



30.03.2016

2002 Act review
Wildlife management Team
Natural Resources Division
Directorate for the
Environment and Forestry
The Scottish Government
1-C North
Victoria Quay
Edinburgh
EH6 6QQ

Dear Lord Bonomey,

Attached to this note you will find the League's submission to your review of the operation of the Protection of Wild Mammals (Scotland) Act (2002). You will see from our submission that we are very concerned that the legislation is failing to protect wild mammals in Scotland.

The submission is accompanied by an extensive file of corroborating materials, including over a hundred hours of video evidence collected by our wildlife crime investigators.

The video evidence is assembled to ensure easy access to the most relevant scenes whilst making it possible to explore as much of the accompanying footage as is required. Video Index documents are also included to aid viewing.

We are also submitting all the documentation completed by all League investigators when collecting evidence. Some of the information in this documentation is operationally sensitive – such as the names of our investigators and the locations from where they filmed. I would be grateful if you would treat these documents as confidential.

I hope you will see that we have endeavored to keep to the remit of your review with an objective assessment of the evidence we collected. If there is any further background information that you require, please let us know.

I will, of course, be available to meet and discuss any aspect of our submission, if you would find that useful.

Yours sincerely,

Robbie Marsland
Director
League Against Cruel Sports Scotland

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Submission from the League Against Cruel Sports Scotland

Context

The League Against Cruel Sports (the League) was founded in 1923. It is Britain's leading charity working to stop animals being killed or harmed for sport. The League was instrumental in bringing about the landmark Hunting Acts both in Scotland and in England and Wales in 2002 and 2004.

We manage sanctuaries to protect wildlife from persecution, carry out investigations to expose illegal and cruel practices, and campaign for effective animal protection laws and standards.

We also work in communities to change attitudes and behavior, in order to make animal cruelty a thing of the past.

The League has had personnel in Scotland for the past six years but did not have the resources to look at the effectiveness of the Protection of Wild Mammals (Scotland) Act (2002) until the end of 2014 after a Director for the League Scotland was appointed and additional budgets identified. The new Director, Robbie Marsland, had previously been the UK Director of the International Fund for Animal Welfare where, over a period of 12 years, he had international responsibility for a number of animal welfare areas including the Canadian Seal Hunt, Icelandic Whaling and Hunting in Hounds in England and Wales.

Early meetings with Police Scotland and the Procurator Fiscal's office revealed that between 2002 and 2014 there were very few complaints about alleged illegal hunting. However, the League consistently received intelligence suggesting that illegal hunting by the ten registered hunts in Scotland was widespread. So we decided to find out what was really going on.

The first step was to establish what activity the ten Scottish hunts said they were undertaking when they were taking full packs of hounds into the Scottish countryside. The Buccleuch hunt's website explained that they, "like all Scottish hunts", were hunting within the law by using a provision that allowed "flushing to guns".

Flushing to guns

Flushing to guns is a way of shooting foxes. It is an activity in the countryside where foxes are driven out of woods, hedgerows and other "covert" into the path of waiting shotguns. As such, it is necessary to employ shooters in strategic positions where an escaping fox would be expected to leave the covert and a safe shot could be taken. The law is clear that if dogs are used and they continue to chase or stay on the line of a fox once it has left the covert - then illegal hunting has occurred.

We are submitting as part of our evidence *The utility of killing foxes in Scotland* written by Professor Harris at Bristol University in 2015. In this report he describes flushing to guns and concludes that even if it was used by Scottish hunts, it would be outwith the Protection of Wild Mammals (Scotland) Act (2002).

He begins by describing how Scottish hunts say they are flushing to guns and equates it to the behavior of Welsh gunpacks prior to the hunting ban in England and Wales.

