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Journal

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inside this supplementary edition:

**Contemporary Dog-fighting
Law in the UK**

Bats and the Law

**Wild Animals as Pets: The
case for a review of the Pet
Animals Act 1951**



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Editor's note

Welcome to a supplementary Journal of Animal Welfare Law (published to supplement the single journal published last year).

I am delighted to include the winner of ALAW's annual student essay completion. The author of the winning essay, Natalie Kyneswood, considers whether the Hunting Act 2004 should be repealed.

Angus Nurse and Simon Harding provide an analysis of dog fighting including its topology and where it sits in relation to legislation. Julia Boyd explores the legal protection of bats and discusses the often contentious issue of bats roosting in churches. Anna Wade and Chris Draper argues for an urgent review of the Pet Animal Act 1951 to better protect wild animals.

Finally, thanks to Paula Sparks for providing the material for the Animal welfare law and policy news roundup.

Jill Williams
Editor

Contemporary Dog-fighting Law in the UK

**Dr Angus Nurse and Dr Simon Harding
Middlesex University School of Law¹**

This article considers the law relating to dog-fighting in England and Wales, examining the nature and extent of dog-fighting offences within UK legislation. Dog-fighting has historically been a working class pursuit which arose as a consequence of urbanization in the late 18th and early 19th centuries as the popularity of bull-baiting declined and rural labourers migrated to the cities bringing their love of blood sports with them.² 'Pit sports' such as dog-fighting offered not only the entertainment of the fight but also the release and excitement of associated gambling activities and the opportunity for workers to hold evening matches indoors while being able to return to work the following day.³ Accordingly, dog-fighting existed within a predominantly white, working-class subculture of like-minded enthusiasts and represented a distinct type of organised animal exploitation. However, the Royal Society for the Prevention of Cruelty to Animals

(RSPCA) and others, report that contemporary dog-fighting has moved away from its organised pit-based origins to encompass street dog-fighting in the form of chain fighting or chain rolling, the use of dogs as status or weapon dogs.⁴

A cursory analysis of UK legislation identifies that the specific offence of 'dog-fighting' does not exist. Instead, dog-fighting is contained within the broader offence of 'animal fighting' prohibited by provisions of the Animal Welfare Act 2006 (which came into force in 2008). However, beyond the actual activity of pitting dogs against each other or allowing them to attack humans, there are a range of other offences associated with dog-fighting including: illegal gambling; attending dog-fighting events; harms caused to the dogs; and the breeding and selling of dogs for fighting. This article's analysis examines how the law deals with these issues and also discusses the extent to which illegal field sports

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contemporary dog-fighting has moved away from its organised pit-based origins to encompass street dog-fighting
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(e.g. dog-fighting and cock-fighting) are dominated by gambling and distinctly masculine subcultures through which a hierarchy of offending is established and developed.⁵ This includes discussion of dog-fighting 'Dogmen' and the cultural imperative of animal harm which influences when and where offences are committed.⁶

Contextualizing Dog-fighting Offences

Previous research has identified mistreatment of nonhuman animals as occurring for many reasons; being

¹ The research on which this article is based was commissioned and funded by the League Against Cruel Sports and was carried out solely by Middlesex University researchers into the current law and the nature and extent of dog-fighting in England and Wales. The full research report is available online at <http://www.league.org.uk/~media/Files/LACS/Publications/Dog-Fighting-Report-2015.pdf>

² F Ortiz, 'Making the Dogman Heel: Recommendations for Improving the Effectiveness of

Dogfighting Laws' (2010) *Stanford Journal of Animal Law and Policy*, 3

³ Ibid; RD Evans and CJ Forsythe, 'The Social Milieu of Dogmen and Dogfights', (1998) *Deviant Behavior*, 51, pp.51-52.

⁴ S Harding, *Unleashed: The Phenomena of Status Dogs and Weapon Dogs* (Policy Press 2012)

⁵ See, for example E Gullone, *Animal Cruelty, Antisocial Behaviour and Aggression* (Palgrave

Macmillan 2012); N Groombridge, 'Masculinities and Crimes against the Environment' (1998), *Theoretical Criminology*, 2(2) 249-267

⁶ A. Nurse, *Animal Harm Perspectives on Why People Harm and Kill Animals* (Ashgate 2013).



either active or passive.⁷ *Active* mistreatment covers various deliberate acts and intended consequences that cause harm to nonhuman animals. *Passive* mistreatment can include neglect caused by ‘failure to act’ such that nonhuman animals are insufficiently cared for and harm is caused either as a result of misunderstanding an animal’s needs or through deliberate neglect.

Animal law has been identified as ‘legal doctrine in which the legal, social or biological nature of nonhuman animals is an important factor’⁸ with animal law being socially constructed according to specific notions of animals’ value within society. Most countries have laws protecting domestic animals primarily through anti-cruelty laws codifying prohibited activities and criminalizing actions inflicting pain or suffering on companion animals. In some jurisdictions legal terminology defines this as causing ‘unnecessary suffering’ reflecting the fact that within domestic settings human harm to nonhuman animals frequently occurs, while also reflecting a contemporary reality that much animal exploitation and harm remains legal. Indeed some forms of accidental harm or harm that constitutes a ‘necessary’ part of human–companion animal relationships (such as neutering, spaying or castrating domestic companions) may constitute legalized suffering.⁹ Animal protection legislation has developed

in part to implement such recognition, providing a legal framework within which harms against animals are codified, albeit generally falling short of providing animals with actual rights.¹⁰ Thus ‘animal protection legislation serves multiple purposes and is intended to address a variety of human activities considered harmful towards animals’¹¹ while at the same time preserving anthropocentric interests in the continued exploitation of animals, for example for food. Neglect involving companion nonhuman animals, which includes both acts and omissions which inflict harm and cause unnecessary suffering to nonhuman animals whether deliberate or accidental, are relevant factors in dog-fighting activity given that fighting dogs are legally classed as companions. Fighting dogs are ‘owned’ or have a human ‘responsible’ for their well-being, thus the same principles and duties of care that apply to ‘pets’ under current law apply to fighting dogs irrespective of their more aggressive nature. Dog-fighting laws in their broader context also indicate that a link exists between animal abuse and other offences, arguing that much abuse of companion nonhuman animals, including fighting dogs, is caused by a conception of animals as property. An anthropocentric view of animals also exists which fails to adequately consider their status as sentient beings with specific needs and which influences much animal welfare offending.¹²

Direct Animal Fighting Offences

Within the UK, dog-fighting laws exist within animal welfare and cruelty statutes to the extent that dog-fighting laws do not exist independently of general anti-cruelty statutes as is the case in the US where dog-fighting is generally a felony and carries much stiffer penalties than general anti-cruelty laws.¹³ UK law makes it not only illegal to actually coordinate or promote a dog fight, but also to keep, possess or train a dog for fighting or to attend a dog fight as a spectator. This section considers *direct* dog-fighting offences; i.e. actual participation in dog-fighting which is primarily covered by Section 8 of the Animal Welfare Act 2006 as follows:

1. A person commits an offence if he –
 - a) causes an animal fight to take place, or attempts to do so;
 - b) knowingly receives money for admission to an animal fight;
 - (c) knowingly publicises a proposed animal fight;
 - (d) provides information about an animal fight to another with the intention of enabling or encouraging attendance at the fight;
 - (e) makes or accepts a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the

⁷ See A Nurse and D Ryland ‘Cats and the Law: Evolving Protection for Cats and Owners’, (2014) *Journal of Animal Welfare Law*, pp.1-6; A Nurse, *Animal Harm Perspectives on Why People Harm and Kill Animals* (Ashgate 2013); ML Petersen and DP Farrington, ‘Types of Cruelty: Animals and Childhood Cruelty’, in A Linzey (ed.) *The Link Between Animal Abuse and Human Violence* (Sussex Academic Press 2009) 25-37.

⁸ J Schaffner, *An Introduction to Animals and the Law* (Palgrave Macmillan 2011) 5

⁹ While the ‘necessity’ of such procedures can be contested on animal rights grounds, animal law generally exempts recognised animal medical procedures from definitions of animal abuse and cruelty.

¹⁰ See M Radford *Animal Welfare Law in Britain: Regulation and Responsibility* (Oxford University Press 2001); S Wise, *Rattling the Cage* (Profile Books 2000); H Kean, *Animal Rights* (Reaktion Books Ltd. 1998)

¹¹ A Nurse, *Animal Harm Perspectives on Why People Harm and Kill Animals* (Ashgate 2013) 6

¹² See A Linzey, *The Link Between Animal Abuse and Human Violence* (Sussex Academic Press 2009); S Wise, *Rattling the Cage* (Profile Books 2000)

¹³ J Schaffner, *An Introduction to Animals and the Law* (Palgrave Macmillan 2011); F Ortiz, ‘Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws’ *Stanford Journal of Animal Law and Policy*, 3 (2010), pp.1-75

- course of an animal fight;
- (f) takes part in an animal fight;
- (g) has in his possession anything designed or adapted for use in connection with an animal fight with the intention of its being so used;
- (h) keeps or trains an animal for use for in connection with an animal fight;
- (i) keeps any premises for use for an animal fight.

It is worth noting that the Act contains a definition of animal fighting that defines an animal fight as ‘an occasion on which a protected animal is placed with an animal, or with a human, for the purpose of fighting, wrestling or baiting’. The wording used makes clear that animal fighting is a tightly defined activity which in part is dependent on proving the intent of those involved in order to prove the commission of an offence. Arguably the specific wording ‘placed *with*’ [our emphasis] would place ‘impromptu’ street fights and chain rolling outside of a strict Animal Welfare Act 2006 definition of animal fighting, albeit such activities would be caught by other legislation. Thus commensurate with other areas of criminal law and animal law, *mens rea* becomes a factor in prosecuting certain offences. However, even where this is not the case a challenge exists in prosecuting for ‘taking part’ in an animal fight, not least clearly identifying the human participants in an event with multiple participants and spectators. These provisions, however, do capture the activities of the key participants in dog-fighting those who: enter their dogs into a fight; organise or hold a fight, referee

a fight; and arguably ‘veterinary’ advisers. The clear intent of the law is to criminalize both the act of dog-fighting and the support network of fights whose activities are also caught in legislation which indirectly captures dog-fighting related activity.

Indirect and Associated Dog-Fighting Offences

A number of secondary or indirect offences also exist within animal protection legislation such that those present at dog-fights also commit indirect offences under Section 8(2) of the Animal Welfare Act. The precise wording of this section is that ‘A person commits an offence if, without lawful authority or reasonable excuse, he is present at an animal fight’. Section 8 also states that:

- 3. A person commits an offence if, without lawful authority or reasonable excuse, he –
 - a) knowingly supplies a video recording of an animal fight,
 - b) knowingly publishes a video recording of an animal fight,
 - c) knowingly shows a video recording of an animal fight to another, or
 - d) possesses a video recording of an animal fight, knowing it to be

such a recording, with the intention of supplying it.

- 4. Subsection (3) does not apply if the video recording is of an animal fight that took place –
 - a) outside Great Britain, or
 - b) before the [Act’s] commencement date.

The wording of Section 8 in respect of spectators and supporters captures the activities of those providing secondary support through, for example the distribution and sale of dog-fighting videos. However the use of the word ‘knowingly’ is problematic, again requiring investigators and prosecutors to prove an offender’s intent and ‘guilty mind’. Arguably, substituting ‘knowingly or recklessly’ would better reflect a need to only prove an offender’s actions and participation in dog-fighting related activities and to consider whether they failed to take adequate steps not to commit an offence.¹⁴ Following the decision in *R v G* [2003] UKKHL 50; [2004] 1 AC 1034, a defendant has acted recklessly as to a given consequence if they have foreseen the risk of a consequence but goes on ‘unjustifiably’ to take the risk. As an established principle of the mental elements of offending in the law of England and Wales arguably ‘knowingly or recklessly’ serves the purpose of capturing offences where the possibility of an offence is an aggravating factor, should a defendant proceed to commit the act. There is, however, also an argument for using ‘intentionally or recklessly’ as the Law Commission originally proposed in respect of other elements of wildlife law. (However the

“ A person commits an offence if, without lawful authority or reasonable excuse, he is present at an animal fight ”

¹⁴There are exemptions in the Act that would apply to journalistic and undercover investigations into dog-fighting so that filming and broadcast of dog-fighting as part of a ‘programme service’ is allowed. Thus the

Act distinguishes between the intent of dog-fighting enthusiasts and the intent to show film of dog-fighting to educate, expose or inform on illegal activities.

Commission's 2015 proposals for wildlife law reform instead talk about 'deliberate' action.)¹⁵

It is perhaps worth noting that the Act's definition of 'video recording' means 'a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image'. Thus the Act applies to mobile phone and tablet recordings and not just 'professional' filming. The Act also specifies that its references to supplying or publishing a video recording extend to 'supplying or publishing a video recording in any manner, including, in relation to a video recording in the form of data stored electronically, by means of transmitting such data' and that this extends to 'showing a moving image reproduced from a video recording by any means'. Thus the Act creates offences in relating to publishing dog-fighting clips on the internet, to sending images by text, tablet, mobile phone or email and communication through social media, even where this is arguably done as a private form of communication – e.g. a subscriber-only service or private Facebook page.

Arguably the provisions of the Communications Act 2003 are also relevant to prosecuting distribution of audio-visual dog-fighting material. Section 127(1)(a) relates to sending a message etc. that is grossly offensive or of an indecent, obscene or menacing character.¹⁶ For the purposes of the Communications Act it is irrelevant whether the

message is received, sending is enough for prosecution. The test for whether a message is 'grossly indecent' was decided by the House of Lords in *DPP v Collins* [2006] 1 WLR 2223 was one of whether the message would cause gross offence to those to whom it relates (which in that specific case was ethnic minorities), who need not be the recipients. As animals cannot be victims of a crime due to their status as 'property'¹⁷ there are challenges in using the Communications Act in respect of the notion of 'grossly offensive' messages. But an argument can be made for dog-fighting as 'indecent' given the deliberate intent to inflict harm on animals (and indeed to see how much they can endure) and the graphic nature of some images.

