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# *The Hunting Bill*

[Bill 10 of 2002-03]

The Government pledged in their 2001 election manifesto to bring the debate on hunting with dogs to a conclusion. Early in 2002 a consultation process was initiated that culminated in three days of hearings in Portcullis House. Based on this consultation process and the evidence presented at the hearings the Government has brought forward a Bill that would regulate the use of dogs in hunting wild mammals.

The provisions of this Bill would extend to England and Wales.

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## **Summary of main points**

The issue of hunting wild mammals with dogs has been a prominent issue among Labour backbenchers throughout the late 1990s. After several Private Members' Bills failed to prohibit hunting with dogs the Government finally introduced a Bill in 2000-2001 that gave the Commons and Lords three options. Though the Bill fell due to the announcement of the 2001 General Election the differences between the Commons and the Lords with respect to hunting with dogs was starkly highlighted.

The Government was elected in 2001 with a manifesto commitment to resolve the issue of hunting with dogs and allowed free votes in both Houses of Parliament on the issue before committing itself to a consultation process that resulted in the current Bill.

The Bill would appear to be a compromise between the pro and anti-hunting factions, prohibiting deer hunting and hare coursing, introducing certain exempt practices such as hunting rats and rabbits while subjecting everything else to tests of utility and least suffering. The Bill has drawn criticism from both pro and anti-hunting factions.

One of the major topics of consideration is that MPs, who will be given a free vote on the legislation, may amend the Bill to one that prohibits hunting and is likely to be rejected by the Lords. There is some pressure that the Parliament Act be used in those circumstances to enforce the will of the Commons.

This paper will provide an overview of the Parliamentary debate of the 2000-2001 Hunting Bill and related comment, will address the current Bill and examine the potential application of the Parliament Act to the issue.



## CONTENTS

<b>I</b>	<b>Introduction</b>	<b>7</b>
<b>II</b>	<b>Parliamentary Comment</b>	<b>9</b>
	<b>A. The <i>Hunting Bill</i> 2000-01</b>	<b>10</b>
	1. Second Reading	10
	2. Committee of the Whole House	12
	3. Standing Committee Consideration	20
	4. Report Stage and Third Reading	34
	5. Debates in the House of Lords	40
	<b>B. Motions and Statements since the General Election</b>	<b>50</b>
<b>III</b>	<b>Comment prior to introduction of the Current Bill</b>	<b>52</b>
<b>IV</b>	<b>The <i>Hunting Bill</i> 2002-03</b>	<b>58</b>
	<b>A. Consideration of the Bill</b>	<b>58</b>
	<b>B. Comment on the Bill</b>	<b>63</b>
<b>V</b>	<b>The Parliament Acts and the <i>Hunting Bill</i> 2002/03</b>	<b>67</b>
	<b>A. The Hunting Bill</b>	<b>67</b>
	<b>B. Application and procedure</b>	<b>68</b>
	1. General	69
	2. The text of a bill	70
	3. Timescale	70
	4. Rejection of a bill	71
	5. Certification	71
	<b>Appendix 1 - Public opinion towards hunting</b>	<b>73</b>
	<b>Appendix 2 - Statistical Profile of Hunting in England and Wales</b>	<b>79</b>



## I Introduction

The role of hunting in the lifestyle of the rural community is widely believed to be important to the social, cultural, environmental and economic wellbeing of that community. The role of hunting in the sustainable management of fox, hare, deer and mink populations is the central argument advanced by hunting's proponents.

Animal welfare groups that believe the use of dogs to chase wild animals to be cruel advance this aspect of the pastime to lobby against the continued acceptance of hunting with dogs under UK law.

The debate about hunting is played out in organisations outside Parliament. The Royal Society for the Prevention of Cruelty to Animals (RSPCA) and the National Trust have both conducted quite public debates about their organisational stance.

The Royal Society for the Prevention of Cruelty to Animals (RSPCA) has faced several attempts to change its stance through dedicated efforts to elect pro-hunting candidates to its ruling council. The society recently sent a warning to their members about the possibility of pro-hunt candidates:

The letter signed by council chairman, Michael Tomlinson, says that the charity is 'at risk of infiltration by people that do not have the best interests of animal welfare at heart' but it does not reveal their identities.<sup>1</sup>

The article goes on to name some of the candidates with pro-hunt leanings, highlighting the increasing conflict between the society and those who hunt. Some long standing supporters of the RSPCA (including those who are pro-hunting) feel there are more pressing animal welfare initiatives for the Society to deal with. This is an important conflict as the RSPCA, as the most prominent animal welfare organisation in the UK, stating that hunting is contrary to fox welfare lends substantial credence to the cruelty argument. The RSPCA campaign against foxhunting in a coalition with the League Against Cruel Sports and the International Fund for Animal Welfare called the Campaign for the Protection of Hunted Animals.

Although the National Trust does not campaign on hunting, there have been recent reports that the Trust is seeking to change its voting structure due to the rows about hunting:

A one person one vote system is under consideration in a full review of the charity's constitution to bring greater democracy.

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<sup>1</sup> "Pro-hunt lobby is plotting to 'hijack' RSPCA", *Observer*, 26 May 2002

The move follows criticism by hunt supporters of the current voting system under which the trust chairman uses proxy votes to place favoured candidates on to the 52 member ruling body.<sup>2</sup>

The chairman-designate of the Trust, Sir William Proby, has been reported as saying that he would not allow similar rows over hunting to affect the reputation and work of the organisation:

[He] called on the government, however, to get on with a decision on hunting. “I don’t hunt personally and it is something the Trust should definitely not be majoring on. We should just obey the law; but it is important that the Government decides the issue.”<sup>3</sup>

Pro-hunting groups believe that a ban on hunting would be an infringement of civil liberties.<sup>4</sup> The Conservative Party has pledged that a future Conservative Government would make Government time available for the reversal of a hunting ban:

“Our commitment is to give an equivalent amount of time as is being given now,” Mr Duncan Smith said.

