



RESEARCH PAPER 02/82
13TH DECEMBER 2002

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.

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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.¹

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.

¹ "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.²

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.”³

Pro-hunting groups believe that a ban on hunting would be an infringement of civil liberties.⁴ 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.⁵

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.⁶

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.⁷

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

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

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

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

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

⁷ “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.⁸

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*⁹
 Research Paper 96/13 *Wild Mammals (Protection) Bill*¹⁰
 Research Paper 97/122 *The Wild Mammals (Hunting with Dogs) Bill*¹¹
 Research Paper 00/96 *The Hunting Bill*¹²

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

⁸ HL Deb 12 March 2001 c672

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

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

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

¹² <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 2000¹³ 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.¹⁴

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.¹⁵

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.¹⁶

¹³ HC Deb 20 December 2000 c379-467

¹⁴ HC Deb 20 December 2000 c379

¹⁵ HC Deb 20 December 2000 c388

¹⁶ 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’.¹⁷

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.¹⁸

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?¹⁹

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.²⁰

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.

¹⁷ HC Deb 20 December 2000 c412

¹⁸ HC Deb 20 December 2000 c417

¹⁹ HC Deb 20 December 2000 c380

²⁰ HC Deb 20 December 2000 c380

Analysis of voting in Division No. 28 (Hunting Bill) 20 December 2000		
Location of Member's constituency	Ayes	Noes
England	323	146
Scotland	18	5
Wales	32	5
Northern Ireland	0	2
Total	373	158
<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.²¹

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

2. Committee of the Whole House

The Committee of the Whole House to choose the preferred option sat on 17 January 2001.²³ 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

²¹ HC Deb 20 December 2000 c462

²² HC Deb 20 December 2000 c382

²³ 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.²⁴

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.²⁵ 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.²⁶

²⁴ HC Deb 17 January 2001 c358

²⁵ HC Deb 17 January 2001 c357, c440

²⁶ 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.²⁷

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."²⁸

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.²⁹

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.*³⁰

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.³¹

²⁷ HC Deb 17 January 2001 c420

²⁸ HC Deb 17 January 2001 c366

²⁹ HC Deb 17 January 2001 c366

³⁰ HC Deb 17 January 2001 c367

³¹ 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.³²

[...]

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.³³

[...]

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 £20,000.³⁴

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.³⁵

³² HC Deb 17 January 2001 c425

³³ HC Deb 17 January 2001 c425

³⁴ HC Deb 17 January 2001 c444

³⁵ 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.³⁶

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.³⁷

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.³⁸

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 option³⁹ and that the Burns Report had identified serious welfare implications of alternatives to hunting.⁴⁰ 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.⁴¹

³⁶ HC Deb 17 January 2001 c374

³⁷ HC Deb 17 January 2001 c375

³⁸ HC Deb 17 January 2001 c452

³⁹ HC Deb 17 January 2001 c375, c386, c415

⁴⁰ HC Deb 17 January 2001 c429, c435, c448

⁴¹ 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 skills⁴² or a lack of incentive to preserve the environment to support foxes.⁴³

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."⁴⁴

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.⁴⁵

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.⁴⁶

[...]

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.⁴⁷

[...]

...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

⁴² HC Deb 17 January 2001 c415

⁴³ HC Deb 17 January 2001 c392, c442

⁴⁴ HC Deb 17 January 2001 c413

⁴⁵ HC Deb 17 January 2001 c427

⁴⁶ HC Deb 17 January 2001 c415

⁴⁷ 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.⁴⁸

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.⁴⁹

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.⁵⁰

Scientific evidence was presented justifying both the continuance⁵¹ and the prohibition⁵² 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.⁵³

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

⁴⁸ HC Deb 17 January 2001 c416

⁴⁹ HC Deb 17 January 2001 c406

⁵⁰ HC Deb 17 January 2001 c428

⁵¹ HC Deb 17 January 2001 c418, c427

⁵² HC Deb 17 January 2001 c438

⁵³ HC Deb 17 January 2001 c438

this respect. The Burns Report⁵⁴ 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.⁵⁵ 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.⁵⁶

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.

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

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

⁵⁵ HC Deb 17 January 2001 c411

⁵⁶ 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 2001.⁵⁷ 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 complain⁵⁸

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.⁵⁹

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

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

⁵⁸ SC B 23 January 2001 c20

⁵⁹ 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.⁶⁰

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

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.⁶²

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.⁶³

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.⁶⁴

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.⁶⁵ It was argued that this group would also suffer disproportionately if hunting was made a criminal rather than civil crime.

⁶⁰ SC B 23 January 2001 c41

⁶¹ SC B 23 January 2001 c42

⁶² SC B 23 January 2001 c45

⁶³ SC B 23 January 2001 c45

⁶⁴ SC B 23 January 2001 c54

⁶⁵ 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.*⁶⁶

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.⁶⁷

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.⁶⁸

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.⁶⁹ Dogs were necessary to ensure a more humane end to wounded animals. It was pointed out that

⁶⁶ SCB 23 January 2001 c82

⁶⁷ SCB 23 January 2001 c89

⁶⁸ SCB 23 January 2001 c101

⁶⁹ 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.⁷⁰ 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.⁷¹

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.⁷² 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*.⁷³

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.

⁷⁰ SCB 23 January 2001 c111

⁷¹ SCB 23 January 2001 c115

⁷² SCB 23 January 2001 c139

⁷³ 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.⁷⁴

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.⁷⁵

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

⁷⁴ SCB 30 January 2001 c168

⁷⁵ 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.⁷⁶

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.⁷⁷

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.⁷⁸

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.⁷⁹

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—

⁷⁶ SCB 30 January 2001 c176

⁷⁷ SCB 30 January 2001 c184

⁷⁸ SCB 30 January 2001 c195

⁷⁹ 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.⁸⁰

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 gunpack⁸¹ 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.⁸²

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.⁸³

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.

⁸⁰ SCB 6 February 2001 c348

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

⁸² SCB 6 February 2001 c357

⁸³ SCB 6 February 2001 c372

Jane Kennedy: On the question of how pointers are used, it is my understanding--I have a vague recollection of how they are trained--that if a dog were to interfere in the sport in the way suggested, its training would not have been adequate. Retriever dogs that catch and kill prey cannot be properly used as retrievers, because their purpose is to flush game or retrieve it, not to kill it. Any prosecution would have to be able to demonstrate that the intent was to hunt with the dogs.⁸⁴

And later expanded upon:

If a dog that is used to flush birds inadvertently flushes a mammal—a fox, for example—no offence will have been committed, whether or not the mammal is shot. As we have said, the test is the intention of the person, not what the dog may or may not do.⁸⁵

Jane Kennedy also made it quite clear that there was no intention within the Bill to outlaw Welsh gun packs.⁸⁶

Some consideration of the requirement to shoot animals flushed or stalked was also made in Committee. David Lidington put the argument that,

...it is often quicker for an animal to be killed by dogs after it has been flushed out or stalked than to be dispatched by a shotgun or rifle. The use of dogs might, in some circumstances, enable a kill to be completed without the risk of that animal being wounded.⁸⁷

He also pointed out certain safety aspects that would arise with a requirement to shoot animals: access to certain areas and those exercising their access rights in particular would give rise to safety considerations. There were also amendments requiring dogs to be kept under close control. He requested that the Parliamentary Secretary should ensure that the idea of practicality was

...implicit in the wording of the schedule as drafted. However, it is not explicit. As I understand the current phrasing of the Bill, it proposes that the obligation should be unconditional. The obligation will be on the dog owner or handler to keep his dog under sufficiently close control to ensure that the dog does not obstruct shooting, even when it is not practicable for the owner or handler to do so.⁸⁸

⁸⁴ SCB 6 February 2001 c383

⁸⁵ SCB 6 February 2001 c384

⁸⁶ SCB 6 February 2001 c386

⁸⁷ SCB 8 February 2001 c473

⁸⁸ SCB 8 February 2001 c474

Mr Beith suggested that alternatives to shooting be allowed, again if they followed the best practicable solution to killing an injured animal. For example allowing flushed or retrieved animals to be netted to allow a more precise and swift kill.⁸⁹

Mr O'Brien believed the amendments would unacceptably widen the exceptions. The requirement to keep dogs under close control was necessary to prevent dogs from attacking quarry animals but this did not mean that dogs had to be kept on leads.⁹⁰ The requirement to shoot animals, as drafted, required only reasonable steps to ensure this; therefore, if it was unreasonable to shoot the animal, it could not be expected.⁹¹ He did not go as far, however, as to allow that dogs might be dispatched to kill an animal in circumstances where it might be unreasonable to shoot it.

Amendments were placed to change the requirement for landowners to approve of hunting on their land. Mr Lidington believed that the Bill was 'unnecessarily restrictive.'⁹² If an exception to the offence of hunting was invalidated by a brief sojourn onto other land then it made 'a nonsense' of the exception as in practical terms someone may cross boundaries without being entirely aware of the fact. The effectiveness of game management or rodent control would be severely restricted if the Bill remained so strict in its interpretation.

Mr Gummer pointed out that the *Deer Act 1991* got around this kind of thing by providing that a land owner would have to disapprove of the activity before a prosecution might be brought.⁹³

Mr Garnier contested that there was an element of hypocrisy in this aspect of the Bill. Land had been opened to the general public on an unprecedented scale but this Bill restricted access to the same land for those carrying out their day to day work.⁹⁴ He also pointed out that many gun packs operate in an ad hoc fashion, supported by farmers and land-owners in their role of pest control without any statement of consent being given.⁹⁵

David Rendel indicated that if the amendments were to be accepted, 'a person could go stalking absolutely anywhere'.⁹⁶ The amendments would mean that a landowner opposed to the activity would have to seek out and forbid all those that might want to utilise his land. Mr O'Brien also argued against the amendments:

⁸⁹ SCB 8 February 2001 c475

⁹⁰ SCB 13 February 2001 c481

⁹¹ SCB 13 February 2001 c482

⁹² SCB 13 February 2001 c492

⁹³ SCB 13 February 2001 c493

⁹⁴ SCB 13 February 2001 c503

⁹⁵ SCB 13 February 2001 c505

⁹⁶ SCB 13 February 2001 c508

...if I go rambling in the countryside, it is my responsibility to ensure that at all times I am on land where I have a right to be. I do not understand why the same principle should not apply to any hunting that is allowed to continue, not least because hunting is a much more intrusive activity than rambling.⁹⁷

f. Animals still allowed for hunting purposes

Some effort was made to increase the number of animals allowed to be stalked and/or flushed out.

John Bercow: Amendments Nos. 52 and 53, tabled by my hon. Friend the Member for Aylesbury (Mr. Lidington), would change the exception for flushing out and stalking from a fox, hare or rabbit to any wild mammal. It seems to me, to my hon. Friend, to other hon. Friends, and perhaps to some Liberal Democrat Members, that there is no sense in animal welfare terms in restricting the species that can be flushed out or stalked. What reason could there be for distinguishing between those three creatures on the one hand and any other mammal on the other—for example, a mink or a deer?⁹⁸

The amendments would allow for the flushing and shooting of deer for control purposes and for mink for conservation purposes. The House, it was claimed, had not intended to prohibit either of these

The Parliamentary Secretary responded that the retrieval of deer was allowed for by making the rescue of such animals an exception under the provisions of paragraph 11 of the Schedule. Ian Cawsey also pointed out that the Environment Agency believed packs of dogs hunting mink caused damage to the habitat⁹⁹ though Llin Golding countered that the Agency had since stated that they have no policy on mink hunting.¹⁰⁰

There was however a later admission that deer stalking might indeed be covered by the Bill and that amendments would be considered for the Report stage of the Bill:

Jane Kennedy: I shall be circulating a letter to the Committee this morning on deer stalking, which states that we are considering tabling amendments, hopefully on Report.¹⁰¹

This topic was also approached in terms of rodent control where some effort was made to include mink and rabbits to the general exception of allowing control of rodents.

⁹⁷ SCB 13 February 2001 c511

⁹⁸ SCB 8 February 2001 c413

⁹⁹ SCB 8 February 2001 c433

¹⁰⁰ SCB 8 February 2001 c435

¹⁰¹ SCB 13 February 2001 c479

There are strong arguments for adding both species to the rodent control defence, but as the arguments are slightly different, I propose to treat them briefly in sequence.

[...]

Attempts to control or eradicate mink in coastal areas or islands where they might prey on ground-nesting seabirds and waders would be more difficult, if not impossible, were the Bill to proceed without amendment to allow the use of dogs for the control of mink.

[...]

Why are rabbits not included in the proposal? They do a tremendous amount of damage to arable crops and vegetables growing in open fields and immense harm to young saplings by ripping the bark from those infant trees. To any reasonable, rational farmer or landowner, rabbits are pests.¹⁰²

Alan Simpson put the case that simply by preventing the hunting of foxes that the rabbit population might be better controlled:

It was estimated that, given that half of the fox diet is rabbit, each fox may prevent between £26 and £145 worth of damage a year overall, and that, due to growth of the rabbit population, that would have the knock-on effect of preventing damage worth between £49 and £608 per fox a year. In addition, a follow-up study by Roger Trout and colleagues, which was written up in the "Journal of Zoology", pointed out that the total saving to farmers may be in the region of £100 million a year. The concession that the hon. Gentleman seeks may occur in nature—if we allow it to take its course.¹⁰³

This was dismissed by those opposed to the Bill who argued that organised hunting added little to pest control and so its removal should not impact on the level of rabbit control farmers would have to undertake.