Welfare Offences Related to Dog-Fighting

The reality of dog-fighting is that animal welfare offences likely dominate the prosecution and investigation of dog-fighting offences. Under section 4(1) of the Animal Welfare Act 2006, it is a summary offence to cause unnecessary suffering to a protected animal or if being responsible for a

protected animal to permit any unnecessary suffering to be caused to any such animal.¹⁸ This encompasses several potential offences relating to dog-fighting and it is worth further outlining the detail of section 4 which is as follows:

1. A person commits an offence if –
 - a) an act of his, or a failure of his to act, causes an animal to suffer,
 - b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,
 - c) the animal is a protected animal, and
 - d) the suffering is unnecessary.
2. Subsection (3) does not apply if the video recording is of an animal fight that took place –
 - a) he is responsible for an animal,
 - b) an act, or failure to act, of another person causes the animal to suffer,
 - c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening, and
 - d) the suffering is unnecessary.

A range of dog-fighting activities are caught by section 4 of the Act which applies to companion animals (i.e. those dependent on humans for food and/or shelter whether actually 'owned' or merely those animals for whom humans have accepted some responsibility to provide food, shelter or veterinary treatment). Given that much exploitation and use of animals is legal under current laws that allow for continued animal exploitation, precisely defining

“an argument can be made for dog-fighting as 'indecent' given the deliberate intent to inflict harm on animals”

¹⁵Law Commission, *Wildlife Law: Interim Statement*, L(Law Commission 2013), 5-6

¹⁶This section of the Communications Act 2003 has been used in respect of indecent phone calls and emails.

¹⁷See M Radford *Animal Welfare Law in Britain: Regulation and Responsibility* (Oxford University Press 2001); S Wise, *Rattling the Cage* (Profile Books 2000)

¹⁸CPS, *Offences involving Domestic and Captive*

Animals, 2014 <http://www.cps.gov.uk/legal/d_to_g/offences_involving_domestic_and_captive_animals/> accessed 16 December 2015

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**harm caused to dogs by
 fighting and/or dog-
 fighting training
 activities is an important
 dog-fighting offence to
 consider**
 ”

animal abuse and cruelty poses some challenges¹⁹ particularly in distinguishing between the lawful and unlawful and between active and passive harms. Dog-fighting offences will also often encompass a range of acts or omissions that adversely impact on the dogs involved. These may not be specifically defined in law as dog-fighting offences but will be caught by the broadly used animal law term of ‘unnecessary suffering’, consistent with Ascione’s definition of animal abuse and cruelty which contextualizes animal abuse as being ‘socially unacceptable behaviour that intentionally causes unnecessary pain, suffering, or distress to and/or death of an animal’.²⁰ Academic and policy discussions of animal abuse tend to concentrate either on *active* mistreatment or *deliberate* neglect where intent to cause animal harm is a significant factor and an indicator of either anti-social personality disorder, mental illness or of other forms of abuse, particularly within domestic contexts.²¹ However, within dog-fighting, passive or unintended harm linked to neglect of an animal is a key element of investigatory and prosecutorial scrutiny of dog-fighting activities. During our research into dog-fighting we identified that relatively few prosecutions are taken for the Section 8 Animal Welfare Act offence of animal fighting and identifying the specific dog-fighting element within Section 8 prosecutions is also problematic. Accordingly harm caused to dogs by fighting and/or dog-fighting training activities is an important dog-fighting offence to consider, as is the failure of dog fighters and supporters to prevent

such harm whether caused directly or indirectly.

While dog-fighters may argue that fighting is a natural state for their particular breed of dog and claim that the dogs enjoy the fight²² the Animal Welfare Act’s consideration of whether suffering is ‘unnecessary’ includes the Section 4(3) qualifications on:

- whether the suffering could reasonably have been avoided or reduced;
- whether the conduct which caused the suffering was in compliance with any law or license; and
- whether the conduct which caused the suffering was for a legitimate purpose.

Thus the prohibitions on animal fighting and possession and use of fighting dogs contained in Section 8 of the Animal Welfare Act and in the Dangerous Dogs Act 1991 are relevant. Dog-fighting, as a prohibited activity, does not constitute a ‘legitimate purpose’ and so any suffering or harm caused to the dogs cannot be considered as incurred in pursuit of a legitimate purpose. In *R (on the application of Gray and another) v Aylesbury Crown Court* [2013] EWHC 500 (Admin) a former horse trader who had 115 equines seized from his premises under section 18a of the Animal Welfare Act 2006, on grounds that it was necessary to do so to prevent their likely suffering, appealed against his convictions for unnecessary suffering. Gray argued that sections 4 and 9 of the 2006 Act required either *actual* knowledge or a form of constructive knowledge that

the animal was showing signs of unnecessary suffering, and that negligence was not sufficient. The court, however, held that Section 4(1)(b) of the 2006 Act clearly aimed to impose criminal liability for unnecessary suffering caused to an animal either by an act or omission which the person responsible either had known or should have known was likely to cause unnecessary suffering whether by negligent act or omission. Section 9(1) also sets an *objective* standard of care which a person responsible for an animal is required to provide. This being the case, the distinction between section 4 and 9 is whether the animal had suffered unnecessarily, not the mental state or beliefs of the person concerned.

Elsewhere in animal law, the Law Commission has recommended transposing the word ‘deliberate’ into UK wildlife law as a means of capturing action in respect of wildlife that relates to a range of intentional acts.²³ While it is beyond the scope of this article to engage in exhaustive application of the ‘deliberate’ principle to dog-fighting, the range of dog-fighting related offences and manner in which they are investigated is such that both intentional and negligent acts are important, particularly in respect of the associated animal welfare offences for which offenders are often caught. Applying the logic of *Gray*

¹⁹See A Nurse, *Animal Harm Perspectives on Why People Harm and Kill Animals* (Ashgate 2013); R. Agnew, ‘The causes of animal abuse: A social-psychological analysis’, *Theoretical Criminology*, 2(2)(1998) 177-210

²⁰FR Ascione, *Children Who are Cruel to Animals: A Review of Research and Implications for*

Developmental Psychopathology (1993) *Anthrozoos*, 4, 228

²¹A Nurse, *Animal Harm Perspectives on Why People Harm and Kill Animals* (Ashgate 2013) 94

²²T Wyatt, *Wildlife Trafficking: A Deconstruction of the Crime, the Victims and the Offenders* (Palgrave Macmillan 2013).

²³Law Commission, *Wildlife Law Volume 1: Report* (Law Commission 2015) 65-69

and Others to dog-fighting, the intentions of those involved are irrelevant, the only consideration is whether the animal has been caused injuries (and their associated suffering) that could have been avoided. Thus, while investigators and prosecutors may find it problematic to prove beyond reasonable doubt (the criminal standard of proof) that a person had organised or knowingly taken part in illegal dog-fighting, proving harm caused to a dog may be a relatively straight forward matter. This offence could be demonstrated, for example, by veterinary surgeon examination that proves and documents the existence of fighting-related injuries that would be admissible in court. Thus animal welfare offences of unnecessary suffering or a failure to provide for appropriate animal welfare are likely easier to prove and prosecute than specific animal fighting offences. Anecdotal evidence from animal welfare investigators suggests that the wording and nature of legislation may lead them to use these ‘lesser’ offences as a tool to secure progress in a case and remove dogs from the dog-fighter’s possession as was the case for the horses in the *Gray* case (see appendices). Thus there is a risk that the reality of dog-fighting is

“the only consideration is whether the animal has been caused injuries (and their associated suffering) that could have been avoided”

obscured by the use of ‘lesser’ offences by investigators and prosecutors, albeit the animal welfare provisions are an important toolkit in addressing illegal dog-fighting.

Associated dog-fighting Offences

Another range of arguably ‘lesser’ and preparatory offences relating to dog-fighting also exist within the form of the Dangerous Dogs Act 1991. The long title of the Act is: *An Act to prohibit persons from having in their possession or custody dogs belonging to types bred for fighting; to impose restrictions in respect of such dogs pending the coming into force of the prohibition; to enable restrictions to be imposed in relation to the types of dogs which present a serious danger to the public; to make further provision for securing that dogs are kept under proper control; and for connected purposes.*

Section 1 of the Act specifically controls dogs classified as ‘fighting’ dogs; namely the pit bull terrier; the Japanese Tosa; the Dogo Argentina; and the Fila Brasileiro. Controls enacted under Section 1 make it a summary offence to:

- possess such a dog, except for purposes permitted by the Act;
- breed, or breed from, such a dog;
- sell exchange or advertise such a dog;
- give away a fighting dog as a gift, or advertise such a purpose;
- allow a fighting dog to be in a public place without being muzzled and placed on a lead; and
- abandon a fighting dog or allow it to stray.

The provisions of the Act arguably criminalise possession of fighting

dogs except under tightly controlled circumstances, and prosecutions data obtained from the CPS indicate that prosecutions for failing to control fighting dogs are relatively commonplace. From an investigatory and prosecutions perspective, an advantage of the Dangerous Dogs Act provisions is that while courts may have to determine whether a particular dog is actually a fighting dog, a reverse burden of proof²⁴ effectively exists where the onus is placed on the defendant to show that his dog is not a fighting dog (Section 5 of the Act). This matter has been considered in some detail by the courts and hinges on the wording and intentions of the Act. In *R v Knightsbridge Crown Court, Ex parte, Dunne; Brock v Director of Public Prosecutions* [1994] 1 WLR 296 the court considered arguments that: a) the word ‘type’ should be treated as being synonymous with the word ‘breed’ and; b) that whether or not a dog showed dangerous proclivities was relevant to determining whether it was a pit bull and thus arguably in determining whether it was a kind of fighting dog.

The Court concluded that the meaning of ‘type’ within Section 1(1)(a) of the Dangerous Dogs Act was wider than the issue of ‘breed’ and that whether or not a dog was ‘of the type known as the pit bull terrier’ within the Act’s confines was a matter of fact. In reaching a decision on whether a dog was a pit bull, the court could take into account the breed standard of the American Dog Breeders Association (ADBA) even where the evidence did not suggest that a dog conformed to every criterion of the ADBA’s standard for being a ‘pure’ pit bull.

²⁴D Hamer, ‘The Presumption of Innocence and Reverse Burdens: A Balancing Act’ (2007) *Cambridge Law Journal* 66(1), 142-171



The court in *Dunne* and *Brock* noted that the ADDBA standard identifies that pit bulls should have the following characteristics:

- i) Gameness;
- ii) aggressiveness
- iii) stamina
- iv) wrestling ability
- v) biting ability

In assessing the weight that should be applied to considering such fighting dog cases the Court held that:

On appropriate evidence, a court would be entitled to express its conclusion in such words as: "We find that this dog has most of the physical characteristics of a pit bull terrier. The fact that it appears not to be game or aggressive is not sufficient to prove, on balance, that it is not a dog of the type of the pit bull terrier."

The Sentencing Council for England and Wales published proposals on dangerous dog offences in March 2015 following changes to the Dangerous Dogs Act 1991 which came into force in 2014, substantially increasing the maximum sentences for dog offences. While it is beyond the scope of this article to assess the full detail and impact of these changes, they arguably represent a more punitive criminal justice approach to dog-fighting and its consideration by jurists. However, we note that UK sentencing tariffs for dog-fighting lag behind those of some other European countries and the recommended sentences for serious wildlife crime offences recommended by the Law Commission.²⁵ There is, therefore, a case for increasing the level of available sentencing options on grounds of consistency.²⁶

A Legal Typology of Dog-fighting

Based on our analysis of the activities and prohibited behaviours that exist in dog-fighting laws, arguably a legal typology of dog-fighting exists that distinguishes between active and passive dog-fighting and direct and indirect dog fighting according to the offences committed. Accordingly our research classifies dog-fighting offenders according to offence type as follows:

- a) **Active Participant** – those with a direct (and sometimes personal financial) benefit from dog-fighting activities whose activities are directly defined within law as active dog-fighting (i.e. physical engagement in dog-fighting). This includes: fanciers/Dogmen, handlers and seconds as offenders.²⁷
- b) **Passive Participant** – those who are involved in dog-fighting activities but whose activities are legally defined as ‘secondary’ activities for example those who facilitate the commission of *Active Participant* activities by holding or organizing dog fighting events and those who cause dog-fighting events to occur through the facilitation of the subsequent physical event. This includes: fight promoters, fight organizers, referees and timekeepers.
- c) **Active Supporter** – those who directly support dog-fighting activities but who may not necessarily be directly engaged in or participate in the activity. This category would include, for example, secondary animal fighting offences such as gambling on the outcome of an event, providing secondary or support

- services such as veterinary services. This includes: yard boys, spectators, street surgeons, those putting up or holding the money (the money man) and enforcers (those who collect debts and bets).
- d) **Passive Supporter** – those whose support for dog-fighting is removed from active engagement such as a video supplier, editor or retailer not present at a dog-fight but who nevertheless falls within the remit of Section 8(3) of the Animal Welfare Act by distributing dog-fighting film and material or who runs a dog-fighting appreciation website. This includes those involved in the dog-fighting ‘film industry’: filmmakers, distributors, reviewers and bloggers.
- e) **Indirect Participant and Associated Offenders** – those who commit offences defined within dog-fighting legislation but who are not directly involved in dog-fighting events and are arguably removed from the activity and associated with dog-fighting at arms length. This includes those who possess, breed or sell ‘fighting’ dogs as defined by the Dangerous Dogs Act 1991 and who by default are caught within dog-fighting statistics and prosecutions even where there is no direct fighting involved. It also includes dog-fighting sympathizers who may not be directly involved in dog-fighting.

²⁵Law Commission, Wildlife Law Volume 1: Report (Law Commission 2015)

²⁶Our full dog-fighting report makes such a recommendation.

²⁷For a full discussion of individual offender types see our full research report on dog-fighting available

online at: <http://www.league.org.uk/~media/Files/LACS/Publications/Dog-Fighting-Report-2015.pdf>
The detailed research report extends beyond the discussion of dog-fighting laws which is the focus of this article and incorporates discussion of the history of dog-fighting, the rules of dog-fighting and contemporary criminality.