Once the Protection of Wild Mammals (Scotland) Act 2002 came into effect, the foxhunts operating in Scotland changed their modus operandi and say they used packs of dogs to drive foxes out of covert to waiting guns (<http://www.countrysidelearningscotland.org.uk/wp.../Factfile-Fox-Hunting.doc>). So they say they are now operating in the same way as the gunpacks found in Wales and elsewhere prior to the implementation of the Hunting Act 2004 in England and Wales. Basically, a pack of dogs is used to drive foxes to waiting guns. Shotguns are used, not rifles, and these have a limited range: the British Association for Shooting and Conservation recommend that a 12 bore shotgun with a load of not less than 36 grams of large shot such as no. 1 or no. 3 can be used to shoot foxes at ranges up to 30 metres (<http://basc.org.uk/cop/lamping/>). This means that the guns would need to be spaced around 50 metres apart to ensure they can shoot any fox that was flushed and kill it humanely, and so the larger the area being hunted, the more guns are needed. Typically gunpacks would have 40 or 50 guns positioned on all sides of the covert or section of the covert to be drawn (Weeks undated). So when the Ministry of Agriculture, Fisheries and Food (as it then was) organised a fox shoot on around 800 hectares of heathland in Camberley in an attempt to contain a potential rabies outbreak in 1969, they needed 60 guns and drove the area in sections over a two day period (Hendrie & Westcott, 1970). The process of lining people up around the covert is the same as was used during cubhunting when foxhunting was legal; a fox will try to escape from any point in the covert, and it is not possible to predict exactly where it will emerge. So all sides need to be lined with waiting guns (if the fox is to be shot) or, when cubhunting was legal, with a line of foot and mounted followers who would stop the foxes from trying to escape.

Professor Harris continues by describing how the Welsh gunpacks explain that it is impossible to stop dogs from chasing and killing foxes during flushing to guns...

In dense covert, the hounds are free-running and not under the control of the huntsman. How these packs of hounds operated is described in the Federation of Welsh Packs' 1999 submission to the Committee of Inquiry into Hunting with Dogs in England and Wales (<http://fedwfp.co.uk/>). In paragraph 9.04, they say *in a large wood or forestry plantation hounds*

may hunt the fox in covert, with the result that the waiting guns may not have an opportunity to shoot. Conversely the hounds may immediately hunt their fox towards a waiting gun, who dispatches it. In the event of the fox being wounded the close attendance of the hounds means that if injured it is quickly caught. During the period that hounds are hunting a particular fox, others may very well be disturbed and move offering the standing guns an opportunity to cull. It may transpire that foxes do not afford the guns the opportunity to shoot and consequently they are caught by the hounds, put to ground or lost. Whilst drawing (seeking a fox) the packs might 'mark' (indicate that the fox is located underground) when terriers will be used and the fox humanely accounted for.

Paragraph 9.05 says... During such a days [sic] hunting, a fox may often avoid the guns and leave the area being hunted, with hounds in pursuit. Again once it has avoided the 'ring' of followers with guns, it is hunted by the hounds until it is caught, put to ground, shot or lost. Paragraph 9.06 says... Large numbers of foxes can be accounted for on such days shooting, especially early in the season. It is a productive method of control especially when small woodlands or similar areas are hunted that play host to large number of foxes. Some of these foxes may never be directly hunted by the hounds, but move within the area hunted because of the presence of the hounds and present the guns with an opportunity to shoot. In actual fact hounds may only hunt one fox, but several may be shot.

Paragraph 13.01 says that... "each and every member pack of the Federation is reliant upon terriers to account for a substantial part of their annual tally" and (paragraph 13.02) adds that the Federation of Welsh Packs consider "it imperative from a welfare point of view that if an injured or wounded fox goes to ground during a days [sic] hunting, then terriers must be used to humanely account for it, so as to avoid prolonged suffering. With such an emphasis upon fox control within Wales, the digging of foxes that are found underground, or are hunted to ground is the norm, with all member packs of the Federation and curtailment of the use of terriers would severely compromise the effectiveness of the fox culling.