Llin Golding asked why mink had acquired such protected status and declared that she would support any measure that might aid in bringing their numbers under control.¹⁰⁴

It was argued that without extending the exception of rodent control to include rabbits then the control of their population would be seriously compromised. Mr Maples pointed out that the Bill was not even consistent in its treatment of rabbits and mink:

I completely agree with the hon. Member, but he has referred to two categories. One includes rats, which can be hunted and killed with dogs and the other

¹⁰² SCB 13 February 2001 c525-6

¹⁰³ SCB 13 February 2001 c528

¹⁰⁴ SCB 13 February 2001 c531

includes mink and rabbits, which cannot. However, there is another distinction between mink and rabbits. Under paragraph 7, rabbits can be flushed out by a dog and then shot or have their necks wrung, but mink are protected even from that. So there are three distinctions. All these animals are pests, if not vermin, so what is the moral or practical justification for those distinctions?¹⁰⁵

Mr O'Brien addressed the issue by outlining the exact status of rabbits under the Bill:

In summary, using dogs to flush rabbits out of cover and shooting them will remain legal. Hunting rabbits with long dogs—lurchers—will be prohibited. The accidental chasing of a rabbit is not an offence.¹⁰⁶

He believed that making hunting rabbits an exception to the Bill would be contrary to its spirit. He also pointed out that anyone accused of hunting hares would be able, if the amendments were accepted, to say that they believed they were hunting rabbits.

The reasons for distinctions between rabbits and mink he believed could be answered in the fact that though:

...[mink] may be shot or trapped and then killed, flushing out is not encouraged.¹⁰⁷

The Bill would allow for the use of dogs in flushing out rabbits but could not allow unrestricted use of dogs in rabbit control and welfare considerations meant that flushing out should not be considered with respect to mink.

g. Burden of Proof

Some amendments addressed the feeling that legislation stemming from the Bill would put the burden of proof onto the accused rather than the accuser.

Mr Garnier: The amendments would place on the prosecution the onus to prove that an offence had been committed. The Bill provides for exceptions to the general offence of hunting a wild animal with a dog, but those are restricted and would reverse the burden of proof because it is for the defendant to prove that his conduct fell within one of the permitted exceptions. The amendments would provide for the same exceptions to the general offence, but in a way that would impose the burden of proof on the prosecution, not the defendant.¹⁰⁸

While accepting that the Bill did provide exceptions to the primary offence of hunting a wild mammal with dogs:

¹⁰⁵ SCB 13 February 2001 c543

¹⁰⁶ SCB 13 February 2001 c558

¹⁰⁷ SCB 13 February 2001 c560

¹⁰⁸ SCB 8 February 2001 c393; see also SCB 25 January 2001 c117-23

We know that there are various exceptions in part II. In simple terms, it is a defence for a person charged with such an offence to prove that he was stalking or flushing out, engaged in rodent control, retrieving game or recapturing or rescuing animals.¹⁰⁹

There remained the concern that the exceptions required the accused to prove they fitted the criteria of the exceptions rather than for the prosecutor to prove that they did not. The amendments were tabled seeking to reverse this position.

While the simple transfer of the burden of proof might not be contrary to human rights such transfers should be 'confined within reasonable limits'. It was argued that the current Bill did not confine the transfer of burden within reasonable limits.¹¹⁰

It was also argued that while the House had voted to ban hunting, it was 'accepted' this meant organised hunting. The amendments sought to relieve the burden that the legislation would place on those that the House never intended to target when the Bill was considered. The dividing line between prohibited activities and certain duties on landowners (such as rodent control) was exceedingly thin and open to abuse by mischief-makers. In cases where the dividing line was so thin then the burden of proof should be on the prosecution.

In response, Jane Kennedy, put the point that had been made previously:

...in the Bill, as with any other criminal offence, it remains the responsibility of the prosecution to prove to the court beyond reasonable doubt, as hon. Members have said, that the accused committed the offence with which he or she is charged. Unless and until each and every element of the offence has been proved, the person remains innocent. That principle remains at the heart of English criminal law and the Bill does not depart from it.¹¹¹

She went on to demonstrate that the principle being utilised in the Bill was in general use in exceptions such as having a licence:

There are many instances in which it is unlawful to commit a certain Act, but it is lawful to do so if the person concerned has a valid licence. The requirement is placed on the person to demonstrate that he or she has that licence. That is obviously sensible because it is easier and more practicable for the person concerned to demonstrate that he or she has a licence than for the prosecuting authorities to prove that he or she does not. That principle applies to the Bill.¹¹²

¹⁰⁹ SCB 8 February 2001 c395

¹¹⁰ SCB 8 February 2001 c397

¹¹¹ SCB 8 February 2001 c403

¹¹² SCB 8 February 2001 c406

Jane Kennedy provided other legislative precedents for having a principal defence to which there are a number of defences – exceptions as they were called in this Bill - including the *Sexual Offences Act 1956*, the *Homicide Act 1957* and the *Chemical Weapons Act 1996*.¹¹³

By reversing the burden of proof she suggested that someone convicted of the crime of hunting with dogs could cite every exception listed in the Bill requiring the prosecution to prove, beyond reasonable doubt, that none of them were valid.

h. Use of Terriers

The Burns Report, while supportive of the use of terriers, had concluded that their use underground would compromise animal welfare. The amendments tabled would have allowed the use of terriers underground in specified circumstances, e.g., in man-made spaces such as cellars and in caves and potholes.

Lembit Opik put forward animal welfare arguments to argue for the use of terriers underground:

It can make no sense in animal welfare terms for a wounded animal to continue to suffer if it can be located underground with the use of dogs. We have already established that it is all right to apprehend such an animal as long as it is on the surface, or presumably in a building above ground level. However, that almost arbitrary exemption means that if the animal chooses to shelter underground, a dog cannot be used in the way that it could be on the surface.¹¹⁴

He also explained that whilst the Bill would seek to prohibit the use of dogs to hunt and kill underground it would still be legal to use a ferret for the same purpose. He believed that terriers could be trained not to attack quarry underground and so avoid the welfare concerns. A ban on this use of terriers would have, he said, severe implications for the future control of pests such as foxes, mink and rats. There was also a problem with defining what would be considered ‘below ground’ as drafted in the Bill.

It was also pointed out that there was agreement, even if reluctant, from some animal welfare organisations that, in certain circumstance, the use of terriers underground would avoid certain cruelties, such as orphaned cubs starving to death.

Jane Kennedy responded to the amendments and disagreed that the ban on the use of terriers underground should be relaxed. She believed that this was where the greatest cruelty tended to take place. The best trained terriers might be capable of standing off the quarry it would not be likely that this would be the general case. The Committee of

¹¹³ SC B 8 February 2001 c405

¹¹⁴ SC B 8 February 2001 c455

inquiry had received evidence of injury and were concerned enough to conclude that below ground work could compromise animal welfare.

Other amendments sought to make only the deliberate use of dogs underground an offence. Mrs Kennedy pointed out that intent was required in all parts of the Act before an offence would have been committed. She conceded that the drafting of the Bill could indeed be used to prohibit the use of dogs to hunt rats in cellars. She promised an amendment to the Bill to ensure that hunting for rats in cellars remained a legal pursuit.¹¹⁵

4. Report Stage and Third Reading

a. Fallen Stock and Compensation

The Report Stage of the Bill began with consideration of fallen stock and of compensation that might be paid in the event of hunting being prohibited. Mr Edward Garnier, speaking to the amendments, pointed out that the hunts collected a huge number of dead animals from farms:

The Cobham report, commissioned in 1997 and entitled "Countryside sports: their economic, social and conservation significance", reported that 179 hunts handled 352,000 carcasses in 1995--an average of more than 2,000 carcasses per hunt. The report estimated that, when the work of the harrier and beagle packs was taken into account, the total number of carcasses handled annually by all packs, including foxhounds, deerhounds and harriers, was more than 400,000.¹¹⁶

There was some concern that the costs of removal would fall on farmers and that an alternative would have to be proposed.

Farmers would not be the only losers in the event of a ban however, since other businesses were likely to face a loss of income through a legal proscription of hunting. Amendments had been tabled to provide compensation to those businesses.

Mr. Garnier: Hunts and hunting organisations employ full-time and part-time staff. The people who participate in hunting with hounds employ stable staff, or provide further employment by keeping their hunting horses at livery. Hunts, hunting organisations and their members and followers incur direct expenditure on goods and services in order to participate in hunting. Finally, expenditure by participants in hunting with hounds stimulates the rural economy by creating a demand for other goods and services. The indirect expenditure arising from hunting generates income and jobs for others. It can enable small businesses to have enough overall income to trade profitably. All of that will go, or will certainly be badly affected, in the event that hunting is banned.¹¹⁷

¹¹⁵ SCB 8 February 2001 c468

¹¹⁶ HC Deb 27 February 2001 c735

¹¹⁷ HC Deb 27 February 2001 c739-40

Lembit Opik supported the amendment claiming that it brought an element of fairness into the prohibition on hunting with dogs:

...it cannot be morally just to take away a person's ability to control a pest without making good the loss that results from the damage caused by that pest.¹¹⁸

He believed that a ban on the use of dogs would lead to an increase in stock predation in the uplands of mid-Wales as this was the most effective way of controlling the fox population. He also put forward precedents where those prevented from participating in a previously legal activity would be compensated:

I remind the House of the precedents: handguns, fur farming and self-loading rifles. We all have different opinions about the morality of using such items or being involved in such activities, but I like to think that we are united in agreeing that we need to treat people fairly. People who hunt with dogs will not understand the logic of compensating for the closure of fur farms and not compensating for the closure of an entire industry.¹¹⁹

Gordon Prentice believed that there was no hard rule that compensation had to be paid; he was also concerned, in the light of recent animal disease outbreaks that fallen stock might be fed to hounds. In fact, in the light of the forthcoming Incinerator Directive from Europe there was some doubt that the fallen stock service could continue to be provided, even if hunting was not banned.¹²⁰ Would it be appropriate to provide compensation when the service was going to be withdrawn anyway?

Nicholas Soames countered that hunt kennels were properly licensed to deal with diseased animals and could be trusted not to feed diseased tissue to their hounds. He also pointed to a Parliamentary Question which highlighted the role played by hunt kennels in clearing fallen stock:

...a small survey undertaken by the State Veterinary Service earlier this year indicates that around 55 per cent. calves, 35 per cent. of adult bovines, 25 per cent. of sheep and goats, and 10 per cent. of pigs and lambs, which have fallen, may be disposed of through hunt kennels.¹²¹

Llin Golding commented that a loss of hunting would allow mink to proliferate with subsequent cost implications to the fishing industry:

Many people will lose their jobs as a result of damage by mink. I say to the Minister in all seriousness that unless he can find £40 million to eradicate mink,

¹¹⁸ HC Deb 27 February 2001 c742

¹¹⁹ HC Deb 27 February 2001 c745

¹²⁰ HC Deb 27 February 2001 c747

¹²¹ HC Deb 25 June 1998 c 606W

he should not be supporting the banning of mink hunting and certainly should be considering compensating many anglers and river keepers--¹²²

George Turner however believed that the compensation outlined in the amendments would draw too wide a net and compensate beyond that where there might be a moral duty to do so. Gun owners were compensated but dealers and manufacturers were not. He believed the amendments to provide compensation would be closer to paying everyone associated with the practice of hunting.

David Rendel pointed out that the collection of fallen stock by hunts did not fall equally on all farms. There were farmers that did not receive this benefit and so total removal would put all farms on an equal footing. The amendment called for compensation only for those animals that would have been collected by a hunt kennel rather than for all fallen stock and so was, in itself, iniquitous. He also pointed out that it would be difficult to identify losses from foxes that would not have taken place had fox hunting continued. The very difficulty of applying such compensation should rule it out.¹²³

Mike O'Brien: The Government want to facilitate the setting up of a collection and disposal service for fallen stock, but we do not want it to be run as a nationalised industry. I understand that officials at the Ministry of Agriculture, Fisheries and Food have had meetings with representatives of the livestock industry and are seeking to discuss and formulate future arrangements for a wider disposal of fallen stock.¹²⁴

He did not believe that the proposed amendments would be helpful in establishing such a service. He was unable however to assure the House that the proposals made by the Government would not increase costs to farmers. This was more in line with the principle of polluter pays that informed most other environmental input.

On the subject of compensation he thought that there was too much ambiguity in the industry to determine who might be entitled to compensation and if so how much they would receive.¹²⁵

Mr O'Brien also denied that there was a duty to compensate those who lost their livelihood due to legislation:

The right hon. and learned Member for Sleaford and North Hykeham (Mr. Hogg) mentioned the compensation scheme for the fur farming industry, which was shut down as a result of the prohibition on fur farming. That case is hardly analogous. The Fur Farming Act 2000 closed down an entire industry. The Bill, by contrast, simply restricts certain activities. Those who own hounds will still be able to use

¹²² HC Deb 27 February 2001 c751

¹²³ HC Deb 27 February 2001 c759-80

¹²⁴ HC Deb 27 February 2001 c782

¹²⁵ HC Deb 27 February 2001 c784

them for drag hunts, while those who own horses will be able to ride as part of an organised hunt or otherwise. Those who serve such people, such as the blacksmiths who shoe horses or the grooms, will still be required.

Hunt employees are precisely that -- employees of individual hunts. It is open to those hunts, if they decide not to go in for drag hunting or some similar activity, to offer their staff appropriate payment.¹²⁶

b. Devolution Issues

Two amendments were tabled which introduced the concept of cross-border hunting where hunts began and ended in Scotland but strayed over the border during the hunt.

David Lidington pointed out that the border is not fenced or particularly well-defined and so questioned whether someone legally hunting in Scotland who strayed into England would be committing a crime. What about a situation where the huntsmen, or some of the huntsmen, remained in Scotland but the hounds chased across into England?

Tony Banks pointed out that the Bill would not be the first legislation to cause cross-border problems:

The hon. Gentleman makes an interesting point that is worth listening to, but what would happen if a stag hunted from England crossed the border into Scotland, where it is unlawful to hunt deer? That is a real situation that could arise now.¹²⁷

This argument was not accepted by Mr Lidington as there was no stag hunting in the English borders and so not a problem likely to arise. Foxhunting did take place in these areas with the potential to cause a legal problem as the practicalities of enforcing the ban would be considerable.