These preliminary categories are fluid and reflect the notion that animal offenders can exist in more than one category and have a range of motivations and behaviours that sometimes defy ‘neat’ classification.²⁸ However, the manner in which UK laws are constructed broadly distinguishes between different offences type and categorizes dog-fighting activities according to perceived seriousness and the extent of engagement with actual fighting activity. Analysis of cases is likely required to develop these categories further but this preliminary legal typology illustrates the manner in which contemporary law classifies different dog-fighting activities.

The Extent of Dog-fighting

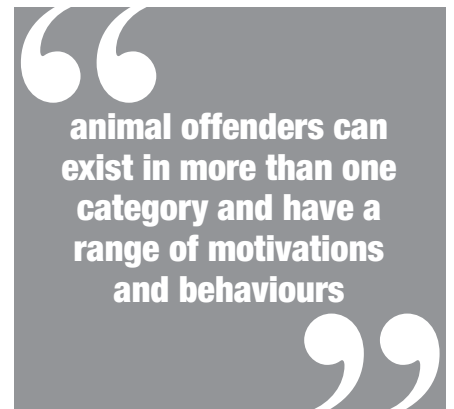
Arguably ‘we only have a fuzzy notion of the stereotypical rural criminal and find it difficult to acknowledge the existence of a rural criminal underclass’.²⁹ Yet the opportunities for criminality provided to rural criminals make it likely that specific types of offending endemic to rural areas and the fieldsports industry exist, multiple classifications of and perspectives on rural crime notwithstanding. Previous research, for example, identified distinct types of offender involved in animal crimes, concluding that in addition to the ‘traditional’ criminal who commits offences for financial gain, other specific offender types exist.³⁰ Masculinities criminals – those who commit offences involving harm to animals as a representation of their

male power and identity – are naturally drawn to animal harm or urban bloodsports activities where vulnerable quarry (e.g. game or wild birds, badgers, hares) can be found and where their criminal behaviour exhibits a stereotypical masculine nature³¹ both in terms of their exercise of power over animals and the links to sport and gambling involved in such activities as dog-fighting, hare coursing, badger-baiting and badger-digging.

Motivations or involvement in dog-fighting or animal cruelty vary depending upon the offender. Offenders involved in the exploitation of animals and wildlife generally commit their crimes for the following broad reasons:

- profit or commercial gain;
- thrill or sport;
- necessity of obtaining food;
- antipathy towards governmental and law enforcement bodies;
- tradition and cultural reasons.³²

While these are the primary motivations others may be involved, e.g. revenge attacks against animals in a domestic violence scenario, certain specific types of offending can only take place in rural areas as they are inherently reliant on countryside and wild species (e.g. hare coursing, badger-baiting, illegal fox-hunting and bushmeat hunting). But a specific urban conception on animal offending also exists and this research concludes that assessing the extent of this is problematic for the following reasons.



Producing clear quantitative data on the number of dog-fighting offences is problematic because it is difficult to establish both nationally and regionally. Problems of definition and in varied recording practices are factors; as with other areas of animal and wildlife crime, offences are sometimes excluded from ‘official’ crime statistics produced by justice agencies (police, Ministry of Justice, CPS) or are subject to variations in recording practice. In the UK, for example, police forces have historically not been required to record wildlife and animal crimes leading to some inconsistency and reliability issues.³³ Where wildlife crime figures were produced they were historically included within ‘other indictable offences’ making direct analysis of wildlife crime levels problematic.³⁴ The recording of dog-fighting is further complicated by the fact that the offence of dog-fighting, arguably does not exist with that specific definition. Instead, as the preceding text identifies, dog-fighting is incorporated into the broader offence of ‘animal fighting’ (under

²⁸A Nurse, *Animal Harm Perspectives on Why People Harm and Kill Animals* (Ashgate 2013); T Wyatt, *Wildlife Trafficking: A Deconstruction of the Crime, the Victims and the Offenders* (Palgrave Macmillan 2013)

²⁹R Smith, ‘Policing the changing landscape of rural crime: a case study from Scotland’ (2010), *International Journal of Police Science and Management*, 12 (3), 373-387.

³⁰A. Nurse, *Animal Harm Perspectives on Why People Harm and Kill Animals*, (Ashgate 2013); T Wyatt, T. (2013) *Wildlife Trafficking: A Deconstruction of the*

Crime, the Victims and the Offenders (Palgrave Macmillan 2013).

³¹M Kimmell, J. Hearn and RW Connell, *Handbook of Studies on Men & Masculinities* (Sage 2005); N Groombridge, ‘Masculinities and Crimes against the Environment’, (1998) *Theoretical Criminology*, 2(2), 249-267

³²See A Nurse, *Animal Harm Perspectives on Why People Harm and Kill Animals* (Ashgate 2013); A Nurse, ‘Policing Wildlife: Perspectives on Criminality in Wildlife Crime’ (2011), *Papers from the British Criminology Conference*, 11

³³E Conway, *The Recording of Wildlife Crime in Scotland* (Scottish Office 1999)

³⁴Ibid., M Roberts, D Cook and J Lowther, *Wildlife Crime in the UK: Towards a National Crime Unit* (Department for the Environment, Food and Rural Affairs/Centre for Applied Social Research 2001); A Nurse, *The Nature of Wildlife Crime* (Enforcing Wildlife Crime in the UK), Faculty Working Paper No 9, Faculty of Law & Social Sciences, (University of Central England 2003)

the Animal Welfare Act 2006) and within a range of other offences so that dog-fighting might variously be categorised as ‘animal crime’, ‘animal welfare crime’, ‘environmental crime’, or within more mainstream crime categories, for example, indictable offences, customs and revenue and gambling offences. The unreliability of official figures is partially negated by animal crime figures produced individually by those environmental and animal welfare NGOs that are directly involved in monitoring animal crime. At a national level, the RSPCA and SSPCA produce figures relating to the number of reported incidents of dog fighting and also produce prosecutions data. The Crown Prosecution Service (CPS) also produces data on public prosecutions and some data are available from police forces on seizures of dogs and dog-fighting activity within their force area.

However the range of organisations involved in compiling various animal crime figures means that producing a comprehensive analysis of the extent and nature of dog-fighting is problematic. The exact position regarding the recording of animal crime is complex and the impression given of animal crime and dog-fighting crime can be distorted by a number of factors which this section discusses. Lea and Young in their classic text *What is to be done about Law and Order?*³⁵ explain that before a crime is officially recorded it must go through a number of stages. The process is as follows:

1. Acts known to the public
2. Crimes known to the public

3. Crimes reported to the police
4. Crimes registered by the police
5. Crimes deemed so by the courts
6. The ‘official’ statistics

Lea and Young argue that at any of these stages it is possible for interpretation of the illegal act to halt the process of its ‘official’ recording:

*[D]oes the member of the public think it worth reporting to the police (that is, is it a real crime and even if it is, will the police do anything about it?) Do the police think it is a real crime worthy of committing resources? And does the court concur? At each stage there is a subjective interpretation, very often involving conflict (for instance the police may think the crime not worth bothering about but the member of the public will) and often a reclassification (for instance, the crime begins as suspected murder and ends up as manslaughter).*³⁶

These arguments take on increased validity in the case of animal crime; Padfield notes that ‘the public’s reporting of crime varies by offence’.³⁷ In some jurisdictions much reporting of animal crime by the public is direct to NGOs perceived as being directly involved in enforcement and monitoring and not to policing agencies. Factors influencing reporting include the high profile of some organisations in the ‘fight’ against animal crime. For example, the high visibility of the RSPCA’s uniformed inspectorate, SSPCA officers and other NGOs, such as the League Against Cruel Sport (LACS), who have achieved public recognition due to extensive

media coverage, means that they may be perceived as likely to take action in the event of an animal crime report. A secondary factor is public perception of animal crime and the role of the police in its enforcement. Media interest in policing and criminal justice predominantly focuses on public order issues such as anti-social behaviour, riots and policing of public protests and ‘serious crime’ priorities such as murder, rape, and even terrorism.³⁸ Lea and Young argued that ‘the focus of official police statistics is street crime, burglary, inter-personal violence – the crimes of the lower working class’.³⁹ This continues to be the case with public perception of animal crime possibly being something which falls outside their expectations of mainstream policing. (In developing countries, corruption issues may also mean that NGOs are trusted by the public and will receive information on wildlife crime, whereas state policing and conservation agencies are treated with mistrust⁴⁰ accordingly public reporting of animal crime often bypasses state agencies, leading to under-representation of animal and wildlife crime in official figures.

“the recording of animal crime is complex and the impression given of animal crime and dog-fighting crime can be distorted”

³⁵J Lea and J Young, *What is to be done about Law Order?* (Pluto Press 1993) 14

³⁶Ibid.

³⁷N Padfield, *Texts and Materials on the Criminal Justice Process* (Oxford University Press 2008) 2.

³⁸P Joyce, *Policing: Development and Contemporary*

Practice (Sage 2010); T Newburn, *Policing: Key Readings* (Willan Publishing 2004)

³⁹J Lea and J Young, *What is to be done about Law Order?* (Pluto Press 1993) 89

⁴⁰See ST Garnett, LN Joseph, JEM Watson and KK Zander KK ‘Investing in Threatened Species

Conservation: Does Corruption Outweigh Purchasing Power? (2011) *PLoS ONE* 6(7): e22749.

doi:10.1371/journal.pone.0022749; ML Gore, J Ratsimbazafy, and ML Lute, M. L. ‘Rethinking Corruption in Conservation Crime: Insights from Madagascar’ (2013), *Conservation Letters*, 6, 430–438. doi: 10.1111/conl.12032

Contemporary Dog-fighting Laws and Offences: Some Preliminary Conclusions

Our research identifies that far from being a single, easily identifiable offence; dog-fighting incorporates a range of different offences in law, a range of different offence types, and a range of different offenders. Commensurate with previous research that identifies different offender behaviours and offending within animal and wildlife crime⁴¹ the Middlesex research concludes that variation exists in the nature of dog-fighting to the extent that a single approach to offending is unlikely to be successful. Instead, policy approaches need to consider the level and type of participation of individual offenders and the manner in which legislation codifies various dog-fighting activities. American dog-fighting scholars identified that 'prosecution of the crime is also made difficult by the secrecy of hobbyist and professional dog-fighting, the spontaneity of street-fighting, the unwillingness of many witnesses to come forward, and the necessity of using indirect evidence to prove most cases'.⁴² Thus arguably US states should amend their statutes

to strengthen penalties for dog-fighting and related offences but the Middlesex research identified that, as with numerous other animal, wildlife and animal welfare crimes,⁴³ it is in enforcement and understanding of the nature of dog-fighting offences that problems most commonly occur.

Our research concluded that the level of dog-fighting remains an unknown quantity given the varied manner in which offences are recorded and prosecuted. Dog-fighting falls within the category of 'animal fighting' under Section 8 of the Animal Welfare Act 2006 and the available data does not distinguish between dog-fighting and other forms of animal fighting. In respect of applying dog-fighting law, we identified that dog-fighting offences may not always be prosecuted or identified as such given the nature of harms caused to dogs during fighting activities and the availability of 'lesser' but more easily provable offences such as failure to provide animal welfare under the Animal Welfare Act 2006. Thus a conclusion of our research is that not only is the level of dog-fighting difficult to quantify, but it is probable that dog-fighting is both under-reported *and* under-recorded given the very real likelihood of dog-fighting offences being recorded under other legislation – e.g. as animal welfare and animal harm offences. Indeed it is also clear that in some circumstances dog-fighting offences are not required to be recorded as such. A logical inference from the preceding conclusion is that there is likely a lack of recording of the links between dog-fighting and other

offences. But, analysis of the law and case law illustrates that dog-fighting and other offences/activities are linked. Within the data we examined, the largest element of known and recorded dog-fighting activity relates to the possession or custody of fighting dogs. It should be noted that the data do not distinguish between custody of dogs in an *actual* fight setting and possession and custody of dogs in a 'benign' or domestic setting. It is beyond the scope of our current project to interrogate the data any further (to do so would likely involve large scale analysis of case files with the attendant access problems in doing so). But we propose further research that distinguishes between reported offences and actual offences/prosecutions and looks at the behaviour and decision-making processes of investigators and prosecutors.

Our research also concluded that a legal typology of dog-fighting exists such that the historical conception of dog-fighting as a 'pit sport' is inadequate to describe the contemporary reality in which dog-fighting has evolved. In its enforcement, contemporary dog-fighting is as much about animal welfare and the harm caused to the dogs as it is about the act of fighting. Thus both the law and our legal typology distinguish between active and indirect engagement in dog-fighting. In doing so we contend that dog-fighting is an animal welfare law problem as is evident by the classification of dog-fighting within various legal categories and offences linked to animal welfare.

“the level of dog-fighting remains an unknown quantity given the varied manner in which offences are recorded”

⁴¹A Nurse, *Animal Harm Perspectives on Why People Harm and Kill Animals* (Ashgate 2013); A Nurse, 'Policing Wildlife: Perspectives on Criminality in Wildlife Crime' (2011) *Papers from the British Criminology Conference*, 11; M Radford, *Animal Welfare Law in Britain: Regulation and Responsibility* (Oxford University Press 2001).

⁴²F Ortiz, 'Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws' (2010) *Stanford Journal of Animal Law and Policy*, 3, 75

⁴³see A Nurse, *Animal Harm Perspectives on Why People Harm and Kill Animals* (Ashgate 2013); A

Nurse, A. *Policing Wildlife: Perspectives on the Enforcement of Wildlife Legislation* (Palgrave Macmillan 2015)

Bats and the Law

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In comparison to other wildlife, bats have a low reproductive rate normally bearing only one offspring per year.¹ In addition, bats have undergone severe declines historically with data from roost counts of pipistrelle bats indicating that there was a 60 per cent decline from 1977 to 1999 in England.² As a species, they are particularly vulnerable to a range of various threats.

Therefore in order to protect bats against further population decline and to protect the numbers of bats currently in the UK, all UK bats and their roosts are protected by law.

