



Let's really stop fox hunting in Scotland

The Lord Bonomy Review



LEAGUE
AGAINST CRUEL SPORTS

Summary

The law is not working

Lord Bonomy's report confirms the League's suspicions that the ten mounted fox hunts in Scotland are using flushing to guns as a decoy for illegal hunting.

The report concludes that flushing to guns is "incidental" to pest control and that the number of guns said to be deployed is not adequate.

The League's video evidence shows that guns were seldom or never deployed by hunts in between 2014 and 2016. We believe they were hunting illegally and Lord Bonomy is satisfied that there is a "case to answer".

Police Scotland say that there are "multiple exemptions that provide opportunities for exploitation by those who continually and deliberately offend." They are also frustrated by an unwillingness of hunt staff to give witness statements.

Amendments suggested by Lord Bonomy

- > The definition of "hunting" needs to be strengthened. It should be "to search for, stalk, flush, chase, pursue or course."
 - > It should be made clear that an offence occurs when a person "uses, or causes or permits, a dog to hunt a wild mammal", or a person "intentionally or recklessly hunts a wild animal with a dog."
 - > The onus of proof should be reversed so that the offender has to prove that they were using an exemption rather than the prosecution to show that they were not.
 - > Landowners should be guilty of an offence if illegal hunting occurs on their land
 - > Foxes should be shot "as soon as possible" not "once safe to do so".
 - > Time limits for prosecution should be up to 3 years
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Further suggestions by Lord Bonomy

- > A voluntary protocol should be used where the police would be informed of the whereabouts, activities and the individual roles of all hunts. This would mean that the identities of all concerned would be known in the case of any alleged illegal activity
 - > A system of Independent monitoring of hunts should be established
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Amendments suggested by The League

Lord Bonomy's suggestions would go some way into reducing the opportunities for those who wish to continually and persistently offend. However, they would not stop determined individuals from taking out a full pack of hounds and continuing to use "flushing to guns" as a decoy for traditional hunting when there are no independent monitors present. Lord Bonomy recognises that "flushing to guns" can be used as such a decoy and he points out that the number of guns said to be deployed is inadequate for pest control. Whenever a mounted hunt takes out a full pack of hounds there is always the possibility that they will hunt in the traditional manner. We therefore recommend:

- > Remove the flushing to guns exemption for mounted hunts
- > Reduce the number of dogs used in all exemptions to 2

We have a petition calling for the law to be strengthened at league.org.uk/scothuntban

The Lord Bonomy Review

Key Extracts

Lord Bonomy published the recommendations from his eight month review of the Protection of Wild Animals (Scotland) Act (2002) on 21 November 2016. We identify here the key sections and reference their paragraph numbering within the full document.

Overall Recommendations

...that there is a basis for suspecting that there may be occasions when **hunting, which does not fall within one of the exceptions, does take place** and that the grounds for that suspicion should be addressed (2.4)

...revising and amending the terms of the Act, and introducing measures aimed at **making the actions of hunts more transparent and accountable** (2.2)

...there are aspects and features of the legislation which **complicate unduly the detection, investigation and prosecution of alleged offences;** (2.4)

The various features of the language of the Act... ..should be reviewed with a view to removing inconsistencies and inappropriate and unnecessary expressions and introducing greater consistency and clarity of expression. **Because it started life as a Member's Bill, the Act has never been subject to the scrutiny of parliamentary draftsmen from which it would undoubtedly benefit.** (5.38)

Response to police comments and recommendations

[The Police Scotland] submission points to what are said to be a number of weaknesses in the Act, including the absence of definition of certain expressions such as "stalking", "searching", "flushing", the number and complexity of the exceptions to the offence of "deliberately hunting a wild animal with a dog" and a general consequent lack of clarity in the legislation. It is claimed that as a result it becomes **extremely difficult to obtain sufficient evidence to prove the basic offence of deliberately hunting a wild mammal with a dog.** The legislation is said to be complex and to need to be simplified to make it more effective. It is also said in the Police Scotland submission **that the fluid nature of the activities of a mounted hunt can create issues in determining when an offence is being committed.** (5.1)

Police Scotland have encountered unwillingness on the part of hunt participants, and also on the part of estate staff in relation to other wildlife crime, to give witness statements to investigating officers "on legal advice", and on at least one occasion witness statements noted verbatim by a solicitor were read out in response to police enquiries. Legal advisers for insurers have also apparently given advice that hunt participants should not give witness statements to the police without legal representation. (7.38)