The problems of gamekeepers along the border facing different legislation depending on whether a rabbit ran across the border or a dog underground moved across the border were highlighted.¹²⁸ Alan Beith did not believe that devolution should cause the Government to hesitate in introducing legislation different from that in Scotland. They should, however, look to the practicalities involved in doing so and decide from those whether the legislation would be workable.

Jane Kennedy did not accept these arguments. It was still unclear, at the time, what the Scottish Parliament was considering with respect to hunting and so no assumptions could be made on that basis.

¹²⁶ HC Deb 27 February 2001 c785

¹²⁷ HC Deb 27 February 2001 c794

¹²⁸ HC Deb 27 February 2001 c797

If we took such a course, we should be creating a tremendous loophole which hunts in the border areas would be quick to exploit. They would ensure that they began their hunting on the Scottish side of the border, and would be able to hunt in England with impunity. Hunts that have hunt kennels located near to the border, such as those in the constituencies of the right hon. Member for Berwick-upon-Tweed (Mr. Beith) and the hon. Member for Hexham (Mr. Atkinson), will be required to carry out their activities in Scotland, if Scottish legislation permits, in such a way to ensure that they do not inadvertently cross the border and hunt in England.¹²⁹

c. Amendments made to the Bill

There were some amendments made to the Bill with no debate or division. These were made in response to commitments during the committee stage of the Bill. The first amendment ensured that it would be a defence to the charge of hunting to prove that the conduct consisted of hunting rabbits. The second allowed for the stalking or flushing of deer from cover using dogs as long as two conditions were met:

- That dogs were kept under reasonable control and that the deer was shot as soon as practicably possible.
- That the activity took place entirely on land where permission had been given for that purpose.

The final amendment removed the need to prove that rodent control either took place on land where such conduct had been approved or the need to ensure it was all above ground.

d. Third Reading

Mike O'Brien welcomed the Bill and commended it to the House as a good Bill that had been amended and influenced by each of the lobbying groups involved in the issue.

David Lidington did not agree.

I welcome the limited concessions made by the Government as a result of the Standing Committee's discussions. However, they do not make a fundamentally bad and misguided Bill acceptable. The Bill creates serious new criminal offences that will apply to the activities of a large number of our fellow citizens and to activities that are lawful now, and that have been for many generations past.¹³⁰

He believed the Bill should not receive its third reading as it was intellectually inconsistent in conceding the right to hunt rats and rabbits with dogs but not foxes. He asked whether these animals did not feel the same fear and terror experienced by a fox. If

¹²⁹ HC Deb 27 February 2001 c805

¹³⁰ HC Deb 27 February 2001 c828

it was simply a matter of the hunted animal being vermin then why not also include foxes and mink?

He questioned the Government's understanding of the economic impact of prohibiting hunting and the powers being granted to the police to criminalise people.

For the purpose of trying to stop hunting with hounds, we are giving the police draconian powers, including a power of arrest that appears to be unique and unprecedented in existing criminal legislation.¹³¹

Lembit Opik believed there were problems with the Bill:

Members of the public could be criminalised if their dogs persistently chased mammals in the prohibited list even if the owners meant no harm in their actions, but were merely not 100 per cent. in control of their animals.

[...]

No regard has been paid to compensation.

[...]

There are other examples of moral randomness. Why is falconry all right? Why is angling okay? Why is hunting fox with dogs not acceptable?¹³²

He pointed out that he believed the Middle Way proposals were the best option for animal welfare and believed they would receive support in later stages of the Bill.

Alun Michael welcomed the Bill and the fact that a free vote of Members of Parliament gave it greater authority than if it had simply been a Government Bill. He also outlined some of the clear decisions made through the amendments to the Bill:

The Bill before us is a clear Bill. It bans the hunting of foxes with hounds. It bans the hunting of deer with hounds, but does not ban stalking. It bans hare coursing. It bans the hunting of mink on the grounds that the parallel with foxhunting with hounds for pleasure is clear. On the question of nuisance from mink, the maximum damage is caused by hunting mink with hounds.¹³³

The Bill was finally presented to the House and given a third reading on a vote of 319 to 140.

¹³¹ HC Deb 27 February 2001 c830

¹³² HC Deb 27 February 2001 c834

¹³³ HC Deb 27 February 2001 c837

5. Debates in the House of Lords

a. *Second Reading*

The Bill was introduced to the Lords by Lord Bassam of Brighton who pointed out that the issue was an important one, even in the context of a foot and mouth outbreak:

Hunting is an important subject and one that is of deep concern. The amount of press attention that it warrants is testament to that, as is the fact that well over 100,000 people have written to the Home Office on the subject since the last general election. Another indication is that, since 1979, Private Members' Bills on the subject of hunting and coursing have been introduced in another place at the rate of more than one a year. I mention those Bills deliberately because they illustrate an important point.

The contentious nature of the subject is such that no Private Member's or Private Peer's Bill is likely to succeed. Those Bills generally did not fail because the majority of parliamentarians were opposed to them but simply because they could not command sufficient parliamentary time. Only a government Bill could provide the opportunity for this difficult issue to be resolved. That is why we have brought forward this Bill. It will enable Parliament to express its view and, we hope, to put this issue to bed.¹³⁴

The House of Lords, like the Commons was presented with a multiple choice Bill containing the same three options presented to the House of Commons.

b. *Second Reading: Cruelty and Criminalisation*

The first issues to be revisited were those of cruelty and the criminalisation of a minority. Lord Cope of Berkeley commented that the reason presented for such criminalisation was that the activity was cruel but that the people he knew to be involved in hunting were not cruel.

They know animals; they know nature; and they are not cruel people.¹³⁵

He also pointed out that the Burns Inquiry contained evidence from veterinarians that disputed the inherent cruelty of hunting as a practice:

"Far from being cruel hunting is the most natural and humane method of controlling the populations of the fox, deer, hare and mink".

That quotation comes from practising vets all over the country, together with several professors and other academics, six fellows of the Royal College of Pathologists and so on.¹³⁶

¹³⁴ HL Deb 12 March 2001 c517-8

¹³⁵ HL Deb 12 March 2001 c526

Lord McNally pointed out that while he was against the practice of hunting this was not due to a 'dewy-eyed or emotional' attitude to animal welfare.

But the debate is not about protecting some mythical bucolic idyll. Times change, and public attitudes change. What was acceptable to one generation is not acceptable to another. Over the years, Parliament has outlawed bear baiting, cock fighting and dog fighting, all because, at the time, Parliament judged those activities to be gratuitous and unwarranted cruelty and, therefore, unacceptable. It also judged at various times that setting one animal to kill another was not sport.¹³⁷

Being against hunting in principle, he felt that regulation, as proposed by the Middle Way group, was not a 'true compromise': it simply legislated for cruelty.

Viscount Brookeborough disagreed with the comparison with banned blood sports:

We have heard on a number of occasions that hunting with dogs equates to bear baiting, dog fighting and cock fighting. That fallacy must be corrected. When speaking of hunting, we are talking about the control and management of several wild species, some of which are classed as pests. As we know, the bears used for baiting and the dogs and bantam cocks used for fighting, were already under control and managed for those so-called "sports". Hunting, therefore, cannot and should not be compared with those two "sports", and should not be included with them.¹³⁸

This sentiment was shared by Earl Peel:

One often hears the argument that hunting has had its day in modern society and should be consigned to history, in the same way as cockfighting and bear-baiting. I find that an extraordinary argument born out of the same ignorance that suggests that hunting is all about satisfying a blood lust. Cockfighting and bear-baiting were outlawed through lack of support and need and the revulsion of those who witnessed them at first hand. Hunting, on the other hand, is a culture and way of life supported by folklore, literature, music and art in all its forms.¹³⁹

Lord Burns, who chaired the Government's Inquiry into the issue of foxhunting spoke to whether the suffering inflicted during hunting was necessary for the purposes of pest control:

I came to the view that hunting is essentially a recreational activity in most lowland areas and in practice plays only a small part in pest control. On the other hand, it is true that in some remote upland areas hunting plays a much bigger part

¹³⁶ HL Deb 12 March 2001 c526

¹³⁷ HL Deb 12 March 2001 c528

¹³⁸ HL Deb 12 March 2001 c652-3

¹³⁹ HL Deb 12 March 2001 c656

in pest control. Farmers would have great difficulties without the help of some aspects of the subject we are debating.¹⁴⁰

The economics of the hunting in these regions, he felt, highlighted the differences:

I was interested to learn that on average it costs £1,000 per fox killed to maintain the hunt infrastructure, including the kennels. In a dozen hunts the cost was more than £2,500 per fox; and for two hunts it was more than £5,000 per fox. This suggested to me evidence of a high recreational value. By contrast, for many of the hunts in Wales and the Lake District the figure was below £350 per fox and for six of the hunts it was below £100 per fox. That seemed more consistent with a greater role of the hunt in population management.¹⁴¹

Lord Burns summarised the reasons by which the committee felt that hunting of foxes and deer ‘probably falls short of the standards we would expect for humane killing’, noting there is an almost ‘total lack’ of scientific evidence about the effect on welfare of hunting the fox. The problem was often that the alternative methods could often also fail to meet expected welfare standards and ‘a ban on hunting is unlikely to reduce the number of foxes and deer killed as farmers would use other methods to manage the population of those animals’.¹⁴² The issue, he stated, was complex and the balancing of factors ‘need not be the same for each of the hunted species or in all areas’.

c. Second Reading: Countryside management

The Lord Bishop of Bath and Wells brought the issue of countryside management into the debate:

People may not like this fact, but, before hunting on Exmoor, the red deer population was almost lost. Its revival was due in part to the hunt and what Ted Hughes called "the strange agreement" between the farmers and the deer.

[...]

Most hunting people whom I know are not indifferent to the suffering; they simply see it as a necessity for the good of the herd which is sustained on farmland. That fact must be recognised.¹⁴³

Lord Mancroft was concerned not only about the animals in the countryside but the people and skills that are currently present there:

¹⁴⁰ HL Deb 12 March 2001 c532

¹⁴¹ HL Deb 12 March 2001 c532

¹⁴² HL Deb 12 March 2001 c534

¹⁴³ HL Deb 12 March 2001 c538

The Bill [...] will destroy thousands of jobs and many traditional skills and trades. Many people too stand to lose their homes and businesses. It will also hurt already fragile local economies and attack the social cohesion that so impressed the inquiry team. It will inevitably change, in part at least, the landscape that is part of our national heritage.¹⁴⁴

He too, however, expressed concern over the Exmoor deer:

The red deer of Exmoor, widely regarded as one of the best herds in the world, will cease to be what the report describes as a "community resource" and will become a pest, valued only for their meat. Farmers, who currently accept small numbers of deer on their farms because they support hunting, will not accept the larger herds that will form and the damage that they will do.¹⁴⁵

Another side of countryside management discussed in these debates has been the fallen stock service provided by hunt kennels, whereby the hunt picks up the bodies of animals that have died in the fields and dispose of their carcasses. Baroness Mallalieu expanded on that:

For 24 hours a day, seven days a week hunt kennels provide a casualty service for injured animals and the disposal of carcasses. There is no alternative. [...] My local pack, the Bicester, last year spent £36,000 out of its subscriptions to provide that service to its local farming community.

On Exmoor the hunt is the only casualty service for the wild red deer. Even the National Trust, which refused to grant licences for deer hunting on its estate, cannot provide an alternative. It still calls in the stag hounds to find and dispatch injured deer which would otherwise face profound suffering. For all the rhetoric we have heard, there is no alternative and none is being suggested by those who support the Bill.¹⁴⁶

Lord Inglewood believed that the management of the countryside included the welfare of the fox:

In the Cumbrian Fells a balance has been struck among the fox, sheep and man. The fox may be a pest, but he is not mere vermin. Quite rightly he has a place in the ecological balance of the fells. I do not believe that any fell farmer wants the animal exterminated. The sheep also has a place--mowing the grass--and man has his, looking after the sheep and the landscape. What man has done is to contain, but not exterminate, the fox. In my view, fell hunting is the best way, the most efficient, safest and most satisfactory way, of achieving that.¹⁴⁷

¹⁴⁴ HL Deb 12 March 2001 c540

¹⁴⁵ HL Deb 12 March 2001 c545

¹⁴⁶ HL Deb 12 March 2001 c571

¹⁴⁷ HL Deb 12 March 2001 c625

d. Second Reading: Practicality

Another issue discussed again was that of the practicality of the legislation:

The Bill as drafted would criminalise someone whose single dog--it is not "dogs" in the plural, as the Minister suggested in his introductory remarks--chases a fox, but not someone whose dog chases a rat; someone whose dog chases a hare, but not someone whose dog chases a rabbit. I realise how some of these extraordinary provisions have come about and how they come before us. Nevertheless, they highlight the problems of enforcement.¹⁴⁸

This was expanded upon later in the debate by Lord Willoughby de Broke:

When one looks at the Bill, there seems no justification whatever for a ban or for supporting one. It is a complete dog's breakfast. It is full of exceptions, anomalies and contradictions.

To give your Lordships a flavour of one or two of the main absurdities, deer may still be hunted with dogs and shot provided that the person doing so is doing it as part of his job as a professional and not for sport. If he enjoys his job--which he probably does, otherwise he would not be doing it at all--that is okay as long as he is paid for it. But if you do exactly the same thing and are unpaid--and you perhaps smile or enjoy what you are doing--you are criminalised under the provisions of the Bill.¹⁴⁹

These problems of practicality came at the fringes of the hunting fraternity – organized hunts would necessarily disappear but the activity at the fringes would potentially cause problems for enforcement of the legislation.