Legal protection for bats

As a protected species, bats come under the remit of national wildlife legislation³ but also other legislation can be invoked for their protection. As a result of such a decline in numbers, all 18 species of bat present

in Great Britain are included within the European Council Directive 92/43/EEC, (the Habitats Directive).⁴

The Habitats Directive is transposed into UK law by The Conservation of Habitats and Species Regulations 2010 (usually referred to as the Habitats Regulations).⁵

All British bats are protected under various legislation throughout the British Isles including England and Wales;⁶ Northern Ireland;⁷ and Scotland.⁸

In the Republic of Ireland, bats are listed under the Wildlife Act;⁹ and the European Communities (Natural Habitats) Regulations.¹⁰

As previously highlighted, the Conservation of Habitats and Species Regulations 2010 implements the EC directive 92/43/EEC in the UK.¹¹ All UK bats

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to protect the numbers of bats currently in the UK, all UK bats and their roosts are protected by law
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are included in Schedule 2 of the Habitats Regulations. As such, there are specific protective provisions under Article 12, which provides this legislation to make it illegal to:

- kill, injure or take bats;¹² damage or destroy a breeding site or resting place (a roost);¹³
- deliberately disturb bats in a way that would impair their ability to survive including ability to hibernate, breed or rear young; or

¹ E.Crichton and P.H.Krutzsch (ed), *Reproductive Biology of Bats*, (Elsevier Ltd 2000) 221-293

² Joint Nature Conservation Committee, 'Mammals of the Wider Countryside (Bats)' (C8, December 2014) <http://jncc.defra.gov.uk/page-4271>

³ Wildlife and Countryside Act 1981; Wild Mammals (Protection) Act 1996 sch 5

⁴ European Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive)

⁵ Conservation of Habitats and Species Regulations 2010

⁶ Wildlife and Countryside Act 1981 (as amended); Countryside and Rights of Way Act 2000; Natural Environment and Rural Communities Act 2006 and

Conservation of Habitats and Species Regulations 2010

⁷ Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 sch 2

⁸ Conservation (Natural Habitats &c) Regulations 1994 (as amended)

⁹ Wildlife Act 1976 sch 5

¹⁰ European Communities (Natural Habitats) Regulations 1997 sch 1

¹¹ Annex IV of the European Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive)

¹² Article 12 (1) (a) Directive 92/43/EEC European Commission *all forms of deliberate capture or killing*

of specimens of these species of specimens in the wild Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC http://ec.europa.eu/environment/nature/.../species/guidance/pdf/guidance_en.p... accessed 01 May 2015

¹³ Article 12 (1) (d) *deterioration or destruction of breeding sites or resting places*

- to significantly affect their local distribution or abundance;
- ¹⁴possess or control any live or dead bat or any part of a bat or anything derived from a bat.¹⁵

It is also an offence under the Wildlife and Countryside Act 1981 (as amended) to:

- Intentionally or recklessly obstruct a bat roost (whether bats are present or not)¹⁶;
- and/or intentionally or recklessly disturb a bat while at a roost.¹⁷

The prohibition of any disturbance of bats or the intentional disturbance of bats while they are in the roost is also provided by Directive 92/43/EEC.¹⁸

Although neither Article 12 nor Article 1 of Directive 92/43/EEC actually contains a definition of the term “disturbance”, a more detailed analysis can be found in the Guidance document on the strict protection of animal species of

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The potential fine for each offence is £5,000. If more than one bat is involved, the fine is £5,000 per bat
 ”

Community interest under the Habitats Directive.¹⁹ The introduction of the Countryside Rights of Way (CROW) Act in 2000²⁰ also makes it an offence to recklessly harm or disturb bats in their roosting places.²¹

The potential fine for each offence is £5,000. If more than one bat is involved, the fine is £5,000 per bat. In England and Wales an offender can also be imprisoned for six months. The forfeiture of any bat or other thing by the court is mandatory on conviction, and items used to commit the offence – vehicles, for example – may be forfeited.

The Planning Policy Framework, released in March 2012,²² acts as a guide to local authorities, in relation to wildlife issues, where developments may affect protected species, and how conservation and any appropriate mitigation measures should be implemented.²³

Licensing Procedures

A license may be granted by Natural England,²⁴ in order to exempt the protection afforded to bats under the Conservation of Habitats and Species Regulations 2010²⁵ for the purpose of allowing any development works to proceed. However, in order for Natural England to issue such a license to permit otherwise prohibited acts; three tests must be satisfied prior to the issue of the license.²⁶

Licences to permit illegal activities relating to bats and their roost sites can be issued for specific purposes and by specific licensing authorities in each country. These are sometimes called 'derogation licences' or 'European Protected Species' licences, and are issued under the Habitats Regulations. It is an offence not to comply with the terms and conditions of a derogation licence. Any person (s) conducting work affecting bats or roosts without a licence, will be breaking the law.

Certain individuals and bodies will need to take particular notice of this legislation if they intend to undertake any work, which may interfere with, or impact upon, bats and bat habitats. These will include property owners/householders who have a bat roost in their property; planning officials and building surveyors; architects; property developers; demolition companies; builders; roofers; woodland owners; arboriculturalists and foresters; and of course pest controllers.

Of course, despite the extent of legislation and guidelines which exist to protect bats and bat habitats, the courts have had to deal with various cases which have involved the issues of disturbance and impact upon bats. Previously, the law may not have been clear on what exactly was expected as regards the responsibility of planning authorities in relation to protected species and their habitats.

¹⁴Article 12 (1) (b) *deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration*

¹⁵Wildlife and Countryside Act 1981, 9 (5) (a) sch 5 “sells, offers or exposes for sale, or has in his possession or transports for the purpose of sale, any live or dead wild animal included in Schedule 5, or any part of, or anything derived from, such an animal”

¹⁶Wildlife and Countryside Act 1981 9 (4) (a) sch 5 “damages or destroys, or obstructs access to, any structure or place which any wild animal included in Schedule 5 uses for shelter or protection”

¹⁷Wildlife and Countryside Act 1981 9 (4) (b) sch 5 “disturbs any such animal while it is occupying a structure or place which it uses for that purpose”

¹⁸Directive 92/43/EEC art 12 (1) (b)

¹⁹Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC, Final Version (February 2007), II.3.2.a) Disturbance: (37) and (38) http://ec.europa.eu/environment/nature/conservation/species/guidance/pdf/guidance_en.pdf

²⁰Countryside and Rights of Way Act 2000

²¹Countryside and Rights of Way Act 2000 sch 2 s 2. (1) (f)

²²<https://www.gov.uk/government/.../national-planning-policy-framework-...>

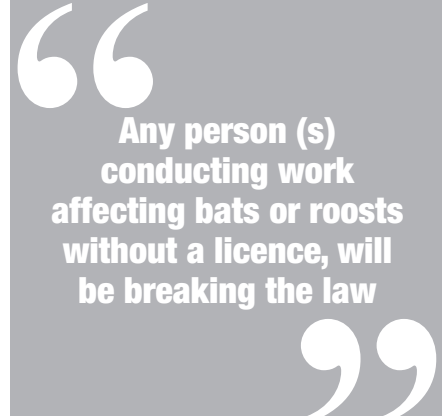
²³Department for Communities and Local Government, National Planning Policy Framework, (March 2012),

¹¹ ‘Conserving and Enhancing the Natural Environment’, 113-119

²⁴Natural England www.gov.uk/government/organisations/natural-england

²⁵Conservation of Habitats and Species Regulations 2010

²⁶Natural England, ‘Natural England Guidance Note: European Protected Species and the Planning Process Natural England’s Application of the ‘Three Tests’ to Licence Applications’ (2010) <http://publications.naturalengland.org.uk/file/8499055> accessed 01 May 2015



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Case Law

Relevant case law on European Protected Species (EPS) which provides some clarity on planning with regard to EPS are the cases of *R (Simon Woolley) v Cheshire East Borough Council and Millennium Estates Limited (the Woolley case)*²⁷ and the Supreme Court decision in *R (Vivienne Morge) v Hampshire County Council (the Morge case)*.²⁸ These two legal decisions have helped to clarify the role and responsibilities of Local Planning Authorities (LPAs) in respect of EPS when they are considering development consent applications. These cases do not create a new obligation or requirement on LPAs but they do provide some clarification of the duties placed on LPAs by the Conservation of Habitats and Species Regulations 2010²⁹ (the Regulations).³⁰

R (Simon Woolley) v Cheshire East Borough Council and Millennium Estates Limited

The claimant applied for judicial review of a decision of the defendant local planning authority granting planning permission to the interested party developer for the demolition of a property and its replacement by a larger property. It was contended, *inter alia*, that in granting planning permission, the Local Authority (LA) had failed to have regard to the requirements of Directive 92/43, as implemented by the Conservation (Natural Habitats, & etc) Regulations 1994. The LA submitted that the only duty imposed by Regulation 3(4) on an authority at the planning stage was to note the existence of the Directive and

Regulations and to note the existence of the relevant bats, and that the applicant for permission needed a licence.

However, clear guidance was set out in para.116 of ODPM Circular 06/05, stating: "*When dealing with cases where a European protected species may be affected, a planning authority...has a statutory duty under Regulation 3(4) to have regard to the requirements of the Habitats Directive in the exercise of its functions.*"³¹

A LA could not discharge its duty simply by making the obtaining of a licence a condition of the grant of permission. The planning officer's report had made no mention of the Directive or the Regulations. It referred to the need to have a condition for the mitigation of disturbance to the bats but that did not amount to consideration by the local authority. In circumstances, the LA had acted in breach of Regulation 3 (4). That breach of the Regulations had to be seen as a substantive breach of European Law and the decision granting planning permission was, accordingly, quashed.

R (Vivienne Morge) v Hampshire County Council

The appellant objector appealed against a decision³² upholding a planning permission granted by the respondent Local Authority (LA) for a bus route along a disused railway line. Morge had objected to the scheme because of its potential impact on European protected species of bats living nearby, with the main grounds for challenge being that the

decision of the LA had breached the requirements of the Habitats Directive (which is transposed into UK law through the Conservation of Habitats and Species Regulations 2010. The issues for determination were:

- i) the level of disturbance required to fall within the prohibition in Directive 92/43 art.12(1)(b);
- ii) the planning committee's obligations under the Conservation (Natural Habitats, &c.) Regulations 1994 reg.3(4), which implemented the Directive. The appeal was quashed by the Supreme Court.

The ruling opened the door for stronger interpretation of certain aspects of the Habitats Directive with the aim of clarifying both the definition of the 'deliberate disturbance' offence and how, and to what extent, that Local Planning Authorities should discharge their legal duty with due regard to the legislation.

In the decision of the Court of Appeal, the interpretation of the 'deliberate disturbance' offence was a rather conservative estimate. However, the decision in the Supreme Court held that "*deliberate disturbance is an intentional act knowing that it will or may have a particular consequence, namely disturbance of the relevant protected species*" (Lord Brown).³³

²⁷[2009] EWHC 1227 Admin

²⁸[2011] UKSC 2

²⁹Previously the Conservation (Habitats etc.) Regulations 1994

³⁰The Regulations transpose the requirements of the Habitats Directive (92/43/EEC) into English law

³¹Office of the Deputy Prime Minister, 'Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact within the Planning System' (16 August 2005) para. 116, 36 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/147570.pdf accessed 03 May 2015

³²2010] EWCA Civ 608, [2010] P.T.S.R. 1882)

³³Morge (FC) (Appellant) v Hampshire County Council (Respondent) [2011] UKSC 2 at 8 <https://www.supremecourt.uk/cases/uksc-2010-0120.html>

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**bats are known to roost
in churches and this has
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bats**
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Most of the cases brought before the courts concern planning and environmental issues and as such come under the remit of the associated legislation. Bat related crime remains at a level for concern. The building development and maintenance sector once again accounted for the vast majority of the incidents referred for investigation.

However, there was one case in what is believed to be the first time the Proceeds of Crime Act (2002) has been used against a company or individual following the illegal destruction of a bat habitation.

On 28 April 2014, at Chesterfield Magistrates Court the company ISAR Enterprises Limited in Birmingham were found guilty and convicted of destroying a bat roost.³⁴ The bat roost was in an empty commercial property in 2012 prior to the Managing Director of ISAR Enterprises Limited, Mr Hargurdial Singh Rai, purchasing the premises with the intention of converting it into accommodation. An ecological report which was produced as part of the planning conditions had identified a roost of the brown long-eared species of bat roosting in the loft space. The Magistrates Court had heard that work could only take place on the building if Natural England had issued a licence. However, the developers had made no application for any licence and proceeded with works without any of the requisite surveys and supervision. Redevelopment included replacing the roof and converting the

loft into a room. Subsequently, this work resulted in the destruction of the bat roost. The court heard how an ecologist originally concluded the site was a roost after he had been instructed by an architect acting for ISAR. The ecologist later noticed development work had started on the site and informed police. A wildlife crime officer and police attended and discovered the bat roost had been destroyed. The offences were eventually reported to Derbyshire Police and Wildlife Liaison Officers.³⁵ Together with the National Wildlife Crime Unit, an investigation was conducted and the company was found in breach of the Conservation of Habitats and Species Regulations (2010).

After the conviction, the Crown Prosecutor, Mr Rod Chapman, made an application for a hearing under the Proceeds of Crime Act (POCA). The Magistrates found Mr Rai, and ISAR Enterprises Ltd guilty of destroying the resting place of a protected species between March, 2011, and July, 2012.

In a ground breaking decision the court, instead of imposing a sentence on Mr Rai and Isar Enterprises, referred the case to Derby Crown Court for order that consideration be given to confiscating assets belonging to the offenders equivalent to the amount

saved by not following lawful processes. In addition the Crown Court could impose a penalty for the offences and a POCA hearing was heard on 2 June 2014.

The referral of the case to the Crown Court for consideration of confiscation of assets was a ground-breaking initiative sending a clear message that such crime certainly does not pay.³⁶ This was the first case in which POCA has been applied in a wildlife crime conviction.

"Rural and wildlife crime usually takes place without numerous witnesses but this does not preclude a successful investigation as this case shows."³⁷

In 2013, the Bat Conservation Trust referred 121 allegations of bat crime to the Police, which they state represents a marked decrease on the 134 allegations referred in 2012.³⁸ However, whether this is due to a more increased awareness of the public to bat protection or simply a decreased reporting of incidents is not known.