However, he refused to be drawn on when in a new Parliament time would be found to reverse the ban.<sup>5</sup>

In an article in the *Daily Telegraph*, Oliver Letwin, the shadow Home Secretary, examines the issue of law and liberty. He makes the claim for foxhunting being a liberty issue:

The surprising thing about this debate [on foxhunting] is not that it occurs, or that many MPs and commentators advance arguments of one kind or another for banning the sport, but rather that, in advocating this measure, its proponents seldom acknowledged the force of the opposing argument from liberty, almost as if the voice of liberty were to be excluded from the conversation of politics.<sup>6</sup>

This argument is taken further in an article in the *Times*:

...what is at stake in debates like this is far more important than the future of foxes or even of huntsmen. It is the future of freedom – the freedom to do and [...] to enjoy doing that of which others disapprove, without incurring the official frown of the Crown.<sup>7</sup>

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<sup>2</sup> “National Trust to review vote rules after hunting row”, *The Times*, 8 June 2002

<sup>3</sup> “End hunt row now National Trust’s new chief pleads”, *The Times*, 22 June 2002

<sup>4</sup> “Hunting ban will infringe civil liberties, say Tories”, *Independent*, 13 July 1999

<sup>5</sup> “Tories pledge to scrap hunt ban”, *Daily Telegraph*, 30 August 2002

<sup>6</sup> “Every new law should have to pass the liberty test”, *Daily Telegraph*, 2 July 2002

<sup>7</sup> “The hunting debate is about much more than foxes – it is about our freedom”, *Times*, 9 September 2002

The prohibition of foxhunting has been the subject of serious Parliamentary debate since Labour won the 1997 General Election with a commitment in its manifesto to providing a vote on the issue. Indeed, as pointed out by Lord Falconer during the House of Lords debate on the previous Hunting Bill:

...since 1979, 22 Private Members' Bills have been promoted in another place to ban hunting. Since the election, 100,000 letters have been received by the Home Secretary in relation to the hunting issue, some for and some against abolition. In those circumstances there cannot be any doubt that it is a significantly controversial issue in this country.<sup>8</sup>

The topic of foxhunting has been dealt with in several Library Papers in the past, which are all available on the Parliamentary Intranet – the most recent paper is also available on the Parliament website.

Research Paper 95/26    *Hunting - Wild Mammals (Protection) Bill*<sup>9</sup>  
 Research Paper 96/13    *Wild Mammals (Protection) Bill*<sup>10</sup>  
 Research Paper 97/122    *The Wild Mammals (Hunting with Dogs) Bill*<sup>11</sup>  
 Research Paper 00/96    *The Hunting Bill*<sup>12</sup>

This paper will not cover the detailed information already available therein. Instead this paper will focus on comment made during Parliamentary debate of the Hunting Bill 2000-01 and the Portcullis House hearings initiated by DEFRA under Alun Michael, the Minister for Rural Affairs, prior to the publication of the current Bill.

## II Parliamentary Comment

After the failure of several Private Members' Bills there was pressure on the Government to introduce a Bill in Government time to settle the matter of hunting with dogs. The Government initially introduced a multiple choice Bill providing Members of Parliament with a choice of the three main options: regulation, supervision and prohibition. The Commons chose prohibition while the Lords chose supervision. The difference in opinion was not resolved as the Bill fell when the 2001 General Election was called.

The same choice was presented to both Houses in 2002 in the form of a Parliamentary motion. This time the Lords voted for regulation, the 'Middle Way' option while the Commons remained firm in voting for prohibition. Alun Michael announced that the

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<sup>8</sup> HL Deb 12 March 2001 c672

<sup>9</sup> <http://hcl1.hclibrary.parliament.uk/rp95/rp95-026.pdf>

<sup>10</sup> <http://hcl1.hclibrary.parliament.uk/rp96/rp96-013.pdf>

<sup>11</sup> <http://hcl1.hclibrary.parliament.uk/rp97/rp97-122.pdf>

<sup>12</sup> <http://www.parliament.uk/commons/lib/research/rp2000/rp00-096.pdf>

Government would conduct hearings which would once again present evidence on the subject before hopefully bringing forward legislation to settle the matter.

The following text presents the debates on the multiple choice bill and the subsequent motions.

## **A. The *Hunting Bill* 2000-01**

### **1. Second Reading**

The second reading of the Hunting Bill took place on 20 December 2000<sup>13</sup> and was introduced by the Home Secretary (Mr Jack Straw).

There was some initial difficulty in the debate as the Bill was not, as yet, proposing any specific measure but providing a choice of three options. In the absence of a definite proposal there was some difficulty in speaking for or against the Bill.