Some of the practicalities of a ban on hunting could be solved, said Baroness Gibson of Market Rasen, by phasing in the ban:

Hounds can be trained to follow the drag scent, and for the hunter and horse there would be little difference if some imagination was applied.¹⁵⁰

e. Second Reading: Parliamentary Mandate

Another consideration in the Lords was the use of the *Parliament Act*. Lord Cope of Berkeley brought up the issue early on in the debate and Lord McNally felt that whilst the Lords had an advisory and revisory role:

¹⁴⁸ HL Deb 12 March 2001 c526

¹⁴⁹ HL Deb 12 March 2001 c642

¹⁵⁰ HL Deb 12 March 2001 c638

...if there is an election and that election results in a House of Commons that again calls decisively for such legislation, I do not think that it is within the competence of this House to resist that legislation. If, on a free vote, the House of Commons again calls for such legislation, I think that on a free vote this House would be well advised to accept that. If we did not do so, we would be wandering into precedents that would have disturbing consequences.¹⁵¹

Lord Hardy of Waith believed that the Lords had a greater duty to address animal welfare than that of Parliamentary niceties:

We should certainly not allow the House to accept that which can be obscenely cruel--that is what would happen if the will of the House of Commons were to prevail--merely because this House may feel that it should be subordinate.¹⁵²

f. Second Reading: Civil liberties

For Lord Hutchison of Lullington the question of hunting was not one of cruelty but of civil liberties:

Every countryman knows that the Commons' vote seeks to destroy not only a country pursuit--a disciplined and historic form of fox and deer control--but also a part of the very culture of the countryside.¹⁵³

He continued by pointing out the illogicality in banning hunting with dogs when fishing and shooting would continue:

Can hypocrisy go further? Are coarse fishing, pheasant shooting and wild fowling not killing for fun? Of course not. Shooters and fishermen, as all "townies" know, include good working-class Labour supporters.¹⁵⁴

Lord Winston was concerned not only that shooting and fishing would follow but that this would extend further to religious slaughter and animal experiments.¹⁵⁵ Lord Vinson went even further, suggesting that those who would like to ban hunting should consider other cruelties:

If they are really concerned about animals, why do they not do something about the caging of wild animals in zoos, the caging of small birds, the keeping of large dogs in small flats where they can never be adequately exercised? These are real, man-made cruelties.¹⁵⁶

¹⁵¹ HL Deb 12 March 2001 c230

¹⁵² HL Deb 12 March 2001 c577

¹⁵³ HL Deb 12 March 2001 c547

¹⁵⁴ HL Deb 12 March 2001 c549

¹⁵⁵ HL Deb 12 March 2001 c592

¹⁵⁶ HL Deb 12 March 2001 c604-5

Lord Bragg made a point of discussing the cruelties inherent in fishing which would not be banned by the Bill:

It is curious that some of the more strident objectors confess to, or even boast of, their devotion to fishing, even that form of fishing where the fish is hooked--and a vicious little hook rips through its mouth. It is then "played"--I think that that is the word--and, when landed, chucked back. Lucky fish; or not. For such legitimate sportsmen to condemn the alleged cruelty of the final few moments of a fox could be called humbug, at least, and a touch hypocritical. What of those who shoot? Ban the lot if you would ban the one and take on the full consequences, which would be, I suspect, outrage at such an assault on private pleasures and public liberties.¹⁵⁷

Lord Archer of Sandwell made the point that these same arguments on liberty had been used in Parliament to defend sports now banned:

Animal welfare has been resisted time and again by arguments about freedom. In 1800 a Bill to ban bull and bear-baiting attracted virtually word for word arguments which have been invoked in the course of this Bill. The Bill of 1835 which reached the statute book and criminalised those activities was denounced as the end of freedom.

Freedom is not about everyone being permitted to do whatever pleases them irrespective of the consequences. That is not freedom but anarchy.¹⁵⁸

Lord Reay did not believe it right to legislate against a minority in this kind of moral circumstance:

... it is tyrannical to seek to ban the legitimate traditional activities of a minority when its members do no harm to others except, purportedly, to offend the conscience of what is almost certainly only another minority.¹⁵⁹

He continued by pointing out the potential for legitimizing such legislation:

There is no end to where that process may be carried once it has been embarked on. Indeed, each of us could compile our own list of legitimate activities that we would rather never see practised again.¹⁶⁰

¹⁵⁷ HL Deb 12 March 2001 c560

¹⁵⁸ HL Deb 12 March 2001 c552

¹⁵⁹ HL Deb 12 March 2001 c640

¹⁶⁰ HL Deb 12 March 2001 c640

g. Committee Stage: Multiple Choice Division

The Lords voted on 13 March 2001 to accept the multiple choice method of voting proffered by the Government and then, on 26 March 2001, considered the choices within the Hunting Bill. The Lords met in committee to discuss the options within the Bill and, after a short debate, to vote on them.

It was possible that this debate would be the only opportunity that the Lords, if they chose a different option than the Commons, would have to discuss the legislation debated in the House of Commons.

Lord Cope was concerned that the option of prohibition, as drafted would ‘condemn all dogs to wear muzzles out of doors.’ He was also concerned that the legislation would be impractical and encourage general disrespect for the rule of law:

It restricts those who are law-abiding, while allowing freedom to those who are prepared to disregard the law. If people are encouraged to disregard one law, they and everyone else come to have less respect for other laws. The progressive effect of that can already be seen in certain parts of our law.¹⁶¹

He also pointed out that the Bill contained inconsistencies. The Bill would forbid the use of dogs to kill some species but not others and while the legislation was presented supposedly to prevent cruelty; it would not explicitly make it an offence to kill foxes in a cruel manner. Later comment also indicated that it was contradictory to ban hunting without consideration of shooting and fishing.¹⁶²

Lord Carlile was similarly concerned about prohibition and while sympathetic to self-regulation felt that the Middle Way option would allow some resolution to be achieved in the debate and potentially avoid similar uses of Parliamentary time in future years.

Viscount Bledisloe provided a legal examination of the issue:

It is my considered opinion, which I commend to the Committee, that the Bill offends against two cardinal principles on which our criminal law must be based.

First, it is the function of the criminal law only to represent the views of the whole of reasonable society as to what should be forbidden. It is not the function of the criminal law to impose the taste, judgments or morality of the majority on a sane and responsible minority. Imposing morality on the minority was the policy of Cromwell’s republic, and look where it got them.

[...]

¹⁶¹ HL Deb 26 March 2001 c36

¹⁶² HL Deb 26 March 2001 c60-1

The second principle against which the Bill offends is that criminal statutes must be clear and unambiguous so that our citizens can know what they may and may not do. As the noble Lords, Lord Cope and Lord Carlile, have already made clear, the Bill dismally fails that test.¹⁶³

Lord Judd spoke to the civil liberty concerns made during the second reading debate:

Civil liberties have been stressed. Hunting with dogs is certainly not a private or a non-intrusive event. Its noisy and dramatic enjoyment for those involved--not to mention those who follow it and who crowd our narrow lanes with their cars, play radios and carry binoculars--is very public and obtrusive. It is not just a matter of sometimes straying into the gardens and properties of those who are not involved or of disturbing or even occasionally harming their domestic animals, livestock and poultry, which from time to time inevitably occurs; it is much more significantly a matter of the anxiety and distress caused to those who are in the vicinity of the hunt but who do not favour it. Their liberties also matter, as do the liberties of those in society more generally who are offended.¹⁶⁴

Lord Phillips of Sudbury was concerned that the supervisory option presented would suffer credibility problems due to the composition of the commission that would supervise hunting:

We have been told that the seven commissioners are nominated by three bodies; that is, bodies representing farming, the veterinary profession and country landowners. Even though they may have appointed professors and others of independent minds, I do not believe that that framework will satisfy a sceptical public when compared with an independent hunting authority appointed by the Home Secretary, the majority of the members of which must be entirely independent.¹⁶⁵

This was echoed by Lord Willoughby de Broke who believed that the Middle Way was the answer to the problem:

Regulation of hunting by a public authority with a balance of interested parties answerable to Parliament could prove acceptable to everyone except the most rabid of extremists. I hope that Members of the Committee will vote for the middle way tonight.¹⁶⁶

Baroness Mallalieu, however, believed that the supervision option was not the continuance of the status quo:

¹⁶³ HL Deb 26 March 2001 c47-8

¹⁶⁴ HL Deb 26 March 2001 c53

¹⁶⁵ HL Deb 26 March 2001 c59

¹⁶⁶ HL Deb 26 March 2001 c64

A major change to the law proposed in option two is that those who do not operate under the control of ISAH will lose their exemption from prosecution under the Protection of Animals Act and the Wild Mammals (Protection) Act. Therefore, anyone who is not supervised by ISAH and does not subscribe to its codes and who goes hunting or coursing would not in a subsequent prosecution be able to claim any exemption under the law. It has other benefits. It is self-financing. It will not cost the Exchequer one penny. Unlike the middle way--option three--it is fully operational now and, unlike the middle way, it has a disciplinary procedure that is already in place. It is not overly bureaucratic and examination will show--I know that the noble Lord, Lord Phillips, will examine it when he has a chance to look at the documents that were sent out--that its independence is unchallengeable.¹⁶⁷

The Lord Bishop of Guildford talked about the importance of public feeling in the event of hunting legislation and the moral question of legislating:

First, when we are dealing with legislation, perhaps it takes a Bishop to make the point that not every immoral act should be turned into a criminal act. It is important that we distinguish that point. Parliament needs to consider extremely carefully the effect on society of criminalising behaviour. As a Christian and as a Bishop, there are many things that I believe to be wrong and immoral, but I do not think that the law should ban them.

[...]

At Second Reading, the right reverend Prelate the Bishop of Portsmouth made a very important point about social cohesion. I do not believe that democracy is concerned with how the majority can impose its will on everyone else. I believe that Parliament has a duty to listen to the voices of minorities. Thus, in an atmosphere where a serious moral debate is taking place--a proper, moral debate to which the noble Baroness has just contributed so excellently--it is the duty of legislators to provide the climate for that moral debate to continue in decency. It cannot continue if legislators impose their will on people who simply do not understand what they are doing.

Only when we achieve a sense of consent within the communities most directly affected by what we seek to do will we be in a position to legislate.¹⁶⁸

The Committee then voted. The first vote was on whether to remove the ban option from the Bill. The vote was 317 content to remove the ban option, 68 not content to do so. The second vote was whether to replace that option with the supervisory option (proposed by the Countryside Alliance). The vote was 249 content to replace the ban option with that of supervision with 108 not content. The third and final vote was whether to replace

¹⁶⁷ HL Deb 26 March 2001 c66

¹⁶⁸ HL Deb 26 March 2001 c69-70

the new clause, for supervision, with one to regulate hunting through an independent body (the proposal of the Middle Way). The vote was 122 content to introduce independent regulation and 202 not content.

The result was that the Bill to be presented to the Lords for consideration in committee was the supervision option. In the event, there was no further consideration of the Bill as the General Election was called for 3 May 2001 and the Bill, along with all other outstanding Bills fell.

B. Motions and Statements since the General Election

The Labour manifesto during the election promised to settle the issue of hunting with dogs and, after the election, it was not long before the issue of hunting was raised once more. In February 2002 it was announced that there would be motions put forward in both Houses, the same as were presented in the 2000-2001 Bill, for consideration.

Robin Cook: The House will also wish to know that on Monday 18 March there will be a debate on hunting. In the Queen's Speech we promised that we would enable a free vote to take place on the future of hunting with dogs. The Government will table a motion enabling the House to express its view in a free vote between the three options. A similar vote will take place in the House of Lords.

Following those votes my right hon. Friend the Minister for Rural Affairs intends to bring forward, before the Easter recess, our proposals to resolve the issue.¹⁶⁹

On the 18 March 2002 there were debates in both Houses which produced votes once more on which of the three options were preferred. The House of Commons debated the issues first with a very similar results to those obtained during the debate on the Bill. The following day in the House of Lords however produced a first concession. The Lords voted for regulation rather than supervision. A comparison of the votes is provided in the tables below.

House of Commons				
	2002 Motions		<i>Hunting Bill 2000-2001</i>	
	<i>For</i>	<i>Against</i>	<i>For</i>	<i>Against</i>
Supervision	154	401	155	399
Regulation	169	371	182	382
Prohibition	386	175	387	174

¹⁶⁹ HC Deb 28 February 2002 c841

House of Lords				
	2002 Motions		<i>Hunting Bill 2000-2001</i>	
	<i>Content</i>	<i>Not Content</i>	<i>Content</i>	<i>Not Content</i>
Supervision	97	119	249	108
Regulation	366	59	122	202
Prohibition	74	331	68	317

These votes were to provide the Government with an idea of the feeling within Parliament on hunting. The votes would seem to indicate that there was remarkably little change in the feelings of the House of Commons and that there remained a determination for legislation to ban hunting with dogs. The voting in the motions can be broken down on a party basis:

Analysis of voting in Divisions No. 197 to 199 (Hunting with Dogs 18 March 2002)		
Member's Party	Ayes	Noes
<i>Division 197 (supervision)</i>		
Labour	0	355
Conservative	138	7
Liberal Democrat	10	34
Other	6	5
<i>Total</i>	<i>154</i>	<i>401</i>
<i>Division 198 (regulation/the middle way)</i>		
Labour	12	341
Conservative	129	4
Liberal Democrat	17	26
Other	11	0
<i>Total</i>	<i>169</i>	<i>371</i>
<i>Division 199 (prohibition)</i>		
Labour	352	5
Conservative	7	145
Liberal Democrat	27	14
Other	0	11
<i>Total</i>	<i>386</i>	<i>175</i>
<i>Source: House of Commons Library Divisions Database</i>		

Alun Michael made a statement to the House of Commons on 21 March 2002 in which he announced that a new Bill, designed around the principles of utility and cruelty, would be introduced to Parliament after a period of consultation. He also gave a first intimation that the Parliament Act could possibly be used to impose the will of the Commons on the issue of hunting with dogs:

We promised in our manifesto that this issue would be resolved. Should there be no way through, and should the new Bill be frustrated in its passage rather than

scrutinised and improved, the Government could not properly stand in the way of the application of the Parliament Act, which of course would be a matter for this House.¹⁷⁰

He then promised to keep the issue strictly focussed on hunting with dogs, repeating the manifesto commitment that there would be no restrictions placed on shooting and fishing.