Bat crimes are criminal offences and as such in order for a conviction to be gained the case must be proven beyond all reasonable doubt. Any question of doubt will normally result in acquittal. The CPS will not prosecute a case unless they are satisfied that there is a reasonable prospect of conviction. Prosecutions will not be taken unless this evidential test is passed and it is also considered to be in the public interest to proceed. One incident in 2013

³⁴UK National Wildlife Crime Unit, 'Businessman convicted of destroying bat roost', <http://www.nwcu.police.uk/news/nwcu-police-press-releases/businessman-convicted-of-destroying-bat-roost/> accessed 05 May 2015

³⁵Derbyshire Constabulary, 'Businessman convicted of destroying bat roost in Matlock' 30 April 2014 <http://www.derbyshire.police.uk/News-and->

[publications/press_releases/derbyshire_businessman_guilty_of_conservation_offence/](http://www.derbyshire.police.uk/News-and-publications/press_releases/derbyshire_businessman_guilty_of_conservation_offence/) accessed 05 May 2015

³⁶Bat Conservation Trust, 'Bat Crime Doesn't Pay' (09 May 2014) http://www.bats.org.uk/news.php/239/bat_crime_doesnat_pay_ accessed 05 May 2015

³⁷Crown Prosecution Service East Midlands http://www.cps.gov.uk/eastmidlands/news_and_

[publications/press_releases/derbyshire_businessman_guilty_of_conservation_offence/](http://www.bats.org.uk/news.php/239/bat_crime_doesnat_pay_) accessed 05 May 2015

³⁸National Bat Conservation Trust, Bat Crime Annual Report 2013

resulted in papers being submitted to prosecutors for a decision as to whether to take a case further. In that instance prosecutors directed against further action on the basis that there was insufficient evidence to secure a conviction.³⁹

Bats and Churches

Historically, bats are known to roost in churches and this has not always been a satisfactory situation for either the church or the bats. In the eighteenth and early nineteenth centuries, a church in Bedfordshire actually placed a bounty of 6d per dozen on the heads of the animals.⁴⁰ In more recent times, concerns regarding bats in churches have been raised in ministerial debates and comprised both positive and negative opinions.

A minister in the Department for Communities and Local Government had stated:

“In fact historic buildings, especially churches, play an important role in helping to protect the conservation status of native bats. In a changing landscape, churches can represent one of the few remaining constant resources for bats, thus giving them a disproportionate significance for the maintenance of bat populations at a favourable conservation status.”

(Lord Ahmad)⁴¹ David Woolley QC has argued that bats are wild animals, and belong in the wild, not in buildings designed and used for purposes other than as bat sanctuaries.⁴² However, this rather misses the point. The reality is that an increasing number of wildlife, including bats, are rapidly losing

their natural habitats in the wild as more land is being built upon. It is no longer unusual to find bats, along with foxes, in our inner cities. As humans encroach ever more upon otherwise natural habitats, (the ‘wild’), unfortunately, the animals that would normally reside there are beginning to move into our habitats and take refuge in buildings regardless of what the design and purposes of those buildings were originally for. Therefore it can only be reasonable to afford such wildlife the appropriate protection in view of the literally changing landscape of our modern world.

In spite of this, recently proposed legislation in the new Bat Habitats Regulation Bill,⁴³ sponsored by Christopher Chope MP, which had the first part of its second reading in January 2015, was aimed at making provision to enhance the protection available for bat habitats in the non-built environment but also to limit the protection for bat habitats in the built environment. This premise was based upon the opinion that in the built environment it was felt that the presence of bats have a significant

adverse impact upon the users of buildings.

This Bill was presented to Parliament on 7 July 2014. The second reading began on 16 January 2015, but was then adjourned. The 2014-2015 session of Parliament prorogued and subsequently this Bill will make no further progress.

What specific implications the new Bat Habitats Bill would have upon bat roosts in traditional places of worship, not to mention other buildings, were not clear. The new proposed Bill had stated that it aimed to ‘*limit the protection for bat habitats in the built environment where the presence of bats has a significant adverse impact upon the users of buildings*’. The key words are: *significant adverse impact*. How significant or adverse any impact is considered could be open to question, dependent upon the users of the buildings and the potential or perceived challenges which may face them by the existence of bats within their building.

The Bill sought to exclude places of worship, such as churches, which would effectively mean that bats would be excluded from the current legislation that protects them, in particular the protection afforded to bats under the Habitats Regulations and the Wildlife and Countryside Act 1981.⁴⁴ Yet an estimated 60% of medieval churches are used by bats at some time during the year.

Understandably, this has caused a dimension of opinion. As natural

“an increasing number of wildlife, including bats, are rapidly losing their natural habitats in the wild as more land is being built upon”

³⁹National Bat Conservation Trust, Bat Crime Annual Report 2013

⁴⁰David Woolley QC, ‘Bats in Belfries (And Naves and Chancels)’, *Ecclesiastical Law Journal*, 17, pp 41-46 doi:10.1017/S0956618X14000891

⁴¹Lord Ahmad of Wimbledon, HL Deb 12 June 2014, col 575

⁴²David Woolley QC, ‘Bats in Belfries (And Naves and Chancels)’, *Ecclesiastical Law Journal*, 17, p 46 doi:10.1017/S0956618X14000891

⁴³Bat Habitats Regulation Bill 2014-2015 (HC Bill No.55) <http://services.parliament.uk/bills/2014-15/bathabitatsregulation/documents.html>

⁴⁴Bat Habitats Regulation Bill 2014-2015 (HC Bill No.55) 2, Limiting the protection for bat habitats in

the built environment: ‘*Notwithstanding the European Communities Act 1972, the provisions of the Habitats Regulations and the Wildlife and Countryside Act 1981 shall not apply to bats or bat roosts located inside a building used for public worship unless it has been established that the presence of such bats or bat roosts has no significant adverse impact upon the users of the building.*’ <http://services.parliament.uk/bills/2014-15/bathabitatsregulation/documents.html>

roosts and foraging sites have been, and are increasingly being, lost, bats are becoming ever more reliant on built structures.

In view of this, issues of bat roosts in religious buildings such as churches had been vigorously highlighted and the subject of much debate.

Positive Incentives and Initiatives

Despite the presence of bats in churches often dividing opinion, there are ways to manage them positively with a view to their wellbeing and conservation while at the same time mitigating any negative impact the bats may place upon the church.⁴⁵

Some churches have responded very positively to their bat ‘problems’ and adapted accordingly, with a variety of novel ideas. Specific case studies have been compiled by the Bat Conservation Trust as part of a partnership project funded by Natural England. The Bats, Churches and Communities project provides service information gaps while supporting the needs of church communities aiming to build partnerships between church communities and bat conservation workers.⁴⁶

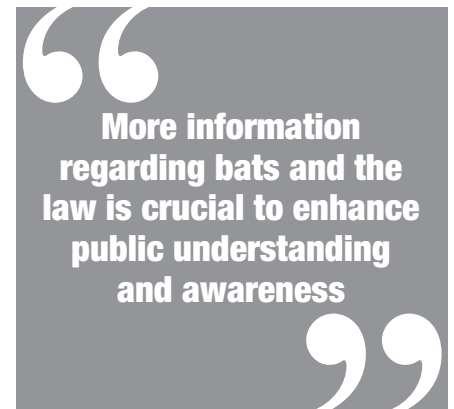
One particular church, Holy Trinity Church of Tattershall in the Diocese of Lincoln, displays information boards about bats near the church entrance. The information boards, entitled ‘Nature Matters’, provides information about the species of bats which roost in the church including

hosting ‘Bat Evenings’. Natural England considered the possibility of assigning Holy Trinity as a Site of Special Scientific Interest (SSSI) due to the importance of the church to the bats which are residing in it. Such accreditation was a positive step and a bonus as not only could it assist the congregation to raise potential funds towards the maintenance of their church building to be more bat-friendly, it also allowed the church to be used as it currently is, i.e. a church, as well as raising public awareness about bats in general.⁴⁷

Conclusion

The Bat Habitats Regulation Act 2015 has now been dropped due to the absence of a motion to carry it over to the next session of Parliament after the General Election.⁴⁸ Its enactment would have seen the current legislative protection of bats seriously undermined with specific risks to bat roosts in buildings such as churches. The failure of this proposed Bill is undoubtedly good news for bats and those who wish to protect and conserve them. Some aspects of legislation pertaining to the protection of bats have been rather vague in recent years, prompting a couple of court cases to attempt to clarify the legal position with specific reference to Local Authorities and their legal responsibilities in relation to bat conservation.

More information regarding bats and the law is crucial to enhance public understanding and awareness of one of Britain’s wildlife species whose



habitats have come under attack in recent years. The positive approach by some church communities concerning their own bat roosts is certainly a step forward in the right direction.

However, bats still remain a threatened species at high risk and the persecution of bats remains one of the six current UK wildlife crime priorities.⁴⁹

⁴⁵ChurchCare, Cathedrals and Church Buildings Division, Archbishops’ Council, ‘Bats and Churches’ <http://www.churchcare.co.uk/about-us/campaigns/our-campaigns/bats>

⁴⁶Bat Conservation Trust, ‘Bats, Churches and Communities’ http://www.bats.org.uk/pages/churches_and_communities.html

⁴⁷Bat Case Study No. 1, Holy Trinity of Tattershall, Diocese of Lincoln, www.bats.org.uk/data/files/Case_study_1_Holy_Trinity_Tattershall.pdf

⁴⁸UK Parliament <http://services.parliament.uk/bills/2014-15/bathabitatsregulation.html>

⁴⁹National Wildlife Crime Unit, <http://www.nwcu.police.uk/what-are-priorities-and-intelligence-requirements/priorities/>

“The Hunting Act 2004 has been a useless piece of legislation and therefore should be repealed.” Discuss.

Natalie Kyneswood

Winner of ALAW’s Student Essay Competition

It is deeply disheartening that, ten years since the ban on hunting with dogs for sport was introduced,¹ the Act’s amendment and repeal has been proposed in Parliament.² Since the ban was imposed, hunting has *adapted* rather than abated³ because law reform stopped short of banning hunting with hounds entirely,⁴ which is why the Act is vulnerable to recrimination and revocation.⁵

Recent plans to amend the Act were motivated by the twin purposes of pest control and bringing the law of England and Wales in line with Scotland.⁶ However, proposals to widen current exemptions to allow for as many dogs ‘as appropriate’ to

enable ‘hunting to be carried out as efficiently as possible’⁷ were political subterfuge to render the ban unenforceable and enable its repeal by the ‘back door’.⁸ Ironically, the Government’s proposed amendment backfired when the SNP announced a subsequent investigation into the operation of the Protection of Wild Mammals (Scotland) Act 2002, with a view to bringing Scottish law in line with England and Wales.⁹ In this respect, the Act may yet prove to be a useful benchmark.

While its rationale for repeal is still to be made publically available¹⁰ the Government will, no doubt, make use of current criticism dogging the Act. Despite being ‘the most

successful wild mammal protection legislation in England and Wales’¹¹ in yielding the highest number of successful prosecutions,¹² the Wooler Review infamously claimed it was ‘business as usual’ for hunters – to the extent that the Act risked

“
hunting has adapted rather than abated³ because law reform stopped short of banning hunting with hounds entirely”

¹ The Hunting Act 2004 came into force on 18 February 2005.

² See House of Commons Hansard (2015) ‘Oral Answers to Questions: Environment, Food and Rural Affairs’ 12 March: Column 393, Question 11 where the Secretary of State was asked, ‘What her policy is on the repeal of the Hunting Act 2004’.

³ Indeed, there are reports that hunts have more subscribers and supporters, see International Fund for Animal Welfare (2012) ‘No Return to Cruelty’ (London: IFAW) p 16. Pro-hunting organisations have also produced a handbook on how to continue hunting under the ban: Countryside Alliance and the Council of Hunting Associations (2005) ‘How to Keep Hunting: Hunting Handbook 2005-2006’ (London: Countryside Alliance).

⁴ Schedule 1 of the Act provides for exemptions to hunting with dogs including: flushing to guns (stalking and flushing out wild mammals with up to two dogs to be shot as soon as possible thereafter); using one dog below ground to flush out a wild mammal to be shot as soon as possible thereafter for the purposes of protecting game/wild birds; use of dogs to flush out a wild mammal from cover to enable a bird of prey to hunt it; use of dogs to recapture wild mammals; use of

up to two dogs to rescue a wild mammal, use of up to two dogs for the observation or study of a wild mammal.

⁵ See Editor (2005) ‘Legislative Comment: The Hunting Act 2004’ *Criminal Law Review*, Mar, 171.

⁶ Truss E (2015) ‘Amendments to Hunting Act Proposed’ 9 July (London: DEFRA).

⁷ See the draft Hunting Act 2004 (Exempt Hunting) (Amendment) Order 2015, which was laid before Parliament under section 14(b) of the Hunting Act 2004 on 9 July 2015 for approval by resolution of each House of Parliament. However, the vote on the draft order was abandoned on 14 July 2015 the day before it was scheduled to go ahead when it became clear that the SNP (as well as Labour) planned to vote against the Government, see Mason R & Brooks L (2015) ‘Sturgeon: SNP Will Keep Foxhunting in Revenge Against Cameron’ *The Guardian* 14 July.

⁸ Conservatives Against Fox Hunting (2015) ‘Open Letter: The Minister For Sport, the President of Conservative Animal Welfare and the Co Chairman of the All Party Group For Animal Welfare Urge Colleagues to Protect the Hunting Ban From Amendment’ 13 July.

⁹ In a letter to the League Against Cruel Sports Scotland the Environment Minister said that the investigation into the legislation would be scrutinised by the Scottish Parliament’s Rural Affairs Committee in the Wildlife Crime Report (see Peterkin T (2015) ‘MSPs Investigate Whether Fox Hunting Ban Flouted’ *The Scotsman* 12 July). There have been no successful prosecutions in Scotland under the 2002 Act.

¹⁰ The Conservative Government has promised Parliament the, ‘opportunity to repeal the hunting Act on a free vote, with a government bill in government time’: Conservative Party Manifesto (2015) ‘Strong Leadership, A Clear Economic Plan, A Brighter, More Secure Future’ (London: Conservative Party) p 25

¹¹ League Against Cruel Sports (2014) ‘The Hunting Act 2004: Ten Years On’ November (Surrey: LACS) p 5.