Some Members were against the Bill receiving a second reading as they did not believe the legislation was something that should be considered. Mr Straw, however, claimed the legislation was justified due to the high level of public interest:

The volumes of newsprint and the fact that the Home Office has received more than 100,000 letters on the subject since the general election attest to that.<sup>14</sup>

David Lidington took the lead in opposing the legislation:

If the Government were to propose comprehensive measures on animal welfare, such as an overhaul of the Protection of Animals Act 1911, I would want to look at them carefully in particular contexts, but the measure that we are debating this afternoon is not justified at all by the evidence presented by the Burns inquiry about animal welfare and the prevention of cruelty.<sup>15</sup>

John Major also opposed the introduction of Bill on Hunting. He declared surprise that the Government introduced the Bill and astonishment at its timing. He claimed the Government's motives to be:

A breathtaking illustration of political self-interest overriding natural justice for a minority cause.<sup>16</sup>

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<sup>13</sup> HC Deb 20 December 2000 c379-467

<sup>14</sup> HC Deb 20 December 2000 c379

<sup>15</sup> HC Deb 20 December 2000 c388

<sup>16</sup> HC Deb 20 December 2000 c406

Michael Heseltine supported this point of view claiming the introduction of the Bill to be cynical, either because they did not believe time to be available for the Bill to complete its passage through the House or that the Prime Minister needed to provide his backbenchers with ‘good red meat to gain their loyalty’.<sup>17</sup>

It was not just pro-hunting Members who expressed such concerns. Roger Gale, a prominent animal welfare supporter, also expressed concern over the motives of introducing the Bill:

I am concerned that the Bill will go to another place, where the total ban, which I support, might not be passed. That will then be used cynically as an example of what the Tory House of Lords has sought to do.<sup>18</sup>

There was also some concern that Scottish Members would be able to vote on the Bill when the legislation would not affect any of the constituents they represented nor have any impact on their constituencies.

Is it right or fair that when dealing with a matter of deep controversy, Scottish Members will be voting while we have no right to vote on the future of hunting in Scotland?<sup>19</sup>

Mr Straw stated that the Scottish Members have a constitutional right to vote on matters passing through the House of Commons. These matters had been discussed during the passage of the *Scotland Act 1998* and that it was not true that Members of Parliament had no right to vote on the future of hunting in Scotland:

First, the powers of the Scottish Parliament derive entirely from the Parliament of Westminster. The Parliament of Westminster can at any stage, if it wishes – I do not advise this course – change the Scotland Act 1998. The Scottish Parliament is palpably and legally subordinate to the Westminster Parliament.<sup>20</sup>

The Bill did, however, receive its second reading with a vote of 373 in favour and 158 against. As can be seen from the table overleaf, there was a majority in favour of the second reading from all parts of the UK except Northern Ireland, where only two Members voted: both against second reading. 69% of English members, 78% of Scottish Members and 86% of Welsh Members voted to give the Bill a second reading.

The concern was that Scottish Members would upset the balance of voting but the 78% yes vote compares well with the 76% yes vote among English and Welsh Members of Parliament.

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<sup>17</sup> HC Deb 20 December 2000 c412

<sup>18</sup> HC Deb 20 December 2000 c417

<sup>19</sup> HC Deb 20 December 2000 c380

<sup>20</sup> HC Deb 20 December 2000 c380

<b>Analysis of voting in Division No. 28 (Hunting Bill) 20 December 2000</b>		
<b>Location of Member's constituency</b>	<b>Ayes</b>	<b>Noes</b>
England	323	146
Scotland	18	5
Wales	32	5
Northern Ireland	0	2
<b>Total</b>	<b>373</b>	<b>158</b>
<i>Source: House of Commons Library Divisions Database</i>		

The nature of the Bill meant that, unlike normal Bills, there would be a Committee of the Whole House to choose one of the three options. That option would then be debated in standing committee as normal, the other two options ignored. The discarded options would be reintroduced by Government amendment before the Bill was passed to the Lords.

When questioned by Sir Teddy Taylor on what would happen in the event that Lords and Commons chose (and debated) different options, Mike O'Brien indicated that second reading was not the time to speculate on what decisions might be made during the progress of the Bill.<sup>21</sup>

Mr Straw also refused to commit on whether the Parliament Act might be used in the event of such a circumstance.<sup>22</sup>

## **2. Committee of the Whole House**

The Committee of the Whole House to choose the preferred option sat on 17 January 2001.<sup>23</sup> The Bill was introduced to the Committee by the Chairman of Ways and Means (Sir Alan Haselhurst) with the intention of debating clauses 2 to 4 of the Bill. The debate was guillotined so that divisions would take place at 10pm that evening on the three clauses of the Bill.

There was concern that the procedure would allow for positive votes on more than one option. It would be possible that all three contradictory clauses would be voted to stand as part of the Bill but Mr O'Brien dismissed the probability that this would actually occur. He also announced that the chosen clause was intended to take effect one year after Royal Assent of the Bill. The Government had introduced new clauses that would make the Bill

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<sup>21</sup> HC Deb 20 December 2000 c462

<sup>22</sup> HC Deb 20 December 2000 c382

<sup>23</sup> HC Deb 17 January 2001 c354-474

non-contradictory and indicate the intended commencement date. These measures would be decided at the end of the debate.

The following text presents some of the major points made during the debate.

*a. Devolution: Scotland and Wales*

Amendments were submitted to provide for the Welsh Assembly to decide upon hunting legislation in Wales. The Government opposed such measures as the Bill related to the creation of criminal offences which was not a devolved power to the Assembly though it was devolved to the Scottish Parliament. Simon Hughes pressed the point, however, looking for assurance that, if the House so decided, the settlement of powers on the Assembly might be changed with respect to hunting. Mr O'Brien was unable to provide definite assurance on this matter but:

...the Government will protect the will of the House--whichever schedule it determines to support. We shall ensure that there is good law in the measure and that it is protected from unnecessary or undue change. Although we shall listen to any technical debates, it is our aim to deliver the will of the House during the Standing Committee proceedings.