Ann Winterton responded for the Opposition, concerned that the announced principles would:

...at a stroke, maim hunting as we have known it, except for a few foot packs in some upland areas? Hunting would then only be tolerated under licence, with rights of appeal given to anti-hunt organisations if a licence were granted.¹⁷¹

The consultation period was essentially completed with three days of hearings in Portcullis House where Mr Michael took evidence from interested bodies on various aspects of the hunting issue. Some of the issues under discussion in those hearings are outlined in the following section.

The 2002 Queens Speech declared that a Bill would be forthcoming and, on 3 December 2002 Mr Michael outlined the provisions of the Bill to be read for the first time that day.

The key issues emerging from the Burns report were cruelty and utility. Those two principles have run like a golden thread through the consultation process. Everything has been tested against them. Are we preventing cruelty? Are we recognising what farmers and others need to do to eradicate vermin or to protect livestock, crops or the biodiversity of an area? My Bill is based on the answers to those two questions.¹⁷²

Details of the proposed Bill and comments on those proposals are discussed in Section IV which discusses the 2002-03 Bill.

III Comment prior to introduction of the Current Bill

Two events caused a flurry of press coverage and comment upon the hunting debate: the Liberty & Livelihood March and the DEFRA hearings in Portcullis House.¹⁷³ The Liberty & Livelihood March that took place in Central London on 22 September 2002 demanded that Government “Safeguards rural people from prejudiced attacks on hunting with dogs and all other field sports”, a credo that all marchers were to sign up to.

¹⁷⁰ HC Deb 21 March 2002 c457

¹⁷¹ HC Deb 21 March 2002 c458

¹⁷² HC Deb 3 December 2002 c755

¹⁷³ <http://www.defra.gov.uk/erdp/hunting/huntinghearingsschedule.htm>

Professor Stephen Harris, of Bristol University and who spoke in the DEFRA hearings,¹⁷⁴ published a short communication in *Nature* on the ‘Effect of British hunting ban on fox numbers’.¹⁷⁵ In essence, the research looked at the variation in fox numbers while hunting was banned due to foot and mouth restrictions in 2001. The final conclusion of the communication was:

Our results therefore support the view taken by the Committee of Inquiry into Hunting with Dogs that a permanent ban on hunting is unlikely to result in a dramatic increase in fox numbers.¹⁷⁶

Professor Harris also referred to a conference publication¹⁷⁷ in defence of foxes in a newspaper article:

In fact, for many, it is probably not worth undertaking fox control at all: recent work by the biologist Beccy Moberly at the University of York examined the economic losses that foxes cause sheep farmers and the money spent on fox-control measures. She showed that housing ewes indoors for just a few hours after lambing was likely to result in lower overall costs than additional fox controls and that on most farms economic losses could be reduced by spending less on fox control, not more.¹⁷⁸

This information would appear to contradict questionnaire-based evidence from the Countryside Alliance submitted to the DEFRA enquiry¹⁷⁹ which highlighted anecdotal evidence that the hunting ban had led to an increase in loss of lambs through fox predation and prompted further investigation:

6.6 Two surveys of hunts were conducted by the Countryside Alliance showed that hunting suspension brought about by Foot and Mouth disease resulted in significant financial loss to farms from fox predation. The principal findings of the surveys, which record the effect of the hunting suspension from 22nd February 2001 are:

- Normal fox cull numbers were reduced by 4,900 (including gun packs)
- There were 4,700 calls from farmers asking for assistance with fox damage.
- Welsh farms in sheep rearing areas lost an average £500 in stock through additional predation.

¹⁷⁴ http://www.defra.gov.uk/erdp/pdfs/hunting/hh_3b_sharris.pdf

¹⁷⁵ Baker *et al*, “Effect of British hunting ban on fox numbers”, *Nature*, 5 September 2002

¹⁷⁶ Baker *et al*, “Effect of British hunting ban on fox numbers”, *Nature*, 5 September 2002

¹⁷⁷ R.L. Moberly *et al* “The costs of red foxes to agricultural interests in Britain”, *Poster Presentation, Canid Biology and Conservation Conference 2001*, Oxford.

¹⁷⁸ Stephen Harris, “Friend or Foe?”, *The Times*, 21 September 2002

¹⁷⁹ <http://www.countryside-alliance.org/cfh/020717consultation.pdf>

- 2,240 days hunting were lost.¹⁸⁰

The Farmers Union of Wales cited a survey in which 118 farms, regularly visited by gun packs reported lamb losses of 1,650 above the norm due to the suspension of hunting because of foot and mouth disease.¹⁸¹

The Countryside Alliance submission also contained testimonials to other problems that had been encountered with pest control during the hunting ban. However, it is likely that the requirements for fox control will change from farm to farm. Obviously arable farmers, with no (or little) livestock may benefit as foxes aid in the control of the rabbit population.

A ban on foxhunting could at a stroke make criminals of those who continue to partake in the sport. The press has reported that many hunt supporters have pledged to break the law and are prepared to go to prison to defend their right to hunt.

Thousands of hunt supporters have signed a declaration that, if a ban comes into force, they will disobey the law and continue to hunt, risking a criminal conviction.

The declaration, on the website www.huntingdeclaration.org, commits those signing it to participating in a hunt on the first day of the season after any ban, in the belief that their arrest and conviction in large numbers would demonstrate the injustice of such a law.¹⁸²

The declaration and other information is available on a website specially constructed for the campaign.¹⁸³

There have also been reports that estate owners vow to defy any ban on hunting. These landowners allow the hunts to use their estates for the activity.

Edmund Vestey, who owns 17,000 acres in Suffolk, Cambridgeshire and Essex, said: "There is a great deal of anger and frustration and the temptation to break the law will be there if the Government bans foxhunting."

[...]

Henry Berkeley, the owner of the 6,000 acre Berkeley estate in Gloucestershire said: "I am determined to carry on hunting for as long as I can and if that means acting illegally then so be it."

[...]

¹⁸⁰ <http://www.countryside-alliance.org/cfh/020717consultation.pdf>

¹⁸¹ Farmers Union of Wales Press Release, *No alternative to foxhunting, says FUW*, 15 November 2001

¹⁸² "Hunt supporters sign up to break the law", *Daily Telegraph*, 22 July 2002

¹⁸³ <http://www.huntingdeclaration.org/>

The Duke and Duchess of Devonshire have vowed to risk imprisonment by promoting a campaign of civil disobedience against a foxhunting ban.¹⁸⁴

There is no dispute as to whether cruelty should be inflicted upon foxes. Neither side of the debate disputes that cruelty is wrong: what is in dispute is whether hunting is cruel. The Portcullis House Hearings discussed the issue of cruelty but this diverted onto comparisons, e.g., if hunting was considered cruel what else would be required to maintain that position? If you believed foxhunting to be cruel, was allowing a cat to hunt also an indication of cruelty? Professor Linzey, a professor of theology speaking against hunting, did not think so:

A cat is not a moral agent and therefore not morally responsible [...] I don't think I am morally responsible for the activity of my cats.¹⁸⁵

In an article in the *Times*, the cruelty of animals on animals is also laid at the door of the fox itself:

I have known a single fox to get into a pen and kill 100 pheasants over the course of a week. People need to understand that nature is cruel – and the same people who condemn fox-hunting as cruel are often quite prepared to lay down mousetraps.¹⁸⁶

Matters more central to the issue remained in dispute. Two experts giving evidence believed that hunting would be banned if subject to standards on animal welfare drawn up by the OECD, while one expert completely supported the activity.¹⁸⁷

It is claimed that the rules in Scotland could lead to greater suffering. The hunt itself is not prohibited if there is intent to kill the fox by gunfire and a person with a gun is present to carry this out. However, this may not always ensure a cleaner kill:

Patrick Martin, of the Bicester [Hunt], said he had attended a hunt this season in Scotland conducted under the new rules, which require a gun to be carried by mounted hunts.

He said: “They shot the fox. It was hit hard, fell over and ran off. The hounds chased the injured fox. They spent several hours looking for it. They never found it. The idea that that wounded fox got away distresses me....¹⁸⁸

¹⁸⁴ “Estate owners vow to defy ban on hunting”, *Sunday Telegraph*, 15 September 2002

¹⁸⁵ “Hunt debate reduced to a game of cat and mouse”, *Times*, 11 September 2002

¹⁸⁶ “I’m willing to risk jail for foxhunting”, *Sunday Times*, 15 September 2002

¹⁸⁷ “Hunting with dogs would be banned under world ruling”, *Daily Telegraph*, 11 September 2002

¹⁸⁸ “Compromise Bill on hunting ‘within weeks’”, *Daily Telegraph*, 12 September 2002

The Scottish hunting legislation has not in essence banned hunting and perhaps tellingly fails to define the terms ‘flush’, ‘hunt’ or ‘cover’. Thus it can be very difficult to determine when flushing becomes hunting or when a hunted animal is or is not under cover.

Both sides of the debate claim their position supports animal welfare.

The introduction of hunting legislation was the subject of speculation during the DEFRA hearings. With conflict between the Commons and Lords in recent votes the speculation was that that the Government would introduce some kind of compromise Bill.

Principles of what constituted cruelty would be set out in national legislation but left to local tribunals to enforce. This would take hunting outside of the criminal law. Local tribunals would also be charged with deciding where hunting performed a useful purpose, to farmers or the landscape, which outweighed any suffering it might cause to animals.¹⁸⁹

Such legislation could limit the amount of hunting taking place and, potentially, end hunting in a more piecemeal fashion than a sudden all-out ban:

Ministers hope the Bill which in effect would ban recreational hunting in England and Wales, will appease the majority of Labour back-benchers who want an outright ban.¹⁹⁰

Lord Burns warned the Portcullis House hearings that:

Introducing legislation which bans hunting with dogs immediately could alienate many country people...¹⁹¹

The enforcement of any ban on hunting is likely to fall to the police.

The Association of Chief Police Officers (ACPO) says that, without a specific offence directed at landowners, many will turn a blind eye to a ban.

[...]

Alastair McWhirter, Deputy Chief Constable of Wiltshire, has told Alun Michael, Rural Affairs Minister: “If hunting is to be made illegal, it may be helpful to think in terms of hunting on land as trespass and to make it an offence for a landowner to allow illegal hunting on his or her land. This may help with self-regulation.”

¹⁸⁹ “‘Hunt tribunal plan’”, *Daily Telegraph*, 12 September 2002

¹⁹⁰ “‘Hunting Bill may allow ‘opt-outs’””, *Independent*, 12 September 2002

¹⁹¹ “‘Gradual’ action on hunting advised””, *The Guardian*, 10 September 2002

Senior officers remain neutral on the hunting issue but are concerned about the difficulties of enforcing a ban.

[...]

ACPO has asked for laws for powers of entry on to land, powers of arrest and powers of seizure of hounds and horses and other equipment.¹⁹²

The police also had concerns that legislation that created a patchwork of what is permissible might be impossible to police. ACPO

...insists that new laws must be consistent and 'preferably not create offences in one part of the country which are not illegal in others'.¹⁹³

At the end of the Portcullis House hearings the Campaign for the Protection of Hunted Animals claimed that there was no way forward but a ban on hunting:

There must be no more delays and political fudges on the future of hunting with dogs, animal welfare groups said today.

After three days of public hearings on the issue, Campaigning to Protect Hunted Animals (CPHA) believes that the case for banning hunting with dogs is clear. It called for a bill to ban hunting to be announced in the Queen's Speech and introduced in the next session of parliament.¹⁹⁴

The Countryside Alliance took home a very different message however:

Richard Burge, Chief Executive, the Countryside Alliance, said: "This valuable process has shown that there is no evidence either on utility or cruelty grounds for any kind of ban on hunting - although there may well be a case for some form of independent regulation. The burden of proof must be on those who would take away others liberties and no proof has been forthcoming. Hunting has already proved its case in the communities where it takes place or it would not continue to thrive".¹⁹⁵

The most enthusiastic response to the hearings however came from the Middle Way, Lembit Opik, co-chair of the Middle Way group had the following comment to make:

One of the greatest achievements of the whole hunting debate was the three-day Hunting hearing in September 2002. Through it, Minister Alun Michael truly did achieve a degree of consensus between the three main organisations. What struck me most was the degree to which the hearings were evidence based – which, in

¹⁹² "Landowners who flout hunt ban 'should be prosecuted'", *Times*, 9 September 2002

¹⁹³ "Police chiefs fear law will bring chaos to the hills", *Times*, 7 September 2002

¹⁹⁴ CPHA Press Release, *Hearing confirm government must now ban hunting*, 11 September 2002

¹⁹⁵ Countryside Alliance, *Final Day Comments: Working for a Fair Solution*, 11 September 2002

my view, indicated the absence of any real evidence to show killing a fox with dogs was necessarily more cruel than the alternatives. It also proved that, when you take the emotional heat out of the debate, real solutions are possible. I suspect that, if everyone in the Commons read the transcript of the hearing objectively, I mean, without existing prejudices, they'd see how a "total ban" is impossible to achieve in reality, as ANY effort to do so would need exclusions that make a ban almost meaningless anyway. Also, the three day hearing process pointed to a serious and sensible method for formulating legislation. To that extent it was largely successful in achieving informed comment from all sides. Perhaps it showed that, when you force people to sit in a room together, even on fox hunting they can't help finding common ground.¹⁹⁶

Regardless of how the legislation is brought in and in what form it is implemented, Iain Duncan Smith has pledged that any such legislation would be reversed under the next Conservative government.¹⁹⁷

IV The *Hunting Bill* 2002-03

The Hunting Bill was published on 4 December 2002. Explanatory notes have been published that are available on the Internet, however there follows a guide to the provisions of the Bill that is divided into four parts and four schedules. The provisions of the Bill would extend only to England and Wales.