¹² To date there have been over 430 successful prosecutions under the Act according to huntingact.org. Ministry of Justice data regarding convictions since 2005 to 2013 reveals the Act has the highest number of convictions and conviction rate (65%) of any piece of wildlife legislation, see League Against Cruel Sports (2014) above p 8.

undermining the police, CPS and the rule of law.¹³ Perhaps hunters ‘have little respect for the law’¹⁴ because of the way the Parliament Acts 1911 and 1949 were used to force the Act through Parliament.¹⁵ However, it is more arguable that the substantive law contained within the Act itself has made illegal hunting possible and its implementation problematic.

For example, the Act’s provisions are perceived as complex and ambiguous since illegal hunting with dogs was never defined save for permitted exemptions.¹⁶ Paragraph 1 of Schedule 1, for instance, regarding the stalking and flushing to guns, contains five conditions which must be satisfied and has been described as, ‘so torturous that any person using dogs may be best advised to be accompanied by legal counsel’.¹⁷ Furthermore, the definition of ‘hunt’ in section 1 has been restrictively interpreted to require a wild mammal to have been specifically ‘identified’¹⁸ thereby creating a further element of the offence for prosecutors to establish beyond reasonable doubt.¹⁹ The prosecution must also show the defendant was

actively ‘engaged’ in the pursuit under section 11(2), not merely attending or observing (which, by comparison, is all that is required under section 5(1)(b) to commit a hare coursing offence).²⁰ Nor can there be an offence of *attempting* to hunt; it is a summary only offence and only offences triable as an indictable offence can be charged as attempts under the Criminal Attempts Act 1981 s 1(4).²¹

A further criticism of the Act is that it is possible for illegal hunters to manipulate its exemptions.²² If a defendant raises one of the exclusions in the Act, and the judge or magistrates consider the evidential

“**defendants may claim to have been using packs of dogs to hunt rabbits or rats rather than wild mammals**”

burden met, the prosecution must prove, to the criminal standard, that the exemption does not apply.²³ Therefore, defendants may claim to have been using packs of dogs to hunt rabbits or rats rather than wild mammals²⁴ or allege they accidentally pursued a fox where the hounds have deviated from artificial trails. Indeed, animal welfare groups consider trail hunting to be a false alibi for illegal hunting.²⁵ The falconry exemption is also purportedly abused, with terriermen carrying birds of prey in cages on the backs of quad bikes, enabling the hunt to deploy packs of hounds.²⁶ However, a perusal of the judgements contained on huntingact.org indicates that judges appear to be wise to such attempts to deceive.²⁷

Additionally, the investigation of hunting offences and evidence gathering is notoriously difficult given the nature of the ‘sport’ and reliant on the courage and conviction of hunt monitors²⁸ as well as the effective penetration of hunting commands, practices and culture.²⁹ On occasion, CPS reluctance to

¹³Wooler S (2014) ‘The Independent Review of the Prosecution Activity of the Royal Society for the Prevention of Cruelty to Animals’ 24 September (London: RSPCA) p 109 and 120.

¹⁴League Against Cruel Sports (2014) fn 11, p 12.

¹⁵See the pro-hunting lobbies unsuccessful legal challenge to the procedure used: *R (Jackson) v Attorney General* [2005] UKHL 56; [2006] 1 A.C. 262 (HL). Tyler argues that effective regulation requires fairness in the exercise of legal authority and the process legal authorities use, see Tyler T (2003) ‘Procedural Justice, Legitimacy and the Effective Rule of Law’ 30 *Crime and Justice* 283. The Countryside Alliance still describe the Act as ‘an abuse of parliamentary process’, see Countryside Alliance (2011) ‘The Hunting Act 2004: The Case for Repeal’ (London: Countryside Alliance) Introduction, p 5.

¹⁶Section 1 of the Act provides: “A person commits an offence if he hunts a wild mammal with a dog, unless his hunting is exempt”.

¹⁷Harrop S (2005) ‘The Hunting Act 2004: Cruelty, Countryside, Conservation, Culture or a Class Act?’ 7(3) *Environmental Law Review* 201, p 204.

¹⁸*DPP v Wright*; *R (Scott & Ors) v Taunton Deane Magistrates Court* [2009] EWHC 105 (Admin); [2010] QB 224.

¹⁹For criticism of the judgement in *DPP v Wright*, above, see Wooler S (2014) fn 13, p 110.

²⁰See Lillington S and Davis L (2007) ‘Prosecution Under the Hunting Act’ 5 *Journal of Animal Welfare Law* 7 who argue that the hare is better protected under the Act than the fox.

²¹Crown Prosecution Service (2013) ‘Legal Guidance: The Hunting Act 2004’ (published online) available at http://www.cps.gov.uk/legal/h_to_k/hunting_act/

²²In contrast, where the hunting engaged in was not actually exempt under the Act, there is a statutory defence in Section 4 that the defendant *reasonably believed* that the hunting was exempt.

²³*DPP v Wright*, at fn 18, p 225.

²⁴See Schedule 1, paras 3-4.

²⁵League Against Cruel Sports (2014) fn 11, p 13; Protect Our Wild Animals (2008) ‘The Myth of Accidental Fox Hunting’ (Cardiff: POWA).

²⁶POWA (2015) ‘Build on the Ban: Strengthen the Act’ Reform Not Repeal (published online) p 1 para 10, available at <http://campaigntostrengthenthehuntingact.com/reform-not-repeal.php>; Moss S (2006) ‘The Banned Rode On’ *The Guardian* 7 November; BBC News (2005) ‘Eagles “Used to Beat Hunting Ban”’ 17 September.

²⁷For example, in the prosecution of the Quantock Stag hounds for illegally hunting deer in 2007, District Judge Parsons stated the defendants were, ‘*disingenuous in attempting to deceive me into believing they were exempt hunting... This was a continual act of hunting over a period of two and three quarter hours... the dogs may well have been deployed in relay to use fresh dogs to chase the deer faster and harder, to tire them quicker and to compensate for having to hunt with only two dogs.*’

²⁸See Association of Chief Police Officers’ Guidance to Assistant Chief Constables (Operations) (2005) ‘The Hunting Act 2004: National Tactical Considerations’ 17 January (Sussex: ACPO); Brunstrom C (2009) ‘Association of Chief Police Officer of England, Wales & Northern Ireland: Guidance on Hunting Act Enforcement’ (London: ACPO) Section 4 Enforcement, 4:2; Wooler S (2014) fn 13, p 111.

²⁹For an overview of hunting culture see Marvin G (2007) ‘English Foxhunting: A Prohibited Practice’ 14(3) *International Journal of Cultural Property* 339.

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 ”

prosecute³⁰ has resulted in animal welfare organisations picking up the mantle³¹ (as well as the bill) in controversial private prosecutions³² that hunters have claimed were politically motivated.³³

If an Act of Parliament’s legal effectiveness is assessed by how closely it achieves its policy objectives,³⁴ the Act has been successful in as much as it was intended to be a political compromise:³⁵ hunting with dogs is banned and the moral victory won³⁶ (for the time being) while hunters continue to test the Act to the very extent of its exemptions.³⁷ However, in practice this state of affairs has satisfied neither party.³⁸

However, if an Act’s efficacy is to be judged on its ability to achieve social change and institutional transformation,³⁹ it is perhaps too early to judge the Act’s legacy. Efforts to enforce the law are improving since test cases and legal challenges were resolved and the

police finally received quality training on the Act.⁴⁰ A dedicated website has been set up for law enforcement professionals that lists successful prosecutions and decodes hunting commands. Prosecution practices have been reviewed⁴¹ and commitment renewed to pursuing illegal hunters through public and private prosecutions where necessary⁴² and, moreover, there are sensible proposals to strengthen the law to close the loopholes⁴³ and increase sentencing powers.⁴⁴

The exempt hunting provisions are undoubtedly the Act’s Achilles’ heel, as the draft order to amend the Act in 2015 demonstrated. Nonetheless, to suggest that the Act has been useless or should be repealed is to undermine the gargantuan effort involved in getting the Act onto the

Statute Book⁴⁵ and the costs incurred (both human and financial) of bringing illegal hunters to justice since the Act became law. To date it has survived constitutional,⁴⁶ EC law and human rights challenges⁴⁷ as well as the recently proposed Government amendment. Repeal would be cruel, regressive and unnecessary.

³⁰See the Wooler Review, fn , at pp 39 and 120.

³¹LACS, IFAW and the RSPCA have all brought private prosecutions under the Act. LACS states that it has had to bring prosecutions under the Act to show the CPS that the Act is enforceable, see LACS (2014) fn 13, p 9.

³²For example, in the Heythrop Hunt prosecution brought by the RSPCA, the trial judge commented on whether the £327,000 costs represented value for money for its donors, see Minchin R (2012) ‘David Cameron’s Local Heythrop Hunt Fined for Fox Hunting’ *The Independent* 17 December.

³³Davies C (2012) ‘David Cameron’s Local Hunt Convicted After RSPCA Prosecution’ *The Guardian* 17 December. However the Wooler Review found no evidence of improper or political motivation by the RSPCA Prosecutions Department, see the Wooler S (2014) fn 13, p 109.

³⁴See Sarat A (1985) ‘Legal Effectiveness and Social Studies of Law: On the Unfortunate Persistence of a Research Tradition’ 9(1) *Legal Studies Forum* 23.

³⁵See Dodds L (2015) ‘Ten Years on From the Fox Hunting Ban, Has Anything Really Changed?’ *The Telegraph* 14 July. In *R (Counterside Alliance) v Attorney General* [2007] UKHL 52; [2008] 1 AC 719 (HL) at para 46, Lord Bingham commented on the minimal nature of the ban: ‘If, as has been held, the object of the Act was to eliminate (subject to the specified exemptions) the hunting and killing of wild animals by way of sport, no less far-reaching measure could have achieved that end. As already noted, the

underlying rationale could have been relied on to justify a more comprehensive ban.’

³⁶Cooper J (2007) ‘Violence Animal Cruelty and Human Behaviour’ 171 *JPN* 622.

³⁷Harrop S (2006) ‘Case Comment: Parliamentary Process, Opposition in the House of Lords and the Hunting Act 2004’ *Environmental Law Review* 2006 8(4) 299, p 300.

³⁸House of Commons Briefing Paper (2015) ‘Amending the Hunting Act 2004’ No 6853 13 July (London: House of Commons Library) p 5; Counterside Alliance (2011) fn 15.

³⁹See Seidman A et al (2001) ‘Legislative Drafting for Democratic Social Change: A Manual for Drafters’ (London: Kluwer Law International) p 3 and ch 1.

⁴⁰Publication of guidance on the enforcement of the Act and an ACPO conference on policing the Act was delayed until after various test cases brought under the Act were heard: Royal Society for the Prevention of Cruelty to Animals (2009) ‘Hunting Act 2004 Briefing’ December (London: RSPCA) p 2. Over the past five years LACS has also provided training to the police, see the League Against Cruel Sports (2011) ‘Report: The 2010/2011 Hunting Season’ 18 May (Surrey: LACS) p 16-18.

⁴¹For example, Wooler S (2014) fn 13.

⁴²The RSPCA has set up its Legal Fighting Fund for this purpose.

⁴³For example, the complete prohibition of dogs below ground, introducing a *mens rea* of recklessness to the

offence to prevent the use of the false alibi of trail hunting, the removal of the ‘observation and research’ exemption, which has been abused by stag hunts to avoid prosecution for illegal hunting (see League Against Cruel Sports (2014) fn 11, pp 12-13; International Fund for Animal Welfare (2015) ‘When it Comes to Hunting, It’s Not the Foxes Who are Sly’ 5 May.

⁴⁴A conviction for an offence under the Act can result in a maximum fine of £5000, although hunters typically receive a much smaller fine within the range of £200 to £850 and therefore it has been said that the impact of such prosecutions is limited: see Wooler S (2014) fn 13, p 39. LACS and IFAW advocate the introduction of custodial sentences similar to the Protection of Badgers Act 1992 and Wild Mammals (Protection) Act 1996, see above.

⁴⁵There were a number of unsuccessful attempts at criminalising hunting wild mammals with dogs before a ban was finally introduced. For the legislative background see Plumb A & Marsh D (2013) ‘Beyond Party Discipline: UK Parliamentary Voting on Fox Hunting’ 8(3) *British Politics* 313; Harrop S (2005) ‘The Hunting Act 2004: Cruelty, Counterside, Conservation, Culture or a Class Act?’ 7(3) *Environmental Law Review* 201.

⁴⁶*R (Jackson) v Attorney General* [2005] UKHL 56; [2006] 1 A.C. 262 (HL).

⁴⁷*R (Counterside Alliance) v Attorney General* [2007] UKHL 52; [2008] 1 AC 719 (HL); *Friend v United Kingdom*; *Counterside Alliance v United Kingdom* (2010) 50 EHRR SE6.

Animal Welfare Law and Policy news roundup

Times, 3 December 2015 – dog fighting decision

Dominic Kelly reports that the RSPCA are preparing to mount a legal challenge to the ruling by District Judge Kevin Gray that a fight between a dog and a fox during a hunt cannot be classed as dog fighting for the purposes of section 8 of the Animal Welfare Act.

Belfast Telegraph, 4 November 2015 (Online edition) – Northern Ireland: cruelty cases

Noel McAdam reports that in Northern Ireland, Minister of Justice David Ford and Minister for Agriculture and Rural Development Michelle O'Neill are proposing harsher punishments for people found guilty of animal cruelty. Mrs O'Neill proposes that the maximum prison sentence available be doubled and maximum fines increased from GBP 5,000 to GBP 20,000.

Times, 10 October 2015 – urban fox cull

David Brown reports that Hackney Council in London temporarily halted plans to reintroduce the culling of urban foxes, after receiving a petition signed by thousands of people and a call by the RSPCA to use more humane, non-lethal deterrents, including managing rubbish.

Times, 17 October 2015 – proposed restrictions on lead shot

Report that EU and wildlife charities, including The RSPB and Wildfowl and Wetlands Trust are supporting proposed UK restrictions on lead shot under European proposals to classify it as a toxic substance. The Countryside Alliance warns that a ban could make shooting prohibitively expensive because alternatives to lead cost up to five times as much per cartridge.

Government consultations and policy

Dog breeding and pet sales
The Government has issued a consultation seeking views on proposed changes to the licensing system for animal establishments in England, including the licensing schemes for pet shops, animal boarding, riding schools and dog breeding.