At that stage, we shall have to consider any technical issues about which we receive clear legal advice that they would undermine the quality of good law, and whether there may be an issue in relation to whipping. I am not giving an undertaking throughout the Committee stage, but there is no Government whip on the merits of the issues before the House today.<sup>24</sup>

Mr Douglas Hogg pointed out that this should mean that Scottish Members would have less constitutional right to vote in a debate concerning creating criminal offences in England and Wales where they would have no constituency interests at all.<sup>25</sup> This point, also debated in second reading, was dismissed by Mr O'Brien:

This Parliament determines whether MPs can vote on a particular matter in this place. This Parliament has determined that MPs representing Scottish constituencies have a constitutional right to vote in the debate on this issue. I do not accept that it is right for the right hon. and learned Gentleman to undermine the legitimacy of the constitutional right of Members to vote in this House. Our view is that Scottish constituency Members will no doubt make their own judgment as to whether they want to vote--that is a decision for them. However, they have a constitutional right to vote and it is certainly wrong for the right hon. and learned Gentleman to try to undermine that.<sup>26</sup>

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<sup>24</sup> HC Deb 17 January 2001 c358

<sup>25</sup> HC Deb 17 January 2001 c357, c440

<sup>26</sup> HC Deb 17 January 2001 c357

Simon Thomas later pointed out that the Middle Way option of regulation would have an added advantage to Welsh Members as this would allow a measure of control to be effected by the Welsh Assembly on hunting rules in Wales.<sup>27</sup>

**b. Policing a Hunting Ban**

There was some consideration of the burden to be placed on police forces due to policing new criminal activity introduced by the Bill. Michael Howard claimed,

The Government are, in effect, telling the police, "We don't think you have enough to do. We think you have time on your hands, so we will give you an additional task, an extra burden. We will ask you to enforce a ban on an activity which has been lawful in Britain since time immemorial."<sup>28</sup>

The effect on policing and cost to the police force were of some interest on both sides of the debate. First, the Association of Chief Police Officers (ACPO) was invoked in favour of supervision:

**Mr. Soames:** Is my right hon. and learned Friend aware that it is said that the Association of Chief Police Officers has made representations to the Home Secretary to the effect that, with the present resources, it could not possibly be hoped effectively to police a ban such as is proposed.<sup>29</sup>

Then a direct statement by a senior policeman on the effects of banning hunting on policing:

**Mr. Lidington:** Did my right hon. and learned Friend see the interview that the assistant chief constable of South Yorkshire police gave to Sky News earlier today? With the diplomacy which senior officers always deploy in their public statements, he said:

*there's no doubt a total ban would present the police nationally and within individual forces with quite a challenge.*<sup>30</sup>

Mr O'Brien replied that, contrary to statements, ACPO was not concerned about additional policing costs due to a ban on hunting:

...the view of the Association of Chief Police Officers communicated to Home Office officials. It is that, by and large, the expenditure of resources on dealing with hunts and protests against hunts now is probably very similar to any costs that the police are likely to face if a ban is imposed.<sup>31</sup>

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<sup>27</sup> HC Deb 17 January 2001 c420

<sup>28</sup> HC Deb 17 January 2001 c366

<sup>29</sup> HC Deb 17 January 2001 c366

<sup>30</sup> HC Deb 17 January 2001 c367

<sup>31</sup> HC Deb 17 January 2001 c367

This argument was taken up much later in the debate when several Members disposed towards a hunting ban quoted figures of the current costs of policing hunts:

**Mr. Prentice:** A survey has been conducted on how much police forces spend on policing the hunts. We have replies from about half the police forces in England. The average annual sum is about £500,000, so police forces already spend considerable amounts on such policing.<sup>32</sup>

[...]

**Mr. Baker:** For the record, I tell the hon. Gentleman that I wrote to each chief constable to ask the cost of policing hunts in the year 1999-2000. About a third of the forces replied, and the total for each was £542,854--not an insubstantial sum.<sup>33</sup>

[...]

**Mike Hancock:** The figures for the cost of patrolling the New Forest hunt's 26 meets in the past year are quite stark. A total of 613 riders were counted at the meets, which is an average of 24 per meet. They killed two foxes on Forestry Commission land, and two that went to ground on private land, using terrier men who dug out the foxes and shot them. Police, railway police and Forestry Commission representatives attended each of the meets. The total cost of policing just those 26 meets of the New Forest hunt was more than £20,000.<sup>34</sup>

The current cost of policing associated with hunting mostly from the need to police the activities of hunt saboteurs and potential clashes with those hunting, rather than the core activity of hunting. The problems posed to policing a ban on hunting were highlighted by James Paice in that, even without a ban in place, the police found it difficult to stop illegal hare coursing. Banning other hunting activities would likely only increase the amount of illegal hunting that took place.

**Mr. Paice:** All the interventions that my right hon. and learned Friend has just taken on the issue of police resources ignore the fact that the police cannot cope with what they are supposed to do at present. Reference was made to people continuing to hunt illegally. However, is my right hon. and learned Friend aware that that already happens? Throughout East Anglia, there is a curse of illegal hare coursing against which the police, at present, cannot enforce the law. Therefore, enforcing further bans would only make a difficult situation worse.<sup>35</sup>

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<sup>32</sup> HC Deb 17 January 2001 c425

<sup>33</sup> HC Deb 17 January 2001 c425

<sup>34</sup> HC Deb 17 January 2001 c444

<sup>35</sup> HC Deb 17 January 2001 c367-8

*c. Animal welfare considerations*

The current legislation to ban hunting was perceived by some Members to be part of a creeping campaign to ban all country sports involving the killing of animals, including shooting and fishing. It was felt that a line had to be drawn and it would be difficult to distinguish between foxhunting and fishing in terms of animal welfare:

**Mr. Hogg:** Is not the truth that all country and field sports are the same, and that no sensible distinction can be made between angling, shooting and foxhunting? They stand or fall together, and those of us who stand for freedom should defend them all.<sup>36</sup>

There was an acknowledgement that the Government had stated that shooting and fishing were not under threat:

I know that the Prime Minister has said that he has no intention of banning shooting and fishing, but the anti-hunting lobby is open about its agenda, and its supporters say that, once they have banned hunting, they will aim to nail the next target.<sup>37</sup>

And Mr O'Brien repeated that assurance at the end of the debate

The hon. Member for South-East Cambridgeshire claimed that if hunting were banned, shooting and fishing would be the campaigners' next target. He is right to say that the campaigners may make that their next campaign, but the Government are unequivocal on the point. Let me reassure those who may be concerned that, whatever happens tonight, there will be no ban on fishing or shooting under a Government led by my right hon. Friend the Prime Minister.<sup>38</sup>

The majority of the debate on welfare, however, rested on foxhunting and whether hunting was indeed cruel to the fox. There were statements that the hunt was the least cruel option<sup>39</sup> and that the Burns Report had identified serious welfare implications of alternatives to hunting.<sup>40</sup> There was some agreement that foxes were a different proposition to other animals:

**Lembit Opik:** ...in some circumstances, foxes need to be killed because they are pests. That is crucial. The question is not whether we kill foxes, but how we do it.<sup>41</sup>

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<sup>36</sup> HC Deb 17 January 2001 c374

<sup>37</sup> HC Deb 17 January 2001 c375

<sup>38</sup> HC Deb 17 January 2001 c452

<sup>39</sup> HC Deb 17 January 2001 c375, c386, c415

<sup>40</sup> HC Deb 17 January 2001 c429, c435, c448

<sup>41</sup> HC Deb 17 January 2001 c400

There were also claims that a ban would seriously damage the welfare of the fox, either through a lack of marksmanship skills<sup>42</sup> or a lack of incentive to preserve the environment to support foxes.<sup>43</sup>

The counter to such arguments was that even if the welfare argument became less clear it was still intolerable to gain pleasure from the killing of an animal.

**John McFall:** The nub of the issue is that those who participate in foxhunting regard it as a sport. I do not deny them their social activities, which is why I advocate drag hunting. Let me give some more anecdotal evidence. I had dinner at Christmas time with an individual who is a foxhunter and a gamekeeper. The gamekeeper said, "Yes, John, people go foxhunting because of the chase--the thrill." The person who went foxhunting said, "Quite frankly, it is a good sport."<sup>44</sup>

It was even less acceptable if the animal was not, like the fox, considered a pest:

**Gordon Prentice:** ...some hon. Members condone the killing of hares--which are not pests or vermin--for fun. That usually excites a response from the Conservatives, but let me say it again--for fun.<sup>45</sup>

There was evidence offered to show that hunting is a process of species management: whilst in some instances it serves to reduce the population size, in others the existence of hunting and coursing forestalled the culling of wild mammals by other means.

**Mr. Paice:** The answer is clear. Coursing takes place only in areas where there are hares. As I shall explain later, I believe that the hare population is better served on estates and in areas where coursing takes place than where it does not.<sup>46</sup>

[...]

There is clear evidence that, were stag hunting to be banned, the deer population would suffer drastically. The only reason why farmers and landowners in the Quantocks and elsewhere allow large populations of deer on their land is for hunting. There is clear evidence that, if there were no hunting, they would shoot out those populations, and deer overall would suffer.<sup>47</sup>

[...]

...the hare, the third most commonly hunted species. On estates that allow legal coursing meets to take place--obviously, I am not referring to the countless illegal

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<sup>42</sup> HC Deb 17 January 2001 c415

<sup>43</sup> HC Deb 17 January 2001 c392, c442

<sup>44</sup> HC Deb 17 January 2001 c413

<sup>45</sup> HC Deb 17 January 2001 c427

<sup>46</sup> HC Deb 17 January 2001 c415

<sup>47</sup> HC Deb 17 January 2001 c416

operations that sadly take place in parts of the country--almost without exception the landowners husband and conserve the hares. The hares are coursed on a small number of days, depending how many meets there are, but even then the majority get away. On average, only between one in eight and one in ten are killed. Thus the welfare of the hare population is better on an estate that allows coursing.<sup>48</sup>

But even with a pest like the fox some Members found killing animals for sport distasteful:

**Bill Etherington:** What makes it even worse is that I find it impossible to understand how, in the name of sport, human beings can entertain themselves by their cruel destruction of an animal, as happens with foxhunting.<sup>49</sup>

On the topic of conservation there was a feeling that it was illogical to say that killing an animal was consistent with trying to conserve the species:

The Conservative party introduced the biodiversity action plan, which included a target. I thought that Labour Members had fixations about targets, but the plan included a target for the little spring hare, jumping about. It was that the spring hare population should double by 2010. We are thus supposed to be doubling the hare population, but at the same time some hon. Members condone the killing of hares--which are not pests or vermin--for fun.<sup>50</sup>

Scientific evidence was presented justifying both the continuance<sup>51</sup> and the prohibition<sup>52</sup> of hunting through scientific evidence on the effects of the hunt on quarry animals. Ian Gibson, however, reiterated the fact that the welfare debate could not be decided by science alone, it would not be possible to allow scientists to decide what was right:

In both cases, and in work with people who have disagreed with them in the past, the professors state that science itself should never be--and, in this case, has not been--the answer to the whole problem, as many other factors must be taken into consideration.<sup>53</sup>

Such factors are less easy to balance and weigh against each other: the 'right' of the fox to live its life balanced against the right of land managers to exercise pest control in the manner they see fit – or to hunt game in a manner they find pleasurable.