"To make this legislation more effective and workable, offences need to be simplified and terms expanded. **Exceptions to the offence to 'deliberately hunt a wild mammal with a dog' are multiple and provide opportunities for exploitation by those who continually and deliberately offend.** As a consequence of this lack of clarity, the Police are on occasion unable to establish the high threshold of evidence required to prove and, ultimately, report cases. (7.11)

Chief Superintendent Sean Scott, did say, in answer to a question posed by a member of the Rural Affairs, Climate Change and Environment Committee at their meeting on 13 January 2016, that 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, **that answer should not be regarded as a statement that Police Scotland consider that the Act works effectively to provide adequate protection for foxes.** (4.17)

Amendments

...there is a view, for which there is some supporting evidence, that the flushing from cover for pest control exception is a decoy for the continuation of some traditional hunting practices;... (7.37)

1. Definition of "hunting"

It would be more satisfactory to build on the existing provision by setting out more fully, but not exhaustively, what is included in the expression "to hunt". One suggestion made, which avoids the risk of not being able to adapt the definition to unusual or unforeseen circumstances is: **"includes to search for, stalk, flush, chase, pursue or course"**. (5.15)

Consideration should be given to deleting **"deliberately"** from section 1(1). (5.2)

2. Intentionally and recklessly

It would be sensible to state clearly that the offence is committed when a person **"intentionally or recklessly hunts a wild mammal with a dog"**. (7.16)

The separate approaches of focusing attention on the actions of the hunter on the one hand and the actions of the dog on the other could be achieved by **"uses, or causes or permits, a dog"**. (7.20)

3. Vicarious liability

There may be merit in providing that the owner who gives the hunt permission to hunt over the land would be guilty of an offence in the event that someone involved in the hunt commits an offence. (7.24)

4. Onus of proof

...the aim of the legislation was to bring an end to the chase and the kill by dogs and yet there remains widespread suspicion that the chase and possibly even the kill continue to occur; the exceptions were intended to allow the use of dogs in connection with genuinely necessary activities and, in limited circumstances, certain sporting activities; **there is a view, for which there is some supporting evidence, that the flushing from cover for pest control exception is a decoy for the continuation of some traditional hunting practices;** observation and investigation of any offending is very difficult because the activity is conducted over a wide area of often remote countryside; and because taken together these may amount to circumstances justifying a decision by Parliament to **provide specifically in the Act that the onus of proof of compliance with an exception lies on the accused.** It should be sufficient for the prosecutor to show that a person is using dogs to carry out acts which are generally part of hunting of a wild mammal in circumstances where there are no firearms and no potential "guns" to be seen. **That should be sufficient to prove illegal hunting in the absence of other evidence to indicate a genuine activity falling within an exception.** (7.37)



5. Time limits

A number of statutes which create wildlife offences provide for summary prosecution but with an extended time limit, which is **six months from the date on which sufficient evidence came to the knowledge of the prosecutor, but no more than three years from the date of the offence.** (See Conservation (Natural Habitats, &c) Regulations 1994, regulation 102; Protection of Badgers Act 1992, section 12A; Nature Conservation (Scotland) Act 2004, section 46; and Wildlife and Countryside Act 1981, section 22). Both the police and the Crown would welcome amendment of section 5 to extend the time bar in that way. (7.43)

6. When foxes can be shot in “flushing to guns”

The expression in section 2(1) “once it is safe to do so” is the least demanding of these expressions. It is subjective and less peremptory than the others. It leaves scope for a chase to begin. It also defines the point of shooting by reference to safety, which **common sense would suggest is implied in the requirement that the mammal should be shot “as soon as possible”.** (5.31)

Flushing to guns

...among mounted hunts pest control can appear to be incidental to the primary objective of exercising horse and hounds (6.12)

What can be said is that it is possible that the way in which the exemption of flushing to guns is applied in practice, and the view that those who participate in the activities of mounted hunts have of what constitutes flushing, **may well have resulted in hounds on occasion engaging in chasing a fox after it has been flushed from cover.** (6.5)

...among mounted hunts pest control can appear to be incidental to the primary objective of exercising horse and hounds (6.12)