The Government is proposing: 'to introduce new secondary legislation under the Animal Welfare Act 2006. This would introduce a single 'Animal Establishment Licence' for animal boarding establishments, pet shops, riding establishments, and dog breeding.'

We expect these changes to modernise the animal licensing system by reducing the administrative burden on local authorities. They will also simplify the application and inspection process for businesses, as well as maintain and improve existing animal welfare standards.

The proposed changes are intended to strengthen the regulation around the sale of companion animals, as well as tackling the much-publicised problem of irresponsible dog breeders, the subject of a recent symposium hosted by ALAW in 2015, bringing together stakeholder groups to discuss this issue.

Animal Welfare Minister George Eustice said:

'We are a nation of dog lovers but it is crucial that puppies are cared for properly and socialised in the first three months if they are to enjoy healthy and happy lives.'

We are aiming to reform the licensing regime we have so that smaller puppy breeding establishments must abide

“

We are a nation of dog lovers but it is crucial that puppies are cared for properly and socialised in the first three months

”

by the same regulations and licensing rules as bigger breeders so that the worst offenders can be dealt with more quickly.

We are also reviewing other animal related licensed activities such as pet sales to address problems associated with the growing trend for internet sales that can contribute to impulse buying.'

The consultation will run from the 20th December 2015 until the 12th March 2016.

Scottish hunting laws

The Scottish Minister for the Environment has announced that Lord Bonomy will lead a review on Scotland's hunting with dogs legislation. The review will consider whether existing legislation is providing the necessary level of protection for foxes and other wild mammals while allowing for the effective and humane control of these animals. Written evidence will be accepted from 1 February 2016 to 31 March 2016.

Trade in exotic pets

On 9 December 2015 Parliament debated the trade in exotic pets.

A House of Commons Library Debate Pack, published ahead of the debate on the exotic pets can be found at <http://researchbriefings.files.parliament.uk/documents/CDP-2015-0124/CDP-2015-0124.pdf>. The pack sets out the information on the issues with the exotic pet trade; policy; and campaigns by charities and other organisations.

The debate highlighted concerns about the impact of the growing trade in exotic pets on biodiversity, conservation and animal abandonment. Concern was raised that the current legislation does not adequately tackle these problems and

– as with the issues highlighted around irresponsible dog breeding – the debate highlighted problems around enforcement at local authority level.

In response to the issues raised, Animal Welfare Minister George Eustice said:
'There is a need to review all animal establishment licensing. We have a hotchpotch of different laws, most of which date from the 1950s and 1960s, covering a range of options. We are working on a review of that and I hope to go to consultation imminently.'

Confirming that the review would include the Pet Animals Act 1951, he stated 'The review will include that Act because although it has stood the test of time, it was designed in an era when the internet did not exist and it is important to review it to make sure it is clear. The law is already clear in that anyone trading on the internet must have a pet shop licence whether or not they have a pet shop in the high street.'

'The areas we want to cover include enforcement. I am keen to see whether we can make greater use of the UK accreditation scheme so that people who are registered with, for example, the Kennel Club, do not necessarily need a separate local authority licence. We should let local authorities focus on those who are outside a system at the moment. I am also keen to look at resource sharing. It would be possible, for example, for one or two local authorities to develop a specialism in exotic pets and to provide help to other local authorities. There are greater prospects for joint working.'

Specifically on exotics, we are considering making it a requirement of having a licence that care sheets and information sheets are provided

“ anyone trading on the internet must have a pet shop licence whether or not they have a pet shop in the high street ”

to owners before they are allowed to purchase pets. That would be a big step forward because, through the licensing and legislative process, there would be a requirement for that information to be given. We are also considering whether we can have a more risk-based approach.

Next year, we will review the code for primates. I had a delightful visit to Wild Futures in the constituency of my hon. Friend the Member for South East Cornwall (Mrs Murray). It does fantastic work. Our view is that it would already be a clear breach of the Animal Welfare Act 2006 for anyone to have a primate in a domestic setting. There are private keepers who can provide the needs of primates, and I am open to looking further into some of the points she made.

My final point relates to the legislation on importing and exporting. Exotic animals imported into the UK are subject to import controls to prevent the introduction of disease to this country. Imported reptiles and snakes do not need to be accompanied by a health certificate, but a certificate must be completed by the competent authority of the exporting country for exotic birds. What is crucial is that all animals imported to the UK from a third country must be presented at a border inspection post and subjected to a veterinary and documentary check by the Animal and Plant Health Agency. Additional controls for many exotic species are provided through CITES—the convention on international trade in endangered species and include around 35,000 species.'

A full report of the debate can be found on Hansard, 9 Dec 2015: Column 337WH

Wildlife Crime Penalties Review Group: Report

In November 2015 the Scottish Government published 'The Wildlife Crime Penalties Review Group' report, which sets out a number of recommendations including: increasing the maximum penalties available; greater use of alternative penalties such as forfeiture; systematic use of impact statements in court; new sentencing guidelines; and consolidation of wildlife laws. The report can be found at <http://www.gov.scot/Resource/0048/00489228.pdf>

Law Commission report on the reform of wildlife law

The Law Commission report (Law Com 362) was published in November 2015. The report makes recommendations for the reform of wildlife law in England and Wales. The report recommends that the existing legislation regulating wildlife should be replaced by a single statute which will manage the strategic, long-term management of wild animals, birds and plants and their habitats.

Volume 1 contains the report. Volume 2 contains a draft wildlife bill. Both can be accessed at:

- http://www.lawcom.gov.uk/wp-content/uploads/2015/11/lc362_wildlife_vol-1.pdf
- http://www.lawcom.gov.uk/wp-content/uploads/2015/11/lc362_wildlife_vol-2.pdf

Consultation on proposed changes to the Control of Trade in Endangered Species Regulations: A summary of responses and the government reply

In September 2015 the Department for Environment, Food and Rural Affairs published a report containing

a summary of responses to its consultation on proposed changes to the Control of Trade in Endangered Species Regulations and the Government's reply to the main issues and next steps.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461543/cotes-consult-sum-resp.pdf

Farm Animal Welfare Committee reports

In October 2015 the Farm Animal Welfare Committee (FAWC) published its opinion on free farrowing systems and the welfare of sows and piglets. The report identifies the welfare issues faced by sows and their piglets in farrowing crates and in free farrowing systems. The report makes a number of recommendations for Government consideration.

Beak Trimming Action Group Review

The Beak Trimming Action Group (BTAG) was convened in 2002, following legislation setting a timetable for a ban on the routine beak trimming of laying hens to come into force on 1st January 2011. However, there had not been sufficient progress in addressing the problems of injuries caused by pecking and following recommendations by the Farm Animal Welfare Council, the *Mutilations (Permitted Procedures) (England) (Amendment) Regulations 2010* removed the ban, but restricted routine beak trimming to birds under 10 days old, using infra-red technology only.

BTAG is made up of 'representatives from the poultry industry, animal welfare NGOs, veterinary and scientific specialists, retailers, the Farm Animal Welfare Committee, Defra officials and devolved administrations.'

“
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wild animals
”

This recent report sets out the group's recommendations about the ways in which laying hens might be managed so that trimming of their beaks is not necessary.

Case Summaries

ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS v WEBB & ANOR [2015] EWHC 3802 (Admin)

In this case the RSPCA appealed by way of case stated against a decision that it had filed a complaint out of time. On 9 February 2010 the RSPCA seized a number of cats and kittens from the respondents' home pursuant to the *Animal Welfare Act 2006* s.18 (5) on the basis that the animals were suffering or likely to suffer if their circumstances did not change. On 10 August the RSPCA filed a complaint seeking authority under s.20 (1)(b), s.20 (1)(d) and s.20(1)(e) to dispose of the cats by re-homing or by having them destroyed.

The Crown Court found that the RSPCA had failed to file the complaint within the six-month time limit prescribed by the Magistrates' Courts Act 1980 s.127, as the animals were seized on 9 February and therefore the filing of the complaint on 10 August was one day late.

The RSPCA argued that the seizure of animals under s.18 (5) did not automatically trigger commencement of the time when the matter of complaint arose and relied upon a later date when it obtained a vets report that revealed their underlying condition.

The court agreed that any seizure of animals under s.18 (5) did not automatically constitute commencement of the time when the matter of complaint arose.

However, on the facts of the case, it was held that the judge was entitled to conclude that the complaint had arisen on 9 February so that time had started running for the purposes of s.127 on that date.

R (on the application of RICHARD MCMORN) (Claimant) v NATURAL ENGLAND (Defendant) & DEPARTMENT FOR THE ENVIRONMENT FOOD & RURAL AFFAIRS (Interested Party) [2015] EWHC 3297 (Admin)

The claimant, a gamekeeper, applied for judicial review of a decision by the defendant (Natural England) refusing to grant him a licence to kill a small number of common buzzards.

Buzzards are protected under the Wildlife and Countryside Act 1981 and cannot lawfully be killed or captured without a licence issued by the defendant, unless their control is necessary to prevent serious damage to livestock, there being no other satisfactory solution.

The claimant managed pheasant shoots in relation to which he released poults, young pheasants, which became prey for buzzards. The claimant applied for licences to kill a small number of buzzards on the basis that they were doing serious damage to his poults by killing and disturbing them, making his pheasant-shooting business unviable. The applications were refused.

The court held that the defendant had an undisclosed policy to treat buzzard or raptor applications differently from those relating to

other species taking into account the adverse public opinion which the grant of a licence for the killing of buzzards, to prevent serious damage to a pheasant shoot, would cause.

It had been unlawful for the defendant to reach its decision on the claimant's application on the basis of its undisclosed policy. In reaching its decision, the defendant had unlawfully taken account of public opinion, which was an irrelevant consideration. The defendant's decision had been unreasonable. The Claimant's application was granted.

R (on the application of CRUELTY FREE INTERNATIONAL (FORMERLY BUAV)) (Claimant) v SECRETARY OF STATE FOR THE HOME DEPARTMENT (Defendant) & IMPERIAL COLLEGE LONDON (Interested Party) [2015] EWHC 3631 (Admin)

The court rejected an application for judicial review of the defendant secretary of state's decision not to suspend or revoke the interested party's scientific experimentation licence and/or to await the final report of the inspector before taking steps.

One of CFI's concerns was that the decision to impose sanctions before the publication of the report was motivated in part by a concern to avoid a perception that the report influenced the decision.

The court held that it was not necessary for the minister to wait for a formal, final report from an inspector on a licence-holder's compliance before taking any steps against the licence-holder, if sufficient information had already been gathered and passed on so as to enable a decision to be taken. In this case, the minister was equipped with all the relevant information to enable him to take a properly and sufficiently informed decision and with the benefit of proper input from the expert inspectors. The minister also had unfettered power to act before it was finalised.

In the course of the hearing 'with a degree of judicial encouragement' the parties reached an agreement on an additional ground about a statement which CFI claimed was a mistake or an ambiguous statement appearing on the face of the published Animal In Science Committee (ASC) report, which suggested that the inspectors had investigated 180 allegations by Cruelty Free International of breaches of the law by researchers and found only five to be established. In fact, the inspectors only formally investigated 18 allegations, finding five sets proven, as well as wide-ranging general deficiencies at Imperial College.

Michelle Thew, Cruelty Free International Chief Executive, comments on the decision:

"It was always perplexing why the Home Office steadfastly refused to correct an obvious error which they could see was causing us damage. We remain very concerned about lenient penalties for licence infringements and will continue to pursue this. It sends completely the wrong message to animal researchers, and the public."

Buzzards are protected under the Wildlife and Countryside Act 1981 and cannot lawfully be killed or captured without a licence

Wild Animals as Pets: The case for a review of the Pet Animals Act 1951

Anna Wade^{1*} & Chris Draper^{1,2}

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Humans have a complex and long-standing history and relationship with animals. A small minority of the world's animal species have been selectively bred by humans over multiple generations across millennia for specific physical and/or behavioural traits. This process is known as domestication and involves changes to the genetic make-up of the animal. These domesticated species are commonly kept as livestock and companion animals. While non-domesticated (or "wild") animals¹ have been kept as companion animals in small numbers throughout history, it is apparent that in recent decades there has been an

increase and diversification in the number and range of species kept, and this has resulted in a rise in the keeping and selling of wild animals as pets in Great Britain.

This increased diversity may cater to public demand for increasingly exotic and unique pets. Nonetheless, it is the position of the Born Free Foundation and other animal protection organisations that the knowledge of how to meet the needs of wild animals kept as pets is frequently lacking, and it is often not possible to meet these needs in a domestic environment. It is important to remember that whilst there is a relatively thorough and comprehensive understanding of the health of more commonly kept domestic animals; even then knowledge is incomplete, and animals often suffer as a result.

It is currently legal to keep any species of animal as a companion (henceforth "pet") in Great Britain, provided that the requirements of national and international wildlife laws, and legislation relating to

animal welfare and public protection, are met.

There are various pieces of primary legislation that relate to the keeping of animals as pets in the UK; The Animal Welfare Act 2006² in England and Wales, and the Animal Health and Welfare (Scotland) Act 2006,³ make it an offence to cause unnecessary suffering to a protected vertebrate animal and mandate a duty of care to meet the welfare needs of protected animals to the extent required by good practice (s. 9(1)); The Wildlife and Countryside Act 1981⁴ protects free-living native wild animals, plants and the countryside; and the Dangerous Wild Animals Act 1976⁵ which aims to protect the public from dangers posed by the private keeping of any wild animal belonging to species categorised as "dangerous", as outlined in its Schedules.

While the Control of Trade in Endangered Species Regulations (COTES)⁶ implementing the EU Wildlife Trade Regulations (EC) 338/97⁷ aim to ensure that trade in wild animals does not threaten the

“A small minority of the world's animal species have been selectively bred by humans over multiple generations across millennia”

¹ Defined in s.21 of the Zoo Licensing Act 1981 as: "Animals not normally domesticated in Great Britain".

