue that illegal hunting is widespread accept that Police Scotland and the Procurator Fiscal’s office have received very few complaints of illegal hunting between 2002 and 2014.

The League Against Cruel Sports (LACS) have recorded hundreds of hours of undercover footage of mounted hunts and yet none of this has produced any evidence that has led to a prosecution. Even the heavily edited few minutes of ‘highlights’ contain no evidence of anyone pursuing a fox with a pack of hounds in contravention of the law. If the evidence were as compelling as the LACS claim then Police Scotland would have taken action and prosecutions would have been brought. The law has not failed just because the many successful prosecutions brought so far have not included someone on a horse or in a red coat.

On 13th January 2016 the Rural Affairs Committee held an evidence session on the Scottish Government's Wildlife Crime in Scotland Annual Report 2014 with Police Scotland and the Crown Office and Procurator Fiscal Service. Giving evidence were Tom Dysart, Crown Office and Procurator Fiscal Service, Assistant Chief Constable Malcolm Graham, Police Scotland, and Detective Chief Superintendent Sean Scott, Police Scotland. It was clear from the discussion that the police will, and do, prosecute where there is evidence of an offence. It was repeatedly pointed out that such evidence was lacking. Detective Chief Superintendent Scott also noted the close co-operation between the police and hunts in the light of the sudden allegation of widespread law breaking and noted that “we will continue to work with them to ensure that all matters are and appear to be transparent and legal”

During the session the following exchange took place between Alex Fergusson MSP, who was the convener of then Rural Development Committee when the Protection of Wild Mammals (Scotland) Bill was going through the Parliament, and Detective Chief Superintendent Scott, in which Detective Chief Superintendent Scott confirmed that there is no evidence to suggest that the mounted fox hunts are acting outside the law.

Alex Fergusson (Galloway and West Dumfries) (Con):

“...I was the convener of the Rural Development Committee when the bill went through the Parliament. It is important to recognise that an element of predator control is involved—indeed, part of the reason for hunting as it exists is for predator control. The fox has no natural enemies, other than man. Therefore, I suspect that many landowners, farmers, tenants and others are very keen to have a bit of fox control carried out on their land by whatever method.

As I think that everyone has said, there is a high level of public interest in the issue, which is entirely understandable. Given that level of interest, there is also a high level of monitoring of mounted fox hunting activity by people with varying views on it. Even with that level of public interest and monitoring, there is no evidence to suggest that the mounted fox hunts that exist are acting outwith the legislation that is in place at the moment.

Detective Chief Superintendent Scott:

That is correct.”

Similarly Tom Dysart from the Crown Office and Procurator Fiscal Service noted:

“...when we are assessing a case, we consider the evidence and apply it to the terms of the legislation that is in force. If it appears that, taking account of exemptions, the legislation is being breached, we will prosecute; if it is not being breached, we will not prosecute. A difficulty in the perceived intention of the legislation was identified fairly quickly after it was passed. As I said, as prosecutors, whatever our personal views of what the law is or should be, we apply what the law is on paper.”

Given the detailed judgement of Sherriff Drummond and the explicit statements of those who proposed the Act it is hard to see what Mr Dysart basis his assertion that: “A difficulty in the perceived intention of the Act was identified fairly quickly after it was passed”. On the contrary, the intention of the Act is clear and it is both enforceable and being enforced.

Effectiveness and welfare

We understand that this Review is not just to look at whether the current law is “providing the necessary level of protection” but that the level of protection is such that it also allows “for the effective and humane control” of foxes. A two dog limit would make the effective control of foxes in Scotland impossible. The Scottish Parliament recognised in the exemptions incorporated in the Act the need for effective fox control and that, as Douglas Batchelor, then Chief Executive of the League Against Cruel Sports, stated in August 2005 with reference to the Hunting Act in England and Wales: *“The gun packs have realised that pairs of dogs are utterly useless in flushing to guns...”*. Significantly he went on to say *“They (the dogs) can’t be easily seen or closely controlled and the fox can easily run round just two dogs”*. Clearly, if fox control is to be effective in Scotland a restriction to two dogs would, as the League Against Cruel Sports have stated, make that impossible. The view expressed by the League Against Cruel Sports is either an argument for the total abandonment of the exemption or an argument in favour of continuing to use a pack of hounds. Given that the Act accepts the need to be able to flush to guns, and whether or not control is in fact necessary is outside the scope of the review, it would seem essential that the ability to use a full pack to flush is maintained if the exemption is to have any practical use as the Scottish Parliament clearly intended.