Paragraph 13.03 of the submission says In order to portray more effectively how extensive and essential the use of terriers are in fox control with member Packs of the FWP, a sample record with a geographical spread is shown below

Name of hunt	Percentage of total for the 1998/1999 season dug out
Afonwy	45%
Cambrian	43%
Cwrt y Cadno	80%
Plas Machynlleth	30%
David Davies	90%
South Pembrokeshire	85%
Average	62%

So it is clear from the submission of the Federation of Welsh Packs that, when using a pack of hounds to flush foxes from covert so that they can be shot by waiting guns: more than one fox is likely to be hunted by hounds when they are in covert; because they are working in dense covert the hounds are not under the control of the huntsman; that the hounds often catch and kill foxes; foxes are often hunted to ground and that around two-thirds of the foxes are dug out and killed with terriers; and foxes are often shot and wounded rather than killed humanely. It should also be remembered that there are significant welfare implications associated with terrier work.

Conclusion

This pattern of hunting is contrary to the aims of the Protection of Wild Mammals (Scotland) Act 2002, which was designed to protect wild mammals from being hunted with dogs. Section 2 (1) permits the use of a dog that is under control to flush a wild mammal from covert for various specified purposes, if the target wild mammal is found or emerges from covert, it is shot... once it is safe to do so. Section 3(b) of the Act requires a person to take reasonable steps to ensure that the fox... is flushed as soon as reasonably possible after it is located and shot as soon as possible after it is flushed. As the Federation of Welsh Packs' 1999 submission to the Committee of Inquiry into Hunting with Dogs in England and Wales makes clear, it is not possible to achieve these goals when using a pack of hounds to flush foxes from covert.

Hunt Website's description of their activities

There were some indications that suggested that Scottish hunts weren't even trying to flush to guns. Their websites declared that they flushed to guns, but they also referred to the skill of foxes evading the hunt. One website referred to the expectation of "*a fast hunt... ..for some considerable distance*". Another website even contained a video from

December 2014 that showed a full pack of dogs apparently “on cry” following a line nowhere near any covert. This led us to be suspicious of their activities..

The League’s 2014/15 field investigation

The League employed a team of experienced wildlife crime investigators, including one with thirty years of evidence gathering experience with the police and others with many years’ experience of monitoring Scottish hunts.

Our investigators set out to monitor the activities of at least half of the fox hunts in Scotland and film their activities over most of the 2014-2015 season. The aim was to inform ourselves, our supporters and the public about the effectiveness of the Protection of Wild Animals (Scotland) Act (2002). The evidence was collected “covertly” to ensure the hunt’s behavior was not influenced by the presence of League Investigators. The aim was not to make individual allegations about particular hunts on particular days, but to establish if there were patterns of activity that led us to believe that any provisions of the Act were being exploited as cover for illegal hunting.

Between 12 December 2014 and 14 March 2015 the League’s wildlife crime investigators witnessed half the hunts advertised by the 10 hunting associations known to operate in Scotland. The filming was mainly from long range, using state of the art zoom lenses and the hunts were unaware that their activities were being filmed.

The 2014/15 findings

The League’s wildlife crime investigators did not see a single shotgun either used or brandished on any of the days they filmed Scottish hunts in the 2014/15 season. Our conclusion was that none of the hunts observed were flushing to guns and that they were using that exemption as cover for what appeared to us and other experts as the activity of pre-ban hunts. One case was so flagrant that there was no other option other than to present a detailed case to Police Scotland. As that case was part of an ongoing criminal investigation, it was excluded from the end of season compilation video – *Scottish Hunting Expose, 2015*. The case was dropped because of identification issues and the footage was released to the public in June 2015.

2015/16 Investigation

The Scottish Government announced in December 2014 that it was setting up the present Review with a submission date at the end of March 2016. The hunting season commenced in November 2015 and would normally end in mid March. It seemed sensible, once more, to covertly film Scottish hunts to see if their patterns of behavior had modified as a result of the media coverage of our 2014/15 expose video and the setting up of the Government Review.