² Animal Welfare Act 2006. Available at <http://www.legislation.gov.uk/ukpga/2006/45/contents>

³ Animal Health and Welfare (Scotland) Act 2006. Available online at <http://www.legislation.gov.uk/asp/2006/11/contents>

⁴ Wildlife and Countryside Act 1981. Available at <http://www.legislation.gov.uk/ukpga/1981/69>

⁵ Dangerous Wild Animals 1976. Available at <http://www.legislation.gov.uk/ukpga/1976/38>

⁶ Control of Trade in Endangered Species (Enforcement) Regulations (1997) <http://www.legislation.gov.uk/uksi/1997/1372/contents/made>

⁷ European Council Regulation 338/97 (and subsequent amendments). Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31997R0338>

survival of the species, the primary legislation relating to the sale of animals as pets is the Pet Animals Act 1951.⁸ This article presents evidence of the scale of the trade in wild animals as pets in Great Britain, and the results of a survey examining the application and enforcement of the Pet Animals Act 1951 by local government authorities, with a view to assessing whether the legislation is still fit for purpose 64 years after it was enacted. It argues that, in view of the increased variety of species in trade and the increasing tendency for trade to be conducted online, there is a need for an urgent review of the legislation and improved consistency of its enforcement by local authorities.

Pet Animals Act 1951

The Pet Animals Act 1951 (“the Act”) was implemented in order to “*regulate the sale of pet animals*” in pet shops (as defined in s.7(1) of the Act) in England, Scotland and Wales by local authorities. The Act makes it an offence to carry out a business of selling animals as pets without a

licence. The local authority may inspect the pet shop - although the frequency of inspections is not specified within the Act - and must be satisfied that basic provisions outlined in s.1(3) which include “*suitable accommodation*” and the adequate supply of “*suitable food and drink*” are met. The local authority may attach conditions to the licence and may refuse a licence if the terms or conditions are not complied with. S.2 of the Act makes it an offence to “*sell animals as pets in any part of a street, road or public place, or at a stall*”.

Enforcement of the Act is the responsibility of local authorities, namely “*the council of any county district, the council of a borough or the Common Council of the City of London and in Scotland means a council constituted under section 2 of the Local Government etc (Scotland Act) 1994*”.⁹ Departments responsible for pet shop licensing may differ between local authorities. Depending on the structure and resources of the local authority, responsibility for dealing with applications and inspecting premises to be licensed under the Act may be designated to Environmental Health, Licensing Departments or equivalents. Designated inspectors may range from Animal Welfare Officers to Food Safety Officers.¹⁰

Section 1.3 of the Act includes provision for the Local Authority to attach conditions to the licence in order to ensure that the basic provisions outlined in s.1(3) are met.

“**Departments responsible for pet shop licensing may differ between local authorities**”

As part of a working group, in 1998 the Local Government Association produced model standards for pet shop licence conditions, which supplements the Act with recommendations for basic minimum standards.¹¹ The model conditions were revised by the Chartered Institute of Environmental Health (CIEH) in 2013 with the aim of encouraging conditions to be attached to pet shop licences and to try to promote consistency across local authorities.¹² The conditions are not a statutory requirement and therefore do not have to be enforced. The Act gives local authorities the power to attach any appropriate conditions, which includes a schedule listing the animals the pet shop is permitted to keep.¹³

The model conditions have been criticised for being too broad to represent the range of animal species for sale in licensed pet shops and for not providing adequately for the welfare of the animals.¹⁴ In some cases it has also been suggested that guidance on certain husbandry conditions might even contravene the Wildlife and Countryside Act 1981.¹⁵ Model conditions may not have direct statutory implications, but if not complied with, they can be used as evidence of a lack of compliance with legislation.

“**It is currently legal to keep any species of animal as a companion (henceforth “pet”) in Great Britain**”

⁸ Pet Animals Act 1951. Available at <http://www.legislation.gov.uk/ukpga/Geo6/14-15/35>

⁹ Pet Animals Act 1951. Available online at <http://www.legislation.gov.uk/ukpga/Geo6/14-15/35>

¹⁰ Ornamental Aquatic Trade Association (2014). Freedom of Information Request on Pet Shop Licensing.

¹¹ Local Government Association (1998). model standards for pet shop licence conditions.

¹² Chartered Institute of Environmental Health (2013) Model Conditions for Pet Vending Licensing.

¹³ Local Government Association. Personal Communication, 12th March 2015.

¹⁴ Warwick, C, Jessop, M, Steedman, C, Toland, E, Arena, PC, Glendell, G & Smith, K (2014) Model Conditions for Pet Vending Licensing, 2013. Chartered Institute for Environmental Health, 32pp. AWSELVA Journal 18(1): 3-7

¹⁵ Warwick, C, Jessop, M, Steedman, C, Toland, E, Arena, PC, Glendell, G & Smith, K (2014) Model Conditions for Pet Vending Licensing, 2013. Chartered Institute for Environmental Health, 32pp. AWSELVA Journal 18(1): 3-7

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**Of significant concern
is the range of species
available from high
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Survey of pet shops licensed under the Pet Animals Act 1951

In April 2014, the Born Free Foundation sent a request for information by email to 377 local authorities in Great Britain (323 England, 30 Scotland and 24 Wales). The request was made under the Freedom of Information Act 2000¹⁶ and Freedom of Information (Scotland) Act 2002¹⁷ and asked for details of all premises licensed under the Act within the local authority's constituency. Each authority was asked to provide the name and address of each licensed premises and to identify which, if any, of the pet shops were licensed to sell non-domesticated species. Local authorities were also asked to return a copy of the list of non-domesticated mammal, bird, reptile and amphibian species that pet shops are licensed to sell.

Responses were received from 98.7% of the 377 local authorities (319 in England, 31 in Scotland and 22 in Wales). A total of 2,924 premises were reported as licensed under the Act. 57% of these premises were reported as selling one or more non-domesticated species. Animals listed on licences included: crocodylians, venomous snakes, venomous lizards, meerkats and primates, and included species listed in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)¹⁸ and the associated EU Wildlife Trade Regulations. Of significant concern is the range of species available from high street pet shops. The survey identified a total of 262 non-

domesticated animals to species level (41 amphibian, 25 bird, 28 mammal and 168 reptile). Only 2% of local authorities provided the scientific binomial (the Latin name) for any of the species that shops were licensed to sell. In many cases, it was difficult to identify the exact species of animal on the basis of the information provided by the local authority. For example, for 30% of the 1,229 pet shops selling reptiles no further information on the genus or species of reptile being offered for sale was provided.

The survey revealed that, on average, local authorities each licence 8 pet shops, although nearly 10% of the local authorities were responsible for 15 or more pet shops, and one reported 40.

The survey highlighted a number of concerns regarding the application of the Act by local authorities.

It was apparent that many local authorities did not have specific animal-related knowledge and were unable to identify non-domesticated or wild animals, despite being provided with guidance. Of the 38 local authorities that stated none of the pet shops they licensed sold wild species, 65% of these were later identified as licensing a pet shop that sold one or more wild species. In one specific case, the local authority

stated that none of the pet shops in their constituency sold wild animals, yet it licensed a pet shop that sold various venomous snakes. Some local authorities showed a basic lack of animal-related knowledge including identifying tortoises as amphibians or fish. These inaccuracies were not only found in responses prepared by Freedom of Information Officers or equivalents, but in some cases also appeared on copies of the official pet shop licence schedule.

It has been suggested that more than 3,500 species and subspecies of reptile and amphibians have been legally traded in the UK over the past ten years.¹⁹ Local authorities lack the expertise to assess whether the complex social, physical and behavioural needs of each individual species are being met.

Online trade in wild animals as pets
An investigation into the online trade in wild animals was undertaken recently by the Blue Cross and the Born Free Foundation. Its aim was to try and get a better understanding of what animals were available to buy

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¹⁶Freedom of Information Act 2000. Available online at <http://www.legislation.gov.uk/ukpga/2000/36/introduction?view=extent>

¹⁷Freedom of Information (Scotland) Act 2002. Available online at <http://www.legislation.gov.uk/asp/2002/13/contents>

¹⁸Appendices I, II and III. Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Available online at <https://www.cites.org/eng/app/appendices.php> (accessed on 7/12/2015)

¹⁹Reptile and Exotic Pet Trade Association (2014) Overview of the reptile trade in the UK. Available online at [http://www.repta.org/Overview-of-the-reptile-trade-\(PDF\)-2014.pdf](http://www.repta.org/Overview-of-the-reptile-trade-(PDF)-2014.pdf)

online, identify problems with the sale of wild animals over the internet, and assess whether the Act is being applied to online trade. When the Act was implemented in the 1950s, the sale of animals over the internet could not have been envisaged and so it stands to reason that no specific mention of online sales was included. Despite this, the Act is clear that all businesses selling animals as pets require a licence and the Act therefore applies to those businesses selling pets online. This was confirmed in a response to an enquiry by the Environment, Food and Rural Affairs Select Committee into the keeping of primates as pets in 2014, in which the Government stated that online businesses ‘*must have premises where the animals are held and therefore should be licensed and subject to inspection*’.²⁰

A sample of six online classified ad sites were examined over a period of three months between August – October 2014. It was found that, at any one moment across these six sites alone, there may be as many as 25,000 adverts offering wild animals for sale.

A random sample of 1,796 unique adverts identified as selling a wild animal were analysed during the study. The analysis revealed at least 125 different types (species, hybrids etc) of wild animal (53 types of reptiles, 37 types of wild bird, 28 types of wild mammal and seven types of amphibians) being advertised for purchase online.

Similar difficulties arose in this investigation as in the survey of licensed pet shops. In their online

advertisements, sellers often provided insufficient information to enable identification of the species of animal for sale. For example, 13 adverts offered ‘various’ reptiles and birds without any further species information.

One seller based outside of the UK was advertising chameleons for sale and collection from a pet market in the Netherlands. The sale of animals at markets (which encompasses pet markets) is prohibited by s.2 of the Act in Great Britain; however there is nothing to stop a buyer from importing an animal from pet markets in other EU countries.

Local authorities reported 89 private addresses licensed under the Act in England, Scotland and Wales. Even if each of these premises was selling wild animals, it is highly unlikely they would account for the vast numbers wild animals advertised for sale online. It therefore seems likely that the majority of online sellers are not licensed under the Act.

Regular online sellers are likely to be invisible to local authorities who, with limited resources, are unable to monitor and inspect such ‘businesses’.

Discussion

The survey of licensed pet shops represents an up-to-date review of the scale of the sale of non-domesticated species in licensed pet shops in Great Britain. The results show that wild animals are sold on a large scale in pet shops across Britain. Information on the range of species offered for sale is at best only partial,

highlighting the lack of expertise available to local authorities, and the urgent need for greater specificity on licence Schedules and within the local authority to reflect the species a pet shop is licensed to keep. The results also suggest that the Act fails to protect animals being sold as local authorities do not have the knowledge or resources to enforce the Act correctly, particularly in light of the range of species covered.

If local authorities are responsible for the implementation of the Act, it is important that licensing officers have access to the necessary training in order to enable them to fulfil their obligations under the Act. These include inspections of facilities to ensure they meet the requirements set out in the pet shop licence conditions, and the ability to assess whether the seller is capable of meeting the animal welfare needs of the species they are selling.

Licensed pet shops should be required to provide the local authority with a species-specific list of animals they sell. Online sellers should, at the very least, provide the common name for the species advertised to protect the

“ Licensed pet shops should be required to provide the local authority with a species-specific list of animals they sell ”

²⁰Primates as pets: Government response to the Committee’s Eleventh Report of Session 2013-2014 – Environment, Food and Rural Affairs Committee (2014). Available online at <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmenvfru/656/656.pdf>

“wild animals are being traded in large numbers and there is evidence that online pet sellers are operating outside of the legislation”

criteria that must be met in order for premises to be licensed under the Act. Our research has highlighted a lack of knowledge and strongly suggests that some businesses are operating in contravention of the Act. The legislation is clearly failing to deliver its aim of regulating the sale of pets, both in pet shops and online.

buyer and ensure they are able to provide a level of welfare of the species for sale. All advertisers of animals for sale should be required to provide details of any permits or licenses in their advertising, in order to demonstrate that the requirements of international and national legislation in relation to dangerous or endangered species has been complied with, and that the animals advertised were legally obtained.

Finally licensed pet shops should display their licence with the conditions and schedule as is demanded by s.4(8) of the Zoo Licensing Act 1981.²¹ This should also apply to online sellers.

The investigation into the online trade in wild animals provides further evidence that wild animals are being traded in large numbers and there is evidence that online pet sellers are operating outside of the legislation and associated licensing requirements.

The recent research presented in this article highlights the urgent need for a review of the Pet Animals Act 1951. This Act fails to reflect the large and increasing scale of trade in wild animals through licensed pet shops and over the Internet. Greater clarity is also needed in relation to the

²¹The Zoo Licensing Act 1981 (Amendment) (England and Wales) Regulations 2002. Available online at <http://www.legislation.gov.uk/ukpga/1981/37>

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What is ALAW?

ALAW is an organisation of lawyers interested in animal protection law. We see our role as pioneering a better legal framework for animals and ensuring that the existing law is applied properly.

We believe that lawyers should, as well as interpreting laws, ask questions about the philosophy underlying them: they have always played a central role in law reform. There is also a real need to educate professionals and the public alike about the law.

Animal cruelty does not, of course, recognise national boundaries and we are building up a network of lawyers who are interested in animal protection in many different countries.

What ALAW will do?

ALAW will:

- take part in consultations and monitor developments in Parliament and in European and other relevant international organisations,
- highlight areas of animal welfare law in need of reform,
- disseminate information about animal welfare law, including through articles, conferences, training and encouraging the establishment of tertiary courses,
- through its members provide advice to NGOs and take appropriate test cases,
- provide support and information exchange for lawyers engaged in animal protection law.

Who can be a member?

Solicitors, trainee solicitors, legal executives, barristers, pupil barristers, judges and legal academics are eligible to join and will receive regular issues of the *Journal of Animal Welfare Law*. Other interested parties can become subscribers to the *Journal* and receive information about conferences and training courses.

How can you help?

Apart from animal protection law itself, expertise in many other areas is important - for example, public law, civil liberties, environmental health, planning law, freedom of information, civil litigation, media law, company law and charity law.

In addition, lawyers have well-developed general skills such as advocacy and drafting which are useful in many ways. Help with training and contributions to the *Journal* are also welcome.