A. Consideration of the Bill

Part 1 of the Bill deals with the offences related to hunting that would be created under the proposed legislation. The hunting of wild mammals would become an offence unless the hunting fell within newly created categories of exempt and registered hunting.¹⁹⁸ Registered hunting would essentially be any hunting that has been given a licence by the newly created registrar while exempt hunting is any hunting that is listed in **Schedule 1** of the Bill. This schedule would be open to amendment by order of the Secretary of State in the future, to increase or decrease those activities defined as exempt.

It would also be an offence under the provisions of this Bill for a land-owner to knowingly permit non-exempt or non-registered hunting to take place on their land or for a dog-owner to knowingly permit his dog to take part in non-exempt or non-registered hunting.

The Bill would essentially ban the hunting of deer using dogs unless it came within the provisions of exempt hunting as there can be no registration in respect of the hunting of

¹⁹⁶ Lembit Opik, personal communication, 11 December 2002

¹⁹⁷ "Pledge of new vote to reverse ban on hunting", *Daily Telegraph*, 10 September 2002

¹⁹⁸ Clause 1

deer.¹⁹⁹ The Bill specifically bans competitive hare coursing rather than the hunting of hares which presumably would be allowed under registered hunting if the tests of utility and least suffering were satisfied.²⁰⁰

Anyone accused of participating in non-registered or non-exempt hunting would be able to use, in their defence reasonable belief that the hunting was registered or exempt.²⁰¹

Part 2 of the Bill deals with registration of hunting. The Bill would create a registrar, to be appointed by the Secretary of State, who would process applications for registered hunting based on tests of utility and least suffering. A Hunting Tribunal would also be created for the purpose of hearing appeals from the decisions made by the registrar.²⁰²

The Tribunal, according to the provisions of **Schedule 2**, would consist of a president, a deputy, a panel of chairmen and general Tribunal members, all of whom would be appointed by the Lord Chancellor.²⁰³ The president would require ten years legal experience and the chairmen, one of whom could be appointed as deputy president, seven years legal experience.²⁰⁴ The general members of the Tribunal would need to be registered as a veterinary surgeon or convince the Lord Chancellor of sufficient experience of animal welfare or land management to be appointed as a Tribunal member.²⁰⁵ The schedule provides information on the tenure of those appointed to the Tribunal, how the proceedings should take place, its ability to call expert witness and to order applicants to pay costs.²⁰⁶

Schedule 1 of the *Tribunals and Enquiries Act 1992* would be amended to include the Hunting Tribunal.²⁰⁷

Anyone over the age of eighteen, wishing to hunt a wild mammal with dogs, might apply either individually or on behalf of a group (all of the applicants for a group application must be over eighteen years of age). The applicant would have to specify the species of animal to be hunted and the area in which the hunt would take place. For a group, the maximum number of individuals taking part in the hunt would have to be stated, the manner in which information on those hunting would be recorded and delivered to the registrar and details of supervision for those non-registered persons intending to partake in the hunt.²⁰⁸

¹⁹⁹ Clause 6

²⁰⁰ Clause 7

²⁰¹ Clause 5

²⁰² Clauses 9 and 10

²⁰³ Schedule 2, paragraphs 1-5

²⁰⁴ Schedule 2, paragraphs 1 (2) and 4 (2)

²⁰⁵ Schedule 2, paragraph 5 (2)

²⁰⁶ Schedule 2, paragraphs 6 to 13

²⁰⁷ Schedule 2, paragraph 14

²⁰⁸ Clauses 13 and 14

The Bill would impose automatic conditions on hunting which would be open to amendment by order of the Secretary of State.²⁰⁹ Individual registrations would require reasonable steps to ensure the swift and humane disposal of wild mammals, any shooting to be carried out by competent persons and the permission of land-owners on which hunting takes place. Hunters would be required to allow inspectors appointed by prescribed animal welfare bodies to accompany them, to have insurance in place to cover loss and damage and to limit participation to three persons (including the applicant).²¹⁰

Excepting the three person limit, group registrations would also require these conditions. In addition, each participant on every occasion on which hunting is carried out would have to be recorded and that record kept throughout the duration of the registration. The group registration would also place a commitment on behalf of registered individuals taking part in the hunt to take reasonable steps to ensure those taking part were eligible for inclusion in the hunting.²¹¹

It would be possible for registered individuals to apply for changes in the conditions to either individual or group applications. Such applications would be treated as if they were a new application and as such subject to inspection by prescribed animal welfare bodies and open to appeal.²¹²

A group application could also be altered to permit additional individuals to hunt under the registration. The additional person could be in addition to the group already named or in replacement for one of those named persons. The additional person would require more than half of the group to indicate their consent. Anyone that failed in their application to join an already registered group would be unable to join any other group for a period of six months, unless specifically permitted by the registrar.²¹³

The Bill would make it an offence to knowingly provide false information when applying to be registered to hunt. In the event of a group registration, it would be an offence to fail to keep proper records though it would be a defence to show reasonable belief that a record was made or retained by another registered individual.²¹⁴

Once granted, registration would last for a maximum of three years or a shorter period as specified in the application, and could be renewed, again for a maximum of three years. Registration may be allowed to lapse but if an application is made for renewal more than

²⁰⁹ Clause 29

²¹⁰ Clause 27

²¹¹ Clause 28

²¹² Clause 30 and Clause 31

²¹³ Clause 32

²¹⁴ Clause 37 and Clause 38

six months prior to its expiry date the registration would not lapse until the application was finally determined.²¹⁵

A person registered, individually or within a group, could have their registration withdrawn if convicted of an offence under this legislation, the *Protection of Animals Act 1911* or the *Wild Mammals (Protection) Act 1996*. That person would be notified by the registrar.²¹⁶

Registration may also be removed, either group or individual, in the event that conditions of registration have been breached or that the tests of utility and least suffering are no longer being met. Prescribed animal welfare groups would be able to apply to the registrar for such de-registration. Similarly the occupier, or owner, of land could apply to the registrar for deregistration in the event of trespass committed in the course of hunting reliant on registration.²¹⁷

Any decision made with respect to deregistration would be open to appeal as previously described.²¹⁸

The manner in which applications are treated by the registrar would be subject to regulations made by the Secretary of State.²¹⁹ These regulations may include requirements on the presentation of documents and payment of fees.²²⁰

An application received by the registrar would be forwarded to ‘prescribed animal welfare bodies’ which would have a specified period to make representation about the proposed hunting. The registrar would be bound to consider such representations when deciding to grant the application. If the application was not refused, the registrar would have the option of granting the application as proposed or conditionally granting the application dependent upon changes in the conditions specified in the application.²²¹

If an application is refused then, subject to material changes of circumstance,²²² no application could be made to hunt the same species or within the same area for a period of six months. If the application was to be made on behalf of a group then no-one within that group would be able to apply individually or be part of a group application within that same time period.²²³

²¹⁵ Clauses 24 and 25

²¹⁶ Clause 33

²¹⁷ Clause 34

²¹⁸ Clause 35

²¹⁹ Clause 15

²²⁰ Clauses 13 (3)(c) & (d) and 14 (3)(c) & (d)

²²¹ Clause 17

²²² Determined at the discretion of the registrar

²²³ Clause 16

Refused applicants would be able to appeal to the Hunting Tribunal and prescribed animal welfare bodies could appeal granted applications. Any appeal would allow representation to be made from both applicants and prescribed animal welfare bodies. The Tribunal would then be able to re-consider the application and grant the application, grant the application subject to changes in conditions or refuse the application. Further appeal could only be made to the High Court if permission was granted either by the Tribunal itself or the High Court.²²⁴

The Bill would also allow the Secretary of State to create, through regulations, a register of hunting and determine the manner in which it should be maintained. The register would record species hunted and in which areas, other details provided by applications and other matters that may be specified within regulations. The register would be open to inspection at reasonable hours though certain information might be omitted if specified by regulation. Copies of the register might also be sought though subject to a fee specified by regulation and omitting information made unavailable by regulation.²²⁵

Part 3 of the Bill is related to the necessary provisions for enforcing the legislation.

A police constable would, without a warrant, be able to arrest a person where there is reasonable suspicion that a person is, has or is about to commit an offence under the provisions of the Bill. The constable would, with reasonable suspicion that evidence would be found, be able to stop and search both the suspect and any vehicle, animal or other thing in the possession or control of the suspect. Anything seized under these provisions would be able to be retained and used as evidence or be forfeited subject to the provisions of an order. Police constables would be provided with the power to enter land, premises other than a dwelling and vehicles in order to exercise powers under the provisions of the Bill.²²⁶

Offences under the Bill would attract fines not exceeding level 5 on the standard scale and result in the registrar being notified of the conviction. When convicted of an offence under this legislation it would be possible for the court to make an order that would disqualify the offender from participating in hunting under the provisions of the Bill. Such orders may last for any length of time up to a life ban. An offender who has been served with a disqualification order can apply, after at least a year since disqualification or previous applications, to terminate the order. An applicant must apply either to the magistrates' court where the order was made or a magistrates court for the same petty sessions area and may be required to pay costs.²²⁷

²²⁴ Clauses 18-20

²²⁵ Clauses 21-23

²²⁶ Clauses 40-42

²²⁷ Clauses 39 and 43

Part 4 of the Bill provides general interpretations of terms used in the Bill such as ‘wild mammal’ and the use of ‘belong’ with respect to dogs. **Part 4** would also bring into effect the provisions of **Schedules 3 and 4** that amend the provisions of several Acts that currently relate to hunting and repeals provisions within some of those same Acts.

The registration provisions of the Bill would come into force within one month of the Bill being enacted while the hunting and enforcement provisions would come into force two months after that. In the transitional period when individuals can be registered but before it is necessary to be registered to take part in hunting, those that have registered would be able to hunt as if that application had been granted.

B. Comment on the Bill

The publication of the Hunting Bill has provided the various interest groups with an opportunity to comment on its detail.

The Countryside Alliance would appear to be encouraged by the fact that the Bill as presented does not simply legislate for a complete ban on the use of dogs in hunting:

The Alliance has long made it clear that a constructive licensing system could be a positive way forward; we are examining the detail very carefully.²²⁸

Strict application of the legislation could severely curtail many recreational aspects of hunting but the Bill explicitly prohibits hare coursing and the hunting of deer with dogs: a measure the Alliance was quick to oppose:

The Alliance rejects entirely the Bill's proposed ban on stag hunting and coursing. The Government has provided no rational grounds for singling out these activities. Fair and truly independent regulation would have called for all forms of hunting to meet the principles of animal welfare and utility.

[...]

It is completely unacceptable that the fragile community of Exmoor, its neighbouring areas, and the diverse supporters of coursing should be the victims of discrimination.²²⁹

One of the things that the Alliance criticise the Government for is that not all animals, or forms of hunting, are treated equally. They propose that a licensing system, if introduced should treat all cases on an equal basis. Ironically that is probably a very similar view to that of the prohibitionist line of argument though their similar treatment would ban all hunts and prohibit the hunting of any animal.

²²⁸ Countryside Alliance, *Response to Hunting Bill Announcement*, 4 December 2002

²²⁹ Countryside Alliance, *Response to Hunting Bill Announcement*, 4 December 2002

The CPHA, Campaign for the Protection of Hunted Animals, (which ran the Deadline 2000 campaign) commentary on the Bill does indeed call for a more even handed approach to the prohibition on the use of dogs:

The CPHA would like to see the Bill amended so as to ensure that the chasing and killing with dogs of foxes, hare and mink are banned. There is no reason to treat these activities differently.²³⁰

Their statement on the Bill presents a number of issues they have with a licensing approach such as the fact that such a system would not stop the killing of wild mammals with dogs, that the licences would be for three years, that the system would be 'costly and bureaucratic', and that there is a lack of guidance on necessary evidence to prove utility. They are also critical of the suggested composition of the Tribunals which would hear appeals.

Another problem with the Bill as presented, according to the CPHA, is the flexibility within it that allows changes to be made by orders and regulations:

...the Bill permits the Secretary of State to vary categories of exempt hunting or to remove automatic conditions of registration. This power could be used by a future Secretary of State to neutralise the Bill. Any reversal of the ban should require primary legislation.²³¹

Lembit Opik, co-chair of the Parliamentary Middle Way group, welcomed the focus on utility and least suffering within the Bill:

The key step forward is defining an action as "cruel" when suffering exceeds "utility," and "not cruel" when "utility" exceeds "suffering." By seeking to create this "cruelty equation," it sensibly shifts the argument towards an objective debate on animal welfare related outcomes. This offers a real chance for common ground between all three groups, since the principle of balancing "utility" versus "suffering" is inescapably rational.²³²

Mr Opik believed that the Government Bill had incorporated ideas from each of the three positions and was not simply a Middle Way Bill. He stated that the Bill had potential:

As long as parliament considers the issue according to the facts, this Bill can provide a long term solution. Remaining areas of contention cover Stag Hunting

²³⁰ Campaign for the Protection of Hunted Animals, *Briefing on Government Bill as introduced*, 11 December 2002

²³¹ Campaign for the Protection of Hunted Animals, *Briefing on Government Bill as introduced*, 11 December 2002

²³² Lembit Opik, personal communication, 9 December 2002

and hare coursing, and the extent recreational activity should be included as “utility.”²³³

The Prime Minister’s Official Spokesman in briefing the press on the Hunting Bill said:

The Prime Minister believed that in reaching the conclusions that had been reached Mr Michael had done his best to try to find a rational way forward. Asked whether the Prime Minister would vote for the Bill, the [Prime Minister’s Official Spokesman] said that the Prime Minister fully supported Mr Michael.²³⁴

The announcement and publication of the Bill produced the usual amount of newspaper comment on the issue. The major theme of the newspapers on 4 December 2002 was the reaction of Labour MP’s to the lack of a complete ban.