...the evidence presented to the Review suggests that, where a full pack of hounds are being used, **there are few circumstances in which two guns would be adequate to ensure that a flushed fox would be shot.** (6.6)

The material recorded on film, seen by witnesses and set out in submissions indicates that there may be circumstances in which **flushing develops into a chase because the area through which the search and flush is taking place is so far from the location of the limited number of guns available.** (6.7)

Although it was said in a number of submissions that foxes follow routes that are familiar to them and the experienced huntsman or marksman is aware of them and takes up position having regard to his experience of the locality, just as many stressed the unpredictability of the exit point. In response to one enquiry about the number of guns used when searching and flushing through an extensive area, one comment made was that **you can never have too many guns.** (6.8)

If the explanation for the remote location of the guns is that deploying them closer to the likely exit points from cover would make it unsafe to shoot, then **the search and flushing location chosen may not be a suitable one for the use of the section 2 exception for pest control.** (6.9)

It is difficult to view the deployment of two or three guns in fairly open countryside, where a full pack of hounds are being used and there is a wide range of escape routes for a flushed fox, **as complying with the obligation of the flusher to "act...to ensure" that it is shot.** (6.12)

There is before the Review material on the basis of which an impartial observer would be entitled to suspect that **there are occasions when the packs of mounted hunts engage in chasing foxes when on the face of it the huntsman is in control of the pack.** The evidence is not conclusive, but equally the suspicion that it gives rise to cannot be dismissed as groundless. (6.14)

Veracity of League's video evidence

It is said that the camera never lies. However the way in which film is presented does not always show the whole picture. A full account of the circumstances may provide a complete answer to any suggestion of illegal hunting. That is not to suggest that film material was presented in a way designed deliberately to mislead the Review, as has been observed in the course of the Review. **In some instances it remains distinctly possible that the video is sufficiently complete to show that there is a case to answer.** (6.4)

...it is not clear that establishing a formal system of licensing would do more for the protection of wild mammals than amending the legislation would. (7.40)

Independent monitors

The proposal was that an individual, officially appointed monitor would attend random hunts without notice and compile a report on the day's activities. While, if necessary, provision could be made in the Act for appointing, and regulating the role and functions of, monitors, it should be possible to introduce a scheme by voluntary arrangement governed by a Code of Practice. Any discussions on a voluntary scheme should involve Police Scotland. How much would require to be the subject of statutory regulation would depend on the success of efforts to reach agreement on a voluntary scheme. The Burns Report in discussing a similar idea suggested appointment of monitors by "a reputable, independent body". That could be an appropriate agency of the Scottish Government. Were it necessary to provide by legislation for the appointment of the monitors, further legislation could be confined to providing for regulation of the scheme by a Code of Practice. (7.2)

Voluntary protocol

...there is reason to believe that it should be possible to develop a voluntary Protocol or Code of Practice to regulate this through discussions in which Police Scotland should be involved" (2.6)

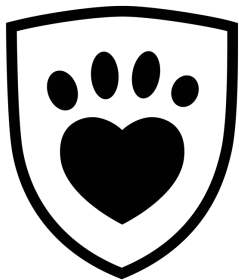
The existing Scottish Mounted Foxhound Packs Fox Control Protocol should form the starting point for the development of a separate Code of Practice for the conduct of hunt activities, including requirements for notification to the police in advance of the hunt of the identities of those responsible for the activities of the hunt, the number of hounds to be used, the identities of the guns and other information, and also provisions about the conduct of those participating in the activities of the hunt. The material should be recorded in the form of a log or register which would form the basis for an annual report by Police Scotland to Scottish Ministers with a view to relevant parts being incorporated into the Wildlife Crime in Scotland Annual Report . (2.7)

Number of dogs

I am persuaded by the submissions and such other evidence as there is, in particular that of the experience of those who work with packs, the scientific study paper by Naylor and Knott (taking full account of its limitations and the criticisms made of it, and the fact that in England and Wales hunts do not generally flush to guns using two dogs, not only that **searching and flushing by two dogs would not be as effective as that done by a full pack of hounds**, but also that imposing such a restriction could seriously compromise effective pest control in the country, particularly on rough and hilly ground and in extensive areas of dense cover such as conifer woodlands (7.26)

Licensing

...it is not clear that establishing a formal system of licensing would do more for the protection of wild mammals than amending the legislation would. (7.40)



LEAGUE

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