#### *d. Economics*

An obvious point of concern to Members of Parliament is the economic effects of the legislation that passes through the House. The prohibition of hunting is no different in

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<sup>48</sup> HC Deb 17 January 2001 c416

<sup>49</sup> HC Deb 17 January 2001 c406

<sup>50</sup> HC Deb 17 January 2001 c428

<sup>51</sup> HC Deb 17 January 2001 c418, c427

<sup>52</sup> HC Deb 17 January 2001 c438

<sup>53</sup> HC Deb 17 January 2001 c438

this respect. The Burns Report<sup>54</sup> estimated that between 6,000 and 8,000 full-time equivalent jobs presently depend on hunting. Concern has also been raised about the destruction of rural communities through the combined effects of loss of jobs and removal of a community focus.<sup>55</sup> There would also be the economic effects suffered by farmers in having to look for (and fund) alternative control methods on foxes. One further cost would be that of fallen stock whereby farmers would have to fund the removal of fallen animals on their land – a task currently carried out free by hunt kennels.

There was some dispute over the costs faced by farmers and the relative costs incurred by foxes. Some Members intending to vote for prohibition, however, accepted that there might be some need to consider the need to finance training and alternative controls.<sup>56</sup>

*e. Divisions*

At the end of the debate there were three divisions. Only one option was chosen as the preferred option in the Commons. The voting, broken down by party, is presented below.

<b>Analysis of voting in Divisions No. 60 to 62 (Hunting Bill) 17 January 2001</b>		
<b>Member's Party</b>	<b>Ayes</b>	<b>Noes</b>
<b><i>Division 60 (Clause 1: supervision)</i></b>		
Labour	1	363
Conservative	137	8
Liberal Democrat	11	25
Other	6	3
<b>Total</b>	<b>155</b>	<b>399</b>
<b><i>Division 61 (Clause 2: regulation/the middle way)</i></b>		
Labour	12	350
Conservative	140	9
Liberal Democrat	20	22
Other	10	1
<b>Total</b>	<b>182</b>	<b>382</b>
<b><i>Division 62 (Clause 3: prohibition)</i></b>		
Labour	355	6
Conservative	8	140
Liberal Democrat	24	17
Other		11
<b>Total</b>	<b>387</b>	<b>174</b>
<i>Source: House of Commons Library Divisions Database</i>		

<sup>54</sup> *Report of the Committee of Inquiry into Hunting with Dogs in England and Wales*, June 2000

<sup>55</sup> HC Deb 17 January 2001 c411

<sup>56</sup> HC Deb 17 January 2001 c434-6

The result of the divisions was that the Bill went to the Standing Committee as a four clause Bill to prohibit hunting: the provisions of which were detailed in a Schedule to the Bill.

### **3. Standing Committee Consideration**

The Bill began its consideration by Standing Committee B on 18 January 2001.<sup>57</sup> The detail of the prohibition option was contained in Schedule 3 to the Bill and thus was the focus of much of the debate in committee.

#### ***a. Criminalisation of Hunting***

It was proposed that the criminal penalties imposed through the original Bill be replaced by civil penalties. David Lidington, speaking to the amendments said:

To make the act of hunting and associated acts a criminal offence is a disproportionate response to the ill of which the advocates of a ban complain<sup>58</sup>

The subsequent debate looked at the potential for criminalising hunters and the potential to similarly criminalise those simply walking their dogs. Mr O'Brien pointed out that the latter concern was nonsense and it was the intent of the owner rather than the dog that was of concern. He also pointed out that to change the offence from criminal to civil was likely to reduce the burden of evidence required and result in more prosecutions rather than fewer.

Concern was voiced about what would happen if a dog owner knowingly allowed his dog off the lead when it had a propensity to chase, for example, rabbits. Would such action constitute intent? If not, would a group of people all walking dogs constitute intent and if so how many? Concern was expressed that this might lead to an unnecessary drain on police resources. Such logic was disputed by Norman Baker who said:

Does the hon. Member for Aylesbury – if not his colleagues – intend to use a free vote to argue that the law of the land should be determined by the number of police required to enforce it? If so, that is a dangerous and somewhat ridiculous position to adopt.<sup>59</sup>

Police time and the costs were however of concern. Alan Beith said:

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<sup>57</sup> <http://pubs1.tso.parliament.uk/pa/cm200001/cmstand/b/cmhunt.htm>

<sup>58</sup> SC B 23 January 2001 c20

<sup>59</sup> SC B 23 January 2001 c35

In those areas where hunting takes place with little or no sabotage or disruption – happily that is true in most of my constituency – the policing costs arising from hunting are minimal.<sup>60</sup>

It was alleged that at hare coursing events there was always potential for those involved in the activity to be involved in trouble.<sup>61</sup>

Edward Leigh said that the policing burden would not be due to existing hunts going underground but instead to small groups on hill farms that would be very hard to detect:

There have already been reports that people in Cumbria feel that Parliament is imposing too many burdens on them – the right to roam and now this Bill. Many people in such areas who are closely tied to the countryside through their livelihoods will feel compelled to pursue hunting in some form.<sup>62</sup>

He also pointed out that pushing the sport underground would also attract people

...from the cities who believe they have a right to conduct their sport, which involves some sort of illegal coursing. We can all deprecate that as an unpleasant activity. Such people are often naturally violent and take pleasure in being cruel to animals. None of us would have any difficulty in rendering such activities illegal. However, we all know that it is virtually impossible for the police to control them.<sup>63</sup>

He expressed concern that the Bill would criminalise existing pest control activities of gamekeepers:

[Gamekeepers] are concerned with creating a balanced environment and face a serious and growing fox population that they must control, but also face tough penalties that could put them out of a job – a £5,000 fine and having to prove their innocence in court.<sup>64</sup>

He quoted extensively from a letter by the National Gamekeepers Organisation which highlighted their concerns with the provisions of the Bill. There was concern that when hunting was abolished, activists such as the League Against Cruel Sports would target shooting and bring charges against gamekeepers controlling foxes on their land.<sup>65</sup> It was argued that this group would also suffer disproportionately if hunting was made a criminal rather than civil crime.