The *Times* announced:

Tony Blair’s attempt to appease the countryside by allowing foxhunting to continue in parts of the country looked doomed last night as Labour MPs lined up to demand a complete ban.²³⁵

One newspaper article noted the statement of intent implied in an Early Day Motion tabled by Tony Banks,²³⁶ which called for a complete ban:

Martin Salter, a Labour backbencher collecting signatures for the motion, said: “There is a strong feeling at all levels in the Parliamentary Labour Party that nothing less than a total ban is acceptable”.²³⁷

There is a second EDM,²³⁸ not reported in the press which calls for Scottish MPs not to take part or vote in debates on a hunting bill that affects only England and Wales.

Some articles examined the potential for amending the Bill. In the *Daily Telegraph*:

Opponents of hunting are confident they will be able to amend the Bill to impose a total ban. Parliamentary procedural experts said last night that the way the Bill had been drafted did not preclude an amendment to impose an outright ban on foxhunting.²³⁹

²³³ Lembit Opik, personal communication, 9 December 2002

²³⁴ Number 10 Downing Street, *Afternoon Government press briefing*, 3 December 2002

²³⁵ “Labour MPs reject hunt fudge”, *The Times*, 4 December 2002

²³⁶ EDM 273, *Hunting with dogs*, 176 signatures, 11 December 2002

²³⁷ “100 Labour MPs call for a total ban on hunting”, *Daily Telegraph*, 5 December 2002

²³⁸ EDM 297, *Hunting in England and Wales*, 22 signatures, 11 December 2002

²³⁹ “Bitter fighting lies ahead as Labour MPs go in for the kill”, *Daily Telegraph*, 4 December 2002

An assessment supported by the *Guardian*:

Despite fears that the Government might make the Bill difficult to amend, it appears simple to alter so that it will impose an outright ban. There are only two clauses, and strategists say an amendment which struck out the possibility of registration would effectively disembowel the bill.²⁴⁰

Some commentary focussed on the fact that the Bill had managed to raise opposition in both traditional camps, those for and against a ban:

...opposing sides outside Westminster denounced the government.

Simon Hart, spokesman for the pro-hunting Countryside Alliance, attacked the ban on hare coursing and stag hunting, while Douglas Batchelor, chairman of the Campaign for the Protection of Hunted Animals, rejected the compromise on hunting with dogs.²⁴¹

There was some comment on the idea of allowing hunting on a case by case basis as leading to an activity being legal in one part of the country and illegal in another.

Put to [the Prime Minister's Official Spokesman] that the very fact that people would be prosecuted in Cumbria but not in Surrey for doing exactly the same thing demonstrated the madness of the Bill, the PMOS said he would disagree. The Bill showed consistency throughout by taking into account local circumstances and in seeking to set up a national, rather than a local, register and national, rather than local, tribunals. Put to him that local tribunals surely made better sense, the PMOS said he would disagree once again. The national tribunals would apply national standards locally.²⁴²

The tantalising prospect of the Parliament Act was never far away. The *Guardian* urged MPs to back this compromise proposal as it feared:

...a majority of MPs will try to radically change Mr Michael's bill during its committee stage. Thus amended, the bill will almost certainly be rejected by the Lords. If that happens there will be immense pressure to invoke the parliament Act provisions which allow the will of the Commons to overcome the will of the Lords, though Mr Michael made no promises yesterday.²⁴³

In his Parliamentary Statement announcing the Bill, Mr Michael had said, on the use of the Parliament Act:

²⁴⁰ "Hunt bill protest gathers pace", *The Guardian*, 5 December 2002

²⁴¹ "Ministers could join revolt against rules to allow hunt", *The Guardian*, 4 December 2002

²⁴² Number 10 Downing Street, *Afternoon Government press briefing*, 3 December 2002
<http://www.number10.gov.uk/output/page6759.asp>

²⁴³ Editorial, "MPs should back the middle way", *The Guardian*, 4 December 2002

...we hope that it will not be necessary for that Act to be applied, as we hope that people will engage with sensible proposals that will command the support of the House and, indeed, of another place.²⁴⁴

[...]

It is our preference that, in considering legislation that comes from this House, the other place should support it and seek to improve it, rather than seeking to obstruct it. I hope that such legislation will be dealt with in that way.²⁴⁵

One article speculated on the future impact the Hunting Bill could have if implemented:

Matthew Knight, a solicitor who represents the Countryside Alliance said: “Least suffering is a dangerous definition. There is a risk that it could be applied to all sports, including fish and birds.”

[...]

Earl Peel, the president of the Game Conservancy Trust said that the new cruelty test would set a dangerous precedent. “Fishing and shooting will face death by 5,000 cuts over the next few years.”

[...]

Lord Peel hoped that shooting could stand up to scrutiny but was uncertain about fishing. “It could be hard to justify on grounds of utility”, he said.²⁴⁶

V The Parliament Acts and the *Hunting Bill 2002/03*

A. The Hunting Bill

There has been much speculation about the use of the *Parliament Acts* in relation to the *Hunting Bill 2002-03*. Despite such speculation, the *Parliament Act* procedure cannot in fact apply this session (2002/03) as the *Hunting Bill* could not this session fulfil the requirement of the Act of having been passed by the Commons in two consecutive sessions.

This was implied by Alun Michael during the following exchange in the Commons:

²⁴⁴ HC Deb 3 December 2002 c759

²⁴⁵ HC Deb 3 December 2002 c762

²⁴⁶ “Hunt Bill is ‘a threat to shooting and fishing’”, *The Times*, 7 December 2002

Mr. Mike O'Brien (North Warwickshire): I welcome the preparedness to invoke the Parliament Act, should that be needed, but will my right hon. Friend confirm that it could not be invoked in the next Session with a new Bill, and that the process would therefore probably take a further year? Will he also confirm that the Government have moved from a position of neutrality—of merely facilitating Parliament's arrival at a conclusion based on one of the three options—to the undertaking of a new process to secure a Bill based on common ground? Has he any idea what that common ground would be?

Alun Michael: My hon. Friend is right: the process will take a little longer by the means I have proposed today than by the means of applying the Parliament Act to the previous Bill. That, however, is a price that we consider worth paying to try to avoid the continuing danger of a stalemate between the two Houses, and to find as much common ground as possible between us and those who feel strongly about these issues, both in this House and outside.²⁴⁷

If the Bill is defeated or blocked at any stage during its passage in the Lords this session, and the same happens again next session, the Government could, if it chose, and provided the Bill meets the criteria specified below, recommend that the procedure be used. However, there has been no specific commitment from the Government about using the *Parliament Act* procedure, although Alun Michael has made a number of comments about its use. For example, during his statement on 3 December 2002, he said:

The Bill is a Government Bill, and I am acting on the Government's behalf in making proposals to enable Parliament to reach a conclusion on the issue. Of course, if a Bill were passed by the House and blocked by another place, it would be reintroduced, as we have indicated. It would be not for us but for Parliament to decide whether the Parliament Act applied. Indeed, it is a matter for you, Mr. Speaker, to decide whether the Parliament Act applies in any particular circumstances.²⁴⁸

Earlier, during his statement on 21 March 2002, Mr Michael said:

We promised in our manifesto that this issue would be resolved. Should there be no way through, and should the new Bill be frustrated in its passage rather than scrutinised and improved, the Government could not properly stand in the way of the application of the Parliament Act, which of course would be a matter for this House.²⁴⁹

B. Application and procedure

The long title of the *Parliament Act 1911* reads:

²⁴⁷ HC Deb 21 March 2002, Vol 383 c464

²⁴⁸ HC Deb Vol 395 c764

²⁴⁹ HC Deb 21 March 2002, Vol 383 c464

An Act to make provision with respect to the powers of the House of Lords in relation to those of the House of Commons, and to limit the duration of Parliament.

The *Parliament Act 1949* amended the 1911 Act reducing the time periods specified in the execution of the procedure, replacing the 1911 Act's "three sessions" with "two sessions", and "two years" with "one year". With regard to bills other than money bills, the procedure is set out in section 2(1) of the 1911 Act, as amended by the 1949 Act:

2 Restriction of the powers of the House of Lords as to Bills other than Money Bills

(1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons [in two successive sessions] (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection [for the second time] by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless [one year has elapsed] between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons [in the second of those sessions].

1. General

The House of Lords *Companion to the Standing Orders* sets out in detail the application and procedures of the *Parliament Acts* in relation to bills other than money bills.²⁵⁰

Other public bills

6.176 If the Lords reject any other public bill to which the Acts apply which has been sent up from the Commons in two successive sessions, whether of the same Parliament or not, then that bill shall, unless the Commons direct to the contrary, be presented for Royal Assent without the consent of the Lords. The bill must be sent up to the Lords at least one calendar month before the end of each session; and one year must elapse between second reading in the Commons in the first session and the passing of the bill by the Commons in the second. The Lords are deemed to have rejected a bill if they do not pass it either without amendment or with such amendments only as are acceptable to the Commons. The effect of the *Parliament Acts* is that the Lords have power to delay enactment of a public bill until the session after that in which it was first introduced and until not less than 13 months have elapsed from the date of Second Reading in the Commons in the first session.

²⁵⁰ 2000, para 6.174-6, also on Lords website – <http://pubs1.tso.parliament.uk/pa/ld/ldcomp/compos30.htm#a216>

2. The text of a bill

In order for the *Parliament Acts* procedure to be invoked, the Bill sent to the Lords in the second session has to be identical to the Bill sent to the Lords in the first session,²⁵¹ with the following exceptions:²⁵²

- (i) The session 2 Bill may contain amendments made necessary by the passage of time, and certified by the Speaker as such²⁵³
- (ii) The session 2 Bill can include any amendments made by the Lords to the session 1 Bill.
- (iii) The Commons can suggest amendments in session 2 and send them to the Lords for their agreement. This is done separately and does not prejudice the Commons' right to insist on the enactment of the session 1 Bill in its original form under the *Parliament Acts*.

The Commons can choose whether to make use of (i), (ii) or (iii). If the Lords make amendments to the session 2 Bill, the Commons can, of course, accept them. The Commons can also direct that the *Parliament Acts* shall not apply at all if they so wish, and indeed the Speaker can decide not to certify a bill even if it is not passed by the Lords in separate sessions.

3. Timescale

To be eligible for the *Parliament Acts* procedure, a bill (other than a money bill) must be passed²⁵⁴ in the Commons in the second session (a) at least one year after it received its second reading in the first session and (b) be sent up to the Lords at least one month before the end of the second session. The exact interpretation of “one year” and “one month” has never been tested. The safest assumption is likely to be to count “one year” from the day after the bill receives its second reading in the Commons in the first session (*i.e.*, one calendar year and one day). To allow for any unforeseen circumstances and guarantee that at least one month elapses before the end of the session, the Commons wait for one further month from the date of sending the bill to the Lords before presenting it for Royal Assent, even if the bill has clearly been rejected by the Lords before that time.²⁵⁵ Again, in practice, this would mean one calendar month and one day. It is likely, therefore, that the minimum period of time that could elapse between the Commons second reading in the first session and the bill receiving Royal Assent is, in fact, thirteen months and two days (assuming there is no gap between the Commons passing the bill and the Lords receiving it).

²⁵¹ Note: identical to the Bill sent to the Lords, not to the Bill as initially presented

²⁵² set out in s 2(4) of the *Parliament Act 1911*

²⁵³ “... only such alterations as are certified by the Speaker as being necessary owing to the time which has elapsed since the date of the former Bill,...”

²⁵⁴ A Bill is recorded in the *Journal* of the House as having been passed once it has been given a third reading.

²⁵⁵ See Speaker's ruling on *European Parliamentary Elections Bill 1998-99*, HC Deb 16 Dec 1998 Vol 322 c984 http://pubs1.tso.parliament.uk/pa/cm199899/cmhansrd/vo981216/debtext/81216-23.htm#81216-23_spnw6

The *Parliament Acts* procedure can operate on bills re-introduced in the first session of a new Parliament.

4. Rejection of a bill

The *Parliament Acts* set out the procedures which are available should the House of Lords "reject" a bill; and section 2(3) of the 1911 Act states that for this purpose a bill is deemed to be rejected by the House of Lords "if it is not passed by that House either without amendment or with such amendments only as may be agreed to by both Houses". The clearest case is when the House of Lords declines to give a bill a second reading, (as with the *European Parliamentary Elections Bill 1998-99*). With the *War Crimes Bill 1990-91* (the Bill presented in the second session) the Lords agreed a dilatory amendment that delayed the bill being read a second time by six months. A dilatory amendment such as this is deemed tantamount to rejection by the Lords, and a Speaker's statement was made the following day which indicated that what had been done in the Lords was regarded as rejection of the Bill.²⁵⁶

Three acts passed into law under the terms of the original 1911 *Parliament Act* without the agreement of the Lords. These were:

- *Government of Ireland Act 1914*
- *Welsh Church Act 1914*
- *Parliament Act 1949*

Three acts have been passed since the 1949 Act:

- *War Crimes Act 1991*
- *European Parliamentary Elections Act 1999*
- *Sexual Offences (Amendment) Act 2000*

5. Certification

The Speaker is responsible for certifying that a Bill fulfils the criteria of the Act. The certification process is given in *Erskine May*:

A bill other than a money bill, when presented to Her Majesty for assent pursuant to section 2 of the Act of 1911, must be endorsed with the signed certificate of the Speaker that the provisions of the section have been duly complied with.²⁵⁷

²⁵⁶ Further information on these Bills and the Parliament Act procedures is given in Library Standard Note SN/PC/675, the *Parliament Acts*, 14 February 2002.

