

# **Wild Mammals (Protection) Bill**

## **[Bill 16 1995/96]**

**Research Paper 96/13**

**23 January 1996**



This paper updates last session's Library research paper 95/26 written to accompany Mr McFall's *Wild Mammals (Protection) Bill*. Members should refer to the preceding paper for further information. Mr McFall's Bill, which ran out of time, sought to ban the setting of dogs after wild mammals, which would effectively have banned hunting. Mr Meale has not included hunting or snaring measures in his *Wild Mammals (Protection) Bill 1995-96* [Bill 16 1995/96] which is based on Clause 1 of Mr McFall's Bill, and aims to provide legal protection against cruelty for all wild mammals.

**Patsy Hughes**  
**Science and Environment Section**

**House of Commons Library**

---

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

## CONTENTS

	<b>Page</b>
<b>I Introduction and summary</b>	<b>5</b>
<b>II Position of common wild mammals in law</b>	<b>5</b>
<b>A. Protection of Animals Acts</b>	<b>5</b>
<b>B. RSPCA 'case histories'</b>	<b>6</b>
<b>III Mr McFall's Wild Mammals (Protection) Bill 1994/95</b>	<b>8</b>
<b>IV Wild Mammals (Protection) Bill 1995-96</b>	<b>12</b>
<b>Further Reading</b>	<b>15</b>



## I Introduction and summary

This brief paper updates last session's House of Commons Library research paper 95/26 'Hunting: *Wild Mammals (Protection) Bill* [Bill 14 1994/95]' written to accompany John McFall MP's Bill of that name. Members should refer to this preceding paper for further information.

Mr McFall's Bill sought to ban the setting of dogs after wild mammals, which would effectively have banned hunting. It also sought to ban the setting of snares. The debates during the early part of its passage thus focused on field sports. In addition however, Clause 1 of the Bill sought to provide protection against cruelty to wild mammals, which in general are presently not protected in law. This Clause had the support in principle of field sports organisations, and to get the Bill through both Houses Mr McFall later amended his Bill, removing all its provisions except Clause 1 and its enforcement clauses. The Bill ran out of time after amendments were tabled in Committee and in the Lords seeking to ensure that field sports and other lawful activities were not affected by its contents.

Mr Meale, who came second in this session's Ballot, has not included hunting or snaring measures in his *Wild Mammals (Protection) Bill 1995-96* [Bill 16 1995/96], which is based on Clause 1 of Mr McFall's Bill and concentrates instead on providing legal protection for wild mammals against cruelty.

## II Position of common wild mammals in law

### A. Protection of Animals Acts

The RSPCA was founded in 1824 to enforce the *1822 Ill-Treatment of Cattle Act*, which was amended and repealed, finally resulting in the *Protection of Animals Act 1911*. The RSPCA Act 1932 establishes the objects of the society, which are to 'promote kindness and to prevent or suppress cruelty to animals and to do all such lawful acts as the Society may consider to be conducive or incidental to the attainment of these objects.' The RSPCA brings private prosecutions, acting through its officers who receive training on, inter alia, the requirements of the *Police and Criminal Evidence Act 1981*. RSPCA officers have no powers of entry

## Research Paper 96/13

although they can be asked to inspect premises by police who are investigating a criminal offence<sup>1</sup>.

Most of the RSPCA's prosecutions are brought under the *Protection of Animals Act 1911*. This, and Acts of the same name which have built upon it, make it illegal to "cruelly ill treat" an animal in specified ways, such as beating, overloading or terrifying it. There is also the more general offence of wantonly or unreasonably causing unnecessary suffering to an animal. This includes not only overt acts but also omissions such as failing to provide food, water, or veterinary attention. To prove that an offence has been committed, it is necessary to prove that the action caused suffering and that the suffering was unnecessary, since the adverb "cruelly" is to be equated with "so as to cause unnecessary suffering"<sup>2</sup>.

However, the Protection of Animals Acts apply only to any domestic or captive animal. "Domestic" animals include any species "sufficiently tamed to serve some purpose for the use of man" and "captive" animals include any species in captivity or under some form of control but **not** simply under a temporary prevention from escape. Hence although certain wild animals have protection under legislation such as the *Wildlife and Countryside Act (1981)* because of their conservation status, free-living non-domesticated animals are not covered by the main Acts unless they are taken into captivity.

Two cases set precedents for the interpretation of the meaning of "captive" under the Acts<sup>3</sup>. In *Steele v. Rogers (1912)*<sup>4</sup>, a person cut a piece off a whale stranded on a beach. The tide later came in and other beached whales were able to return to the sea. In *Rowley v. Murphy (1964)*<sup>5</sup>, a hunted deer was restrained and dragged from under a van before being killed with a knife. In both cases it was decided by the courts that the animals involved were not captive within the meaning of the Act.

### **B. RSPCA 'case histories'**

The above precedents were followed in a 1986 decision. A defendant admitted that he had beaten a hedgehog with a stick and left it injured; it was rescued by a neighbour but later died. The RSPCA appealed against an acquittal of the defendant and argued that the hedgehog was effectively captive because it was so severely injured that it could not escape.

---

<sup>1</sup>*Animal Welfare and the Law*, Blackman, Humphreys and Todd, 1989

<sup>2</sup>*An Introduction to Animal Law* Cooper 1987 p.28

<sup>3</sup>ibid

<sup>4</sup>76 J.P. 150.

<sup>5</sup>1 All E.R. 50.

The Court held however that the Act did not make it an offence to maim an animal which had not yet become captive. It was also argued by the RSPCA that since the hedgehog's defence to attack is to roll up instead of run away, by hitting it the defendant was effectively keeping it confined to the spot. These arguments were rejected.

On another occasion the RSPCA decided to prosecute after witnesses testified that during an attack a wild rabbit had been effectively held captive by six youths because they had repeatedly thrown a coat over the animal while they kicked it and beat it with sticks. The animal died through having its skull crushed. The RSPCA secured a conviction, but on appeal to the High Court in November 1993 the rabbit was not deemed to be captured and the youths were freed<sup>6</sup>.

During the second reading of Mr McFall's Bill last session in the Lords Baroness Nicol stated<sup>7</sup>:

I been asked indirectly by the NFU to give examples of the kind of offence which would be prevented by the Bill. From the many details of offences which have been sent to me, I have chosen the four most typical. Two youths in Faversham, Kent, shot a hedgehog five times with an air rifle, played football with it and finally tossed it onto a bonfire to burn to death. The hedgehog, despite its appalling