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<sup>60</sup> SC B 23 January 2001 c41

<sup>61</sup> SC B 23 January 2001 c42

<sup>62</sup> SC B 23 January 2001 c45

<sup>63</sup> SC B 23 January 2001 c45

<sup>64</sup> SC B 23 January 2001 c54

<sup>65</sup> SC B 23 January 2001 c57-8

Jane Kennedy replying on behalf of the Lord Chancellor's Department responded that to make hunting a civil rather than criminal offence would be to undermine the decision made during the Committee of the Whole House. She also pointed out that the amendments would essentially introduce a fixed penalty scheme that would remove discretion from the courts when deciding on circumstance and particular details of the case. She also dealt with the points made regarding opposition by ACPO to the Bill:

A clear statement of ACPO's views can be found in an article that appeared in The Times--no particular friend to the Government on this matter--on 18 January. Headed "Police ready to enforce ban", it is the record of a discussion with Alastair McWhirter, the assistant chief constable of the Wiltshire constabulary. As chairman of ACPO's public order sub-committee legal affairs group, he has been leading for ACPO on this issue. Mr. McWhirter is quoted as saying:

*I really would like to dispel the myth being put about that the police think a ban is unenforceable--they do not.*<sup>66</sup>

**b. *Exceptions and Defences to the Offence***

The next amendments to be considered were introduced by David Lidington:

**Mr. Lidington:** The purpose of each amendment is to provide a general exception to the offence of hunting a wild mammal with a dog, as defined in paragraph 1. Amendment No. 1 would make an exception for hunting rodents with dogs, amendment No. 2 for hunting rabbits and amendment No. 3 for hunting mink. Amendments Nos. 41 and 42 are slightly different, although they address the same issue. They would provide for the Secretary of State to designate a particular species as an exception to the general ban on hunting with dogs and for those exceptions to be approved by statutory instrument after debate in both Houses of Parliament.<sup>67</sup>

The main thrust of the amendments was to protect those people whose occupation would be made easier by the use of dogs. They would protect people from malicious complaints made to the police when making practical use of dogs, to make pest control easier and more efficient rather than sporting pursuits such as foxhunting and coursing. There was concern that gamekeepers, already working under a burden of regulation, would find the provisions of the Bill too onerous to continue their work effectively.<sup>68</sup>

There was also concern that the Bill would require gamekeepers and farmers to utilise guns for pest control: a proficiency in which they were not necessarily skilled.<sup>69</sup> Dogs were necessary to ensure a more humane end to wounded animals. It was pointed out that

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<sup>66</sup> SCB 23 January 2001 c82

<sup>67</sup> SCB 23 January 2001 c89

<sup>68</sup> SCB 23 January 2001 c101

<sup>69</sup> SCB 23 January 2001 c109

the Bill allowed the hunting of rodents to be an offence but not the hunting of mink or rabbits which were also pests.<sup>70</sup> The amendments would allow for an Act of Parliament resulting from the Bill to be updated to allow for the control of specific pest species such as rabbits and mink.

The amendments were believed however to open a large loophole in the legislation whereby anyone would be able to justify the killing of a wild mammal by proving to have been intending to kill a pest species.<sup>71</sup>

The placement of the burden of proof onto the defendant rather than on the prosecution also caused concern:

**Mr Garnier:** There are occasions when the defendant is entitled to raise an issue that the prosecution then has to disprove. I am thinking, for example, of self-defence. If I assault the Minister, the CPS or those representing it will have to prove all of the elements of the assault. I, as the defendant, may wish to raise a defence—that is to say, self-defence—but I do not have to prove anything. I have merely to raise the issue and the evidential burden is that of the prosecution to disprove that what I did was not an over-reaction, but something beyond the realms of self-defence.

Mr O'Brien pointed out that the Bill required that the intent to hunt was necessary before an offence could be committed. He also pointed out that there was an onus upon dog owners to control their animals and upon those engaged in pest control to be aware of the boundaries within which such activity was allowed.<sup>72</sup> There was an initial burden of proof on the prosecution to prove that hunting had occurred before any defence might be necessary. Neither was the subsequent reversal of proof a novel institution, it had previously been used in the *Protection of Badgers Act 1992*.<sup>73</sup>

### *c. Selected Breeds and Pets Chasing Animals*

An amendment was tabled to restrict the breeds of dog that would be banned from hunting. It was argued by Mr Lidington that this would remove much of the concern of ordinary dog owners over the chance of them being prosecuted from hunting under the new legislation.

He pointed out that there were very few breeds of dog resident in hunt kennels or utilised in coursing and that:

There is a danger that the Bill will put at risk the farmer or landowner who exercises his dog and uses it to pursue vermin on his land.

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<sup>70</sup> SCB 23 January 2001 c111

<sup>71</sup> SCB 23 January 2001 c115

<sup>72</sup> SCB 23 January 2001 c139

<sup>73</sup> SCB 23 January 2001 c150

Mr Lidington claimed that the Bill as it stood made hunting an offence rather than focussing on ‘particular activities that are defined as cruel.’ The amendments could make the legislation more acceptable to those from rural areas concerned by removing the fear of malicious complaints and accusations.

There were concerns however over the problems that this kind of restriction might provide too wide a loophole to avoid the intentions of the Bill and the amendments were withdrawn.

*d. Unnecessary Suffering*

An amendment was tabled to limit the prohibition to hunting where there was intent to cause unnecessary suffering. Mr Lidington pointed out that existing animal welfare legislation required some intent to cause unnecessary suffering, a requirement completely absent from the current Bill. The Bill would be assuming that hunting was essentially cruel. Omitting the need to prove it so demonstrated that those against hunting were unsure of their ability to provide such proof.

