

Such developments are to be welcomed, but they only serve to highlight the shortcomings of the Protection of Animals Acts, which are cumbersome, outdated, and unwieldy. The combination of various provisions spread across a range of statutes, the anachronistic language and concepts contained in much of the legislation, and the lacuna as regards welfare – especially in relation to companion animals – together represent an unanswerable case for legislative reform.

The Department for the Environment, Food and Rural Affairs launched a draft Animal Welfare Bill last July.² It is essential that an organisation such as ALAW, which can contribute to the legislative process from a uniquely qualified and informed position, should be fully engaged in lobbying for change. A Bill is likely to be published after the general election, if Labour is returned to power.

The next edition of the Journal will feature an article examining in detail the provisions of the Bill and its implications for the protection of animals.

Is the Hunting Act just an empty shell?

David Thomas
Solicitor

Now that their Parliament Act challenge has failed, the hunting community is

adopting a three-fold strategy to undermine the Hunting Act – civil (or, more accurately, criminal) disobedience; searching for ways of legally circumventing the law; and a propaganda campaign that the Act is unenforceable and that the police should not waste their time on it.

First, civil disobedience. Forty thousand hunt supporters have signed a declaration that they will defy the law. Civil disobedience is usually deployed in support of causes of rather greater moment than the freedom to use packs of dogs to chase and tear apart wild animals – the campaigns for the enfranchisement of women and against apartheid and British rule in India spring to mind. Nevertheless, preferring one's conscience to the dictates of a law perceived to be unjust has a long and honourable tradition and should be respected.

However, a crucial feature of Gandhian *satyagraha* or passive resistance – on which so many campaigns involving civil disobedience have been built – is that transgressors must accept the authority of the law in question and gladly submit to the prescribed punishment. Few hunters appear willing to do so. Indeed, the Countryside Alliance is careful not to encourage law-breaking. Instead, it is searching for ways around the law, as the second strand of the overall strategy. It has produced a comprehensive handbook suggesting ways hunting with dogs can continue legally. Some have suggested that hunts could kill a fox (by shooting it) and then drag its body ahead of their pack of dogs, an aspect of trail hunting (as distinct from drag hunting). If the dogs should chance upon a live quarry and chase it, this will simply be an “accident” falling outside the new legislation, it is argued.

² Command No 6252, 15.7.2004. The Scottish Executive's Environmental and Rural Affairs Department (responsibility for this issue is devolved under the terms of the Scotland Act 1998) is consulting on this issue and will also draw up a bill.

The third strand of the strategy is then to suggest that the law is unenforceable. In fact, the principal offence, as Fraser Sampson said,³ is straightforward: one must not intentionally use a dog to hunt a wild animal, subject to tightly-drawn exemptions. Of course, one cannot get inside the mind of a hunt participant to deduce what he or she really intended. But that is true of all criminal offences requiring a guilty mind (*mens rea*). The courts are well-used to looking at all the evidence, direct and circumstantial, to see if a defendant committing the prohibited act had the requisite intention. Shoplifting is an apposite example – did the defendant intend to steal or was the unauthorised taking an “accident” of absent-mindedness?

In the trail-hunting example, the court would look at all the evidence in deciding whether the intention was to chase live quarry with dogs. Does the hunt encourage foxes to breed? Was the trail laid over territory known to contain foxes? What equipment was used? What does filming, overt or covert, reveal? If the defendant has signed the civil disobedience declaration, that will be damning evidence of a guilty mind.

All this is the usual stuff of criminal prosecutions. If there is genuine doubt, the defendant should receive the benefit of it. There may conceivably be issues around the precise scope of some of the exemptions. Again, that is standard fare. It is difficult to see how there can be much doubt with stag hunting and hare coursing. But each case, quite properly, should be judged on its own merits.

As Alastair McWhirter of the Association of Chief Police Officers recently acknowledged, the police must enforce

the Hunting Act as it must all criminal legislation. The Attorney-General has confirmed that it will be enforced in the usual way. If any force were to adopt a policy or practice of turning a blind eye, it would be susceptible to judicial review. Of course, it is for each force to decide its priorities. However, the fact that so many hunters have said they will defy the law should be a powerful factor encouraging the police to take appropriate prosecutions, especially early on. The police are guardians of the rule of law as well as of individual laws.

As Sampson argued, there are no doubt practical policing issues, but so there are with other offences with a public order dimension. The police may be well-advised to look for a subtle rather than openly confrontational approach. But ultimately the Hunting Act contains all the powers of enforcement they need, including the right to seize animals and equipment.

The Act is controversial legislation but it is perfectly enforceable. Indeed, the Countryside Alliance has implicitly recognised as much by launching a human rights challenge – if nothing were really going to change, how could any human rights be infringed? It is the police’s job to enforce the law, sensitively but firmly. Otherwise the overwhelming will of elected parliamentarians, and indeed of the population at large, will be thwarted.

This article first appeared on 1 March in The Times, with whose kind permission it is reproduced.

³ “Police must expect to be outfoxed by hunters”, *Law*, 15 February 2005.