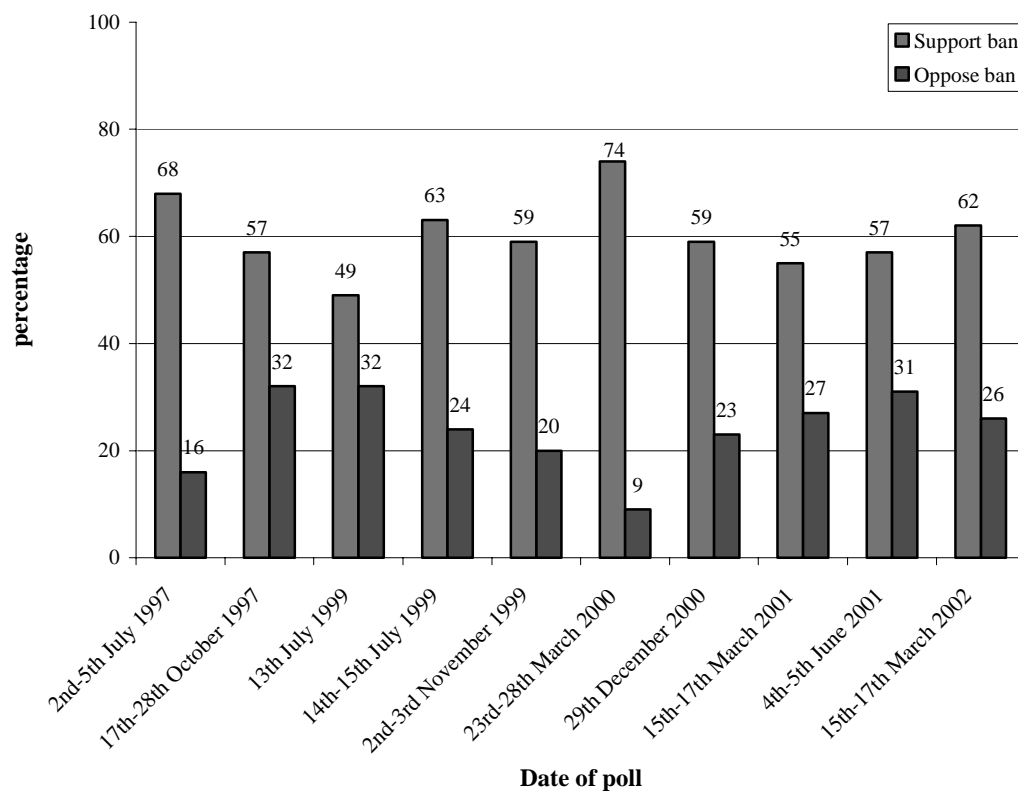
²⁵⁷ *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 22nd ed, Butterworths, 1997, p570

Appendix 1 - Public opinion towards hunting

There have been a number of opinion polls carried in the last few years regarding the issue of hunting with dogs and related topics. This Appendix reviews the results of various MORI and NOP polls, and considers the over-time trends in public opinion revealed by them.²⁵⁸

On average, across the ten MORI polls conducted between 1995 and 2002, the level of support for a ban on the hunting of wild mammals with dogs has been 60.3%. The highest level of support was recorded in a poll in March 2000 (74%), and the lowest in July 1999 (49%). Figure 1 below reports this data in more detail:

Figure 1: MORI poll data on hunting with dogs, 1995-2002



In **February 1995**, MORI conducted a face-to-face interview with a sample of 1,082 respondents in Great Britain aged 18 and over. 66% of those polled disagreed with the

²⁵⁸ The text of questions used by MORI to establish support or opposition to a ban on hunting with dogs have varied slightly between polls. However, for illustrative purposes, the question used in July 1999 was “And now some questions about hunting wild mammals with dogs (e.g. fox hunting and stag hunting). To what extent do you support or oppose a ban on hunting with dogs in Britain?”

statement put to them that ‘fox hunting is a necessary means of preserving the balance of wildlife in our countryside’, while 20% were in an agreement. When asked a series of specific questions regarding the banning of hunting of various species, opinion tended to vary. 53% thought that shooting live game birds, such as pheasant and grouse, should be banned (31% opposed), but only 12% thought that fishing with rod and line should be prohibited (68% opposed).

In **July 1997**, MORI interviewed, by telephone, a sample of 1,000 adults in Great Britain aged 18 and over. The poll found that 71% thought that hunting with dogs should be banned, whereas 81% felt that drag hunting could be used as an alternative to hunting live animals. Two-thirds of those polled (66%) disagreed with the view that hunting with hounds was an important part of the rural economy, and 72% felt that hunting was not necessary for the control of the fox population. Most people favoured a ban on the hunting of deer (67%), but also foxes (58%), hares (56%) and mink (55%).

A further poll was conducted by MORI on behalf of the *Campaign for the Protection of Hunted Animals* (CPHA) in **October 1997**, sampling 1,529 ‘country dwellers’ living in rural areas aged 18 and over. The survey found that 57% of those living in rural areas supported Michael Foster’s Private Member’s Bill to ban hunting with dogs, whereas 32% were opposed. A majority of people felt that hunting with dogs was *not* an important part of the British way of life (60%), and a similar proportion thought that hunting with dogs was an outdated activity (57%). Around three-quarters of those polled supported the idea of drag hunting as a viable alternative to killing animals with dogs (74%).

The *Mail on Sunday* commissioned MORI to run a poll in **July 1999** which interviewed, by telephone, 801 adults aged 18 and over across Great Britain. The survey found that 63% of those polled supported a ban on hunting with dogs, while 24% were opposed. As with the July 1997 poll, respondents were asked a series of questions regarding species-specific bans. 69% felt that fox hunting was *not* ‘a necessary means of preserving the balance of wildlife in the countryside’, 53% favoured a ban on the shooting of live game birds such as pheasant and grouse, but only 18% supported the banning of fishing with rod and line.

Also in **July 1999**, MORI undertook an opinion poll to coincide with the Eddisbury by-election, surveying 500 people aged 18 and over in the constituency. The poll asked respondents a series of questions concerning hunting. 49% of Eddisbury constituents favoured a ban on hunting with dogs while 32% were against.

A MORI poll conducted, again by telephone, in **November 1999** among 968 respondents aged 15 and over, found that 59% supported the Government’s plans to ban hunting and 20% were opposed.

There was a sizeable boost to the anti-hunt lobby through a poll conducted in Scotland in **March 2000**. MORI Scotland interviewed 991 people aged 18 and over by face-to-face interview in their homes. 74% of those polled were opposed to hunting with dogs while

only 9% were in favour. 70% supported the proposals contained in a Bill in the Scottish Parliament designed to outlaw foxhunting, hare coursing and underground terrier work.

In **December 2000**, 504 British adults aged over 18 were interviewed on behalf of the *Mail on Sunday*, again by MORI by face-to-face interview. 59% supported a ban on hunting with dogs and 23% were opposed. The remainder had no opinion, or neither supported nor opposed the principle of a ban.

During the Foot and Mouth outbreak in **March 2001**, 503 adults aged over 18 were interviewed by MORI by telephone, alongside booster samples of 277 adults in Devon and 255 in Northamptonshire. In Britain as a whole, 55% supported a ban on hunting with dogs and 27% were opposed. Among the Devon sample, 53% supported a ban (29% opposed) while in Northamptonshire 50% wanted hunting with dogs outlawed (37% opposed).

NOP conducted a poll on behalf of the *Countryside Alliance* in **April 2001** among 1,000 adults as to the likely outcome of the Government's proposals on hunting. The poll found that 36% of those questioned wanted hunting to be controlled by a new regulatory authority, 22% preferred hunting to remain subject to its own existing system of self-regulation, while 37% wished for hunting to be made a criminal offence.

Shortly before the general election held in **June 2001**, MORI sampled 1,010 adults aged over 18 and interviewed them by telephone as to their expectations of a future Labour government. 57% supported a ban on fox hunting and 31% were opposed. 11% had no opinion.

NOP carried out a poll on behalf of the *Countryside Alliance* and *Daily Telegraph* among 1,000 members of the Royal College of Veterinary Surgeons in **July 2001**. 63% of rural vets opposed an outright ban on hunting on the grounds of animal welfare, while 30% supported a ban. 65% of vets supported the continuation of hunting with dogs, either subject to statutory regulation (32%) or self-regulation under independent supervision (34%). 24% of those polled supported the 'total ban' option contained in the *Hunting Options Bill*.

In **October 2001**, NOP published a poll of 1,000 residents of rural Wales commissioned by the *Countryside Alliance (Wales)*. 38% thought that hunting should be made a criminal offence, 25% felt that hunting should continue under a system of government licensing, 23% thought that hunting should continue under a system of self-regulation subject to independent supervision while only 11% felt that hunting should continue without supervision. Overall, this poll showed that 59% of residents of rural Wales wanted hunting with dogs to continue, albeit under some form of regulation.

In **March 2002**, a quota sample of 1,003 adults aged 16 and over were interviewed by MORI by telephone, shortly before the House voted on the issue of hunting at the close of a specific debate on 18th March. While the House of Commons supported the prohibition of hunting with dogs in almost identical numbers to the vote on the *Hunting Bill* the year

before, the House of Lords supported the principle of allowing hunting by regulation. In the MORI poll 62% indicated their support for the Government's plans to bring in a ban on hunting with dogs while 26% of those polled were opposed.

The *Countryside Alliance* commissioned NOP to run a poll among 1,000 adults to coincide with the motions on hunting before Parliament in **March 2002**. 23% of respondents said that the Government should insist on a compromise between the position of the House of Commons and that taken by the House of Lords. One-quarter of those polled (25%) thought that the Government should drop the hunting proposals completely and 48% felt that the Government should insist on a ban.

A survey commissioned by the *International Fund for Animal Welfare* was conducted by MORI in **August 2002** among a quota sample of 1,944 adults aged 15 and over in 187 sampling points across Great Britain. 73% felt that the Government had taken 'too long to resolve the hunting issue' while only one-in-seven of those polled (14%) thought that the Government had taken 'the right amount of time'.

In **September 2002**, a sample of 1,002 adults aged 15 and over were interviewed by telephone by MORI on behalf of the *Campaign for the Protection of Hunted Animals* (CPHA), the *League Against Cruel Sports*, and the RSPCA. 74% felt that hunting with dogs was inhumane and 72% believed that, if people wanted to hunt, they should attend drag hunts.

The most recent NOP poll was conducted in **October 2002** on behalf of the *Countryside Alliance* among 1,000 adults aged 15 and over. The results appeared to show a slight decline in the level of support for a ban on hunting with dogs. 28% thought that hunting with dogs should be controlled under Government licence and a similar proportion (26%) felt that the *status quo* (i.e. self regulation) should prevail. 43% wanted hunting with dogs to be made a criminal offence, down from 48% reported in the NOP March poll, also for the *Countryside Alliance*.²⁵⁹

²⁵⁹ Further information may be found at <http://www.mori.com/polls/hunting.shtml> and <http://www.countryside-alliance.org/news>

Table 1: Polling data on hunting with dogs, 1995-2002*percentages*

Date of Poll	Support ban	Oppose ban
2nd-5th July 1997	68	16
17th-28th October 1997	57	32
14th-15th July 1999	63	24
13th July 1999	49	32
2nd-3rd November 1999	59	20
23rd-28th March 2000	74	9
29th December 2000	59	23
15th-17th March 2001	55	27
4th-5th June 2001	57	31
15th-17th March 2002	62	26

Source: MORI

Date of Poll	Statutory			No supervision
	Total ban	regulation	Self-regulation	
April 2001	37	36	22	n/a
July 2001	24	32	34	n/a
October 2001	38	25	23	11
October 2002	43	28	26	n/a

Source: NOP/Countryside Alliance

Table 2: Polling data on species-specific hunting, 1995-2002*percentages*

Date of Poll	Support species ban					
	Deer	Fox	Hare	Mink	Game	Fish
23rd-24th February 1995	-	66	-	-	53	12
2nd-5th July 1997	67	58	56	55	-	-
14th-15th July 1999	-	69	-	-	53	18
18th-20th January 2002	80	72	81	-	-	-

Source: MORI

Appendix 2 - Statistical Profile of Hunting in England and Wales

The data contained in Tables 3 and 4 below was cited in the *Report of the Committee of Inquiry into Hunting with Dogs in England and Wales* (Cm 4763), published in June 2000. This data is based on the responses to the *Survey of Hunts* by Produce Studies Ltd, conducted in February 2000:

Table 3: Statistical Profile of Hunts in England and Wales, by species

	Fox	Deer	Hare*	Mink
Number of hunts	178	3	83	20
Days spent hunting	74	97	53	42
Financial:				
Total income	£13,034	£363	£1,427	£89
Hunt income per hunting day	£986	£1,247	£325	£105
Horses owned	754	39	-	-
Hounds				
Entered hounds (couple)	5,566	120	1,630	176
Unentered hounds (couple)	1,595	23	442	29
Employment				
Full-time employees	453	14	42	1
Part-time employees	249	11	53	12
Participants				
Subscribers	20,591	1,342	5,245	771
Members of Supporters' Clubs	34,723	770	3,398	268

* figures for hares include hunting with beagles, bassets and harriers

Source: *Report of the Committee of Inquiry into Hunting with Dogs in England and Wales* (Cm 4763) (June 2000)

Table 4: Statistical Profile of the Average Hunt

	Fox	Deer	Hare*	Mink
Income	£73,000	£121,000	£17,000	£4,000
Horses owned	4.2	13.0	-	-
Hounds				
Entered hounds (couple)	31	40	20	9
Unentered hounds (couple)	9	8	5	1
Employment				
Full-time employees	2.5	4.7	-	-
Part-time employees	1.4	3.7	-	-
Participants				
Subscribers	118	447	63	39
Members of Supporters' Clubs	195	257	41	13
Mounted followers (weekday)	30	47	-	-
Unmounted followers (weekday)	34	150	15	20
Mounted followers (weekend)	50	90	-	-
Unmounted followers (weekend)	58	300	29	37

* figures for hares include hunting with beagles, bassets and harriers

Source: *Report of the Committee of Inquiry into Hunting with Dogs in England and Wales* (Cm 4763) (June 2000)