He continued by stating that insufficient evidence had been presented in a scientific manner to say that hunting was cruel in essence and that the Burns Inquiry had highlighted this paucity of evidence.<sup>74</sup>

He argued that available evidence would suggest that all pest control methods imposed welfare implications. That a ban on hunting might increase welfare implications as more inexperienced marksmen took to shooting pests rather than hunting them. There were several selected quotations from the Burns Report to support both the pro and anti hunting factions. Mr Garnier pointed out that selective quoting could be used by each side of the debate potentially reducing the authority of the report by doing so.<sup>75</sup>

Mr Lidington drew upon statements made by veterinarians to the Burns Inquiry which suggested that the response of foxes to the hunt were similar to those made to many other incidents in their day to day existence. Cruelty, he claimed, only came to the fore in the final few minutes of a hunt.

The welfare friendly alternatives to hunting, according to Burns, were only friendlier if carried out to high standard.

**Mr Lidington:** In summary, the evidence that hunting with hounds causes unnecessary suffering to wild mammals is, at best, inconclusive and, in my view, at odds with most of the evidence. If one follows the Burns recommendation to compare the cruelty that is supposedly inherent in hunting with the cruelty and

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<sup>74</sup> SCB 30 January 2001 c168

<sup>75</sup> SCB 30 January 2001 c171

suffering inflicted on wild mammals by alternative methods of control, there is a strong argument to allow hunting to continue.

The Bill has been framed in a peculiar way. It ignores the tradition in Bill after Bill on animal welfare, in which Parliament has sought to define both the cruelty of a particular action and the motivation of the perpetrator of it.<sup>76</sup>

Mr Garnier supported the amendment pointing out that opponents of hunting would seem to be happier if essential pest control was carried out by people that did not enjoy the job. It seemed to him that the worst facet of hunting for those opposed to the activity was that some people enjoyed doing it.<sup>77</sup>

Tony Banks said there was no doubt over the cruelty associated with hunting. He dismissed claims that it was a continuum of nature to which a quarry animal simply acted as nature intended: up to and including dying at the conclusion of the chase.

Mr Pickthall questioned the wisdom of including ‘unnecessary suffering’ as part of the Bill as there would then have to be some consideration of what was ‘necessary suffering’ with respect to hunting.<sup>78</sup>

Jane Kennedy responded that the amendment would mean that the question of whether or not hunting was cruel would not be decided in Parliament but foisted on to the courts. This was not acceptable.<sup>79</sup>

*e. Flushing Out, Falconry and Stalking*

Mr Bercow spoke in support of an amendment to allow hunting where it would be conducted in the interest of conservation or management of the quarry population.

The Bill already recognises that it can be acceptable to hunt a fox, a hare or a rabbit in certain circumstances, especially if it is judged necessary by those engaged in the activities to protect livestock, fowl, gamebirds or crops—or indeed for the purpose of obtaining meat for consumption, although, if I remember rightly, not meat that is then passed to a retailer for onward sale. It is also possible for a bird of prey to hunt a particular mammal.

It is extremely difficult, if not impossible, for us in the Committee to draw the line between when hunting in the form of stalking or flushing finishes and hunting otherwise than that commences. Given the need to use dogs for hunting in circumstances that hon. Members on both sides of the Committee admit can—

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<sup>76</sup> SCB 30 January 2001 c176

<sup>77</sup> SCB 30 January 2001 c184

<sup>78</sup> SCB 30 January 2001 c195

<sup>79</sup> SCB 30 January 2001 c198

and probably will—arise, it would be sensible to recognise that hunting should be permitted if, and only if, it satisfies the conditions in the amendment.<sup>80</sup>

There was also some concern that if the terms such as ‘out of cover’ were to be included in the Bill and have legal standing then they would have to receive better definition within the Bill. Would it, for example, cover a Welsh gunpack<sup>81</sup> that took 40 or 50 minutes to flush a fox from a copse of trees?

The group of amendments also included a clarification on the use of dogs for falconry purposes.

The Government's proposed exemption for falconry is interesting, because the Bill seems to provide deliberately for wild mammals to be killed lawfully for sport. That raises an interesting question about the moral purpose behind the Bill. It is difficult to see the logic of, on the one hand, proscribing the hunting of a wild mammal with dogs, while, on the other, making a deliberate allowance for hunting a wild mammal with a hawk or falcon.<sup>82</sup>

Another of the group would extend the exemption on the use of dogs to animals killed for human consumption rather than simply personal consumption.

Mr Soames spoke in favour of the amendment providing exemptions for gamekeepers carrying out conservation work on their estates. He said that it was inevitable that at some point in the course of gamekeeping a fox would be coursed by dogs accompanying a gamekeeper. This should be expected and not be the subject of prosecution.

There was some concern that the Bill dealt with the stalking of foxes, hares and rabbits but omitted deer and the consequences of prohibiting the sale of carcasses thus obtained:

Having brought to its end a beast that might be seriously injured, one would presumably be prohibited from doing anything other than burning the carcase or eating it oneself.<sup>83</sup>

Jane Kennedy responding for the government dismissed many of the amendments as being against the principles of the schedule. She conceded that there should perhaps be further consideration of whether meat obtained through the killing of game should be made available for more than personal consumption.

There was some concern over falconry where there was indeed a clear intent to hunt and kill wild mammals and the use of the dog was entirely necessary.

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<sup>80</sup> SCB 6 February 2001 c348

<sup>81</sup> A gunpack is normally used to flush foxes into the open where they may be shot.

<sup>82</sup> SCB 6 February 2001 c357

<sup>83</sup> SCB 6 February 2001 c372











































































