The 2015/16 findings

Six hunts were filmed between November 2014 and March 2016. The video *Scottish Hunts Expose 2016* shows that the pattern of behavior used by the hunts observed was identical to that observed in 2014/16. Hunts were once again seen to be routinely searching through covert with no guns stationed to shoot emerging foxes. Hounds were seen in the open countryside “on a line” away from covert and apparently on the trail of a scent – with no guns present. On one notable occasion a fox is twice seen being flushed from an earth into the path of a pack of hounds under control of a huntsman. Police charges have been made in this case.

In the 2015/16 season, men were occasionally seen with guns but they were always away from the hunting action. All such incidents are flagged in the videos in the accompanying evidence file.

The evidence file

As evidence of a pattern of behavior of Scottish hunts routinely using the flushing to guns exemption as cover for illegal hunting, we submit our evidence file. This includes three edited videos produced to summarize our case:

Scottish Hunt Expose, 2015
The Buccleuch Hunt Expose
Scottish Hunt Expose, 2016

These videos contain excerpts from over 100 hours of film footage. The videos show that time after time Scottish hunts appear to encourage full packs of hounds to search through covert with a complete absence of any shooters. To highlight the absence of shooters, the videos illustrate where people with shotguns would be expected to be stationed if the activity were flushing to guns. The videos shows dogs in full cry clearly following a line and being seemingly encouraged by the huntsman to do so. On at least six occasions the dogs are seen chasing a fox.

In order to establish that the edited videos are a full and fair representation of what our investigators saw and recorded we are submitting all of our footage to the Review. It is arranged by year, by each hunt in the edited video and it contains the clip from the edited video and an extended version which shows the scene for up to an hour before and after each incidence contained in the edited video. GPS readings are incorporated into the videos to establish the time and location of each incident.

The extended footage is useful as it also reveals the fluid and speedy movement of the huntsmen and their hounds from covert to covert. If flushing with guns really was occurring, it would be expected that the huntsman and hounds would have to wait some time for the guns to move away from the last covert searched and reposition themselves

at the new covert to be searched. The footage reveals neither such stilted progress across the countryside, nor are any guns seen.

We have accompanied all the footage with documentary evidence corroborating the veracity of the material and to aid exploration of the footage. These documents are:

- New Case Reports – a document completed by the investigator shortly after the event describing what they saw.
- Operational Briefing Identity Documents – the briefing supplied to the investigators about the hunt they were observing
- Operational Order – the document signed off by the League Scotland Director approving that intelligence led investigation to take place
- A document which describes the content of each video with time code references to enable easy access to particular sections.

We are also submitting all of the original sd cards of all the footage filmed between 2014 and 2016.

Recommendations

The League is convinced that the Protection of Wild Animals (Scotland) Act (2002) was a well intended piece of legislation aimed at ending the practice of hunting foxes (and other mammals) with hounds. This was clearly the intention of the Scottish Parliament and we believe that this intent has been routinely circumvented under the guise of the “flushing to guns” exemption.

The legislation banning hunting with hounds in England and Wales also has a “flushing to guns” exemption, but there is a limit to the number of hounds that can be used. In Scotland there is no limit. In England and Wales it is limited to two dogs. It is the experience of the League and a number of other animal welfare NGOs that no hunt in England and Wales has ever claimed to be “flushing to guns”. This is an activity which seems to have no interest to hunts in England and Wales.

We believe that any exemption that allows for a full pack of hounds to be employed in the countryside has the risk of being exploited by anyone with a desire to encourage them to chase foxes and other wild animals.

The number of dogs

We are aware that arguments have been made that reducing the number of hounds used in “flushing to guns” would be detrimental to the animal welfare of the fox. We asked Professor Harris of Bristol University for his expert opinion of such an argument:

The welfare issues of using two dogs to flush foxes

The Federation of Welsh Farmers' Packs (formally the Federation of Welsh Packs) commissioned a study in Scotland during the winter of 2012/2013 to compare the efficiency of using two hounds with a pack of hounds to flush foxes from covert (Naylor & Knott undated). A number of key issues were not addressed in this report, including: how many foxes were shot and killed cleanly; how many were wounded and then killed by the dogs; how many were wounded and escaped; how many were wounded and then caught and killed by the hounds; and how many foxes were hunted but escaped. Lloyd (1980a), for instance, described the movements of a radio-collared fox in mid-Wales that was hunted on at least four occasions by packs of hounds, both mounted packs and gunpacks. It survived all four hunts, although it made substantial movements each time after it was hunted. Nor does the report address the fundamental issues of whether using a pack of hounds is more effective in reducing the spring fox population size (paragraph 26) or in reducing levels of lamb losses (paragraph 34). There are also a number of methodological problems with the study, such as the assumption that vocalising by the hounds is a sign that a fox is being pursued: while this indicates that the hounds are on a fresh scent, it does not show that they are actively pursuing a fox.

Despite these methodological limitations, Naylor & Knott (undated) concluded that *a pair rather than a pack of hounds a) is less effective in flushing foxes to guns and b) imposes a longer duration of pursuit on foxes that might be associated with welfare compromise*. This conclusion ignores the more major welfare issues, including whether more or fewer foxes were shot and wounded when using a pack of hounds compared to using two dogs, and whether more foxes were caught and killed by a pack of hounds than when using two dogs. Furthermore, the authors provide no evidence to suggest that a longer chase has significant welfare implications: it could equally well be argued that moving foxes slowly out of covert with two dogs is less stressful than using a pack of dogs to chase a fox quickly out of covert.

Consequently, as there is no evidence that the welfare of foxes would be compromised and good reason to believe that it would be improved, the League believes that there should be a limit to two dogs in any exemption in the Scottish act.

Trail Hunting and Recklessness

Hunts in England and Wales do not use the “flushing to guns” exemption. Their stated wish is to take out a full pack of hounds. In order to do this they invented a new activity called Trail Hunting.

At first sight Trail Hunting appears to be like Drag Hunting. Drag Hunting is an old equestrian sport where an artificial scent is laid within about half an hour of the “hunt” commencing. The scent can be laid over open countryside or over obstacles like walls and fences that can be jumped by experienced riders following hounds that are trained to follow the artificial scent.

Trail Hunting was invented in the months after the 2004 hunting ban in England and Wales. Once again, a trail is said to be laid, but it is a fox based scent. Furthermore it is said to be laid in habitat that foxes normally habituate. The reason given by hunts that say they go trail hunting is that the ban in England and Wales will be repealed by the Conservative Government (whose policy calls for a “free vote” in Parliament on the issue) and that they want to ensure that their dogs remain trained to follow a fox’s scent once the law is abolished.

Courts and animal welfare NGOs in England and Wales have described the use of Trail Hunting as a “cynical subterfuge” to cover illegal hunting. The international Fund for Animal Welfare published an extensive report on Trail Hunting *Uncovering the Trail of Lies* in 2015. It concluded that:

“Although there may be exemptions, we believe the available evidence suggests that trail hunting, in general, is primarily a false alibi to avoid prosecutions of illegal hunting, rather than a harmless temporary simulation of hunting before the ban, or a slight variation of the cruelty free sport of drag hunting, as many want us to believe.”

Consequently, the League recommends that if the number of hounds used in “flushing to guns” is reduced to two it will also be necessary to head off the introduction of Trail Hunting in Scotland by also introducing a “recklessness clause” to the Scottish legislation which would define the use of a fox based scent as “reckless” and therefore illegal.

A complete ban

The League’s extensive experience and video evidence shows that there are a number of people in Scotland who are determined to find ways of encouraging packs of hounds to chase and kill wild mammals. Reducing the number of hounds in the “flushing to guns” exemption and introducing a recklessness clause would go a long way towards stopping this activity which is prescribed by Parliament.

However, those who say they want a return to foxhunting have been shown to be dedicated, resourceful and are apparently willing to be deceitful. We believe that the only way of making sure that another false alibi is not devised would be to ban the use of packs of fox and other hunting hounds in the countryside. Such a ban would stop fox hunting in Scotland – for good.