The only research into the effectiveness of using two dogs as opposed to a greater number was commissioned by the Federation of Welsh Farmers Packs and wholly carried out in Scotland in 2012 – 2013. It showed that using more dogs was not only more efficient but that the time between an animal being found or flushed and it being shot was reduced. The research has been submitted for peer review.

If one accepts the arguments of those who promoted the ban on hunting then as a matter of logic any reduction in the time between being found and being shot must be of benefit to wild mammals in terms of welfare. The suggestion that a limit of two dogs would be better in welfare terms is an assertion without any evidential foundation and contrary to the latest evidence and the logic of the arguments advanced in support of the ban.

Public opinion

Public opinion in Scotland clearly indicates that the Scottish public is happy with hunting legislation, and supports the conclusions of the Rural Development Committee in accepting the need for fox control and that flushing to guns should be allowed. Scots believe that farmers need to be able to control foxes on their land and do not want the law changed to stop them doing so.

Polling carried out by YouGov between the 17 and 21 December 2015 showed that 64%, said they thought it was acceptable for farmers to shoot foxes to protect their livestock, whilst just 27% were opposed. The largest group, 40%, thought the current law on hunting, which allows the use of any number of dogs to flush and shoot foxes, should be left as it is. A further 9% believed all restrictions on hunting should be removed. Together those two groups represent a clear majority of those who expressed a view. Only 37% wanted the law changed to ban flushing with dogs and shooting.

Summary

- The Act bans what those opposed to hunting wanted banned for alleged animal welfare reasons – the chase and kill using dogs.
- The Act accepts the use of dogs to flush to guns, as accepted by those opposed to hunting, because it does not involve the chase and kill by dogs and therefore there was no welfare reason to ban it.
- The Act therefore allows dogs to be used to flush to guns for certain limited purposes and subject to conditions which ensure there is no chase and kill by dogs.
- The Act does not make an artificial distinction between hunting under the exemptions based on what a person hunting is wearing or the mode of transport deployed.
- The Act is equally capable of being enforced against anyone using dogs, regardless of whether mounted, on foot or using vehicles, as the number of successful prosecutions makes clear.
- Where there is the necessary evidence then a prosecution can succeed. The Protection of Wild Mammals (Scotland) Act is no different from any other criminal law.
- The changes being proposed (by the League Against Cruel Sports and others) to limit the number of dogs to two goes against all the evidence put before the Scottish Parliament by those who promoted the ban and would render effective fox control in Scotland impossible. As Douglas Batchelor, then Chief Executive of the League Against Cruel Sports, stated in August 2005: *“Pairs of dogs are utterly useless in flushing to guns.”*
- The available evidence, and logic alone, would suggest that the ability to use more than two dogs is not only more efficient but also reduces the time between a fox being found and it being flushed and shot. Given the arguments advanced by the proponents of the legislation in Scotland limiting the number of dogs to two would see longer periods of pursuit which would be negative in animal welfare terms.
- Given that the work of the gun packs was considered acceptable by those opposed to traditional hunting it would now be extraordinary effectively to ban them when the only difference between a gun pack and mounted pack is whether or not people are using horses.
- In the absence of evidence, those opposed to what they term ‘red coat’ hunts have made unsubstantiated allegations against those using dogs under the terms of the Scottish law. It is hard not to see this as having more to do with opposition to attempts to amend the English and Welsh legislation than with any problem with the hunting legislation in Scotland.
- It is hard not to question the motivation of those who argue that there is a problem with the legislation in Scotland because there have been no successful prosecutions against what they call “red coat” or ‘mounted’ hunting when exactly the same activity is undertaken by the ‘gun packs’. It should also be noted that these ‘mounted’ hunts will also go out on foot on certain days due to weather and/or terrain. As Sherriff Drummond so accurately noted: *“...the mode of transport adopted by a participant is irrelevant.”* It might be added that as well as being irrelevant in terms of the law it is also not an animal welfare consideration.
- If the purpose of the legislation was to ban the chase and kill by hounds but to allow the effective and humane control of foxes then the legislation is fit for purpose and has been shown to be so both in legal terms and in terms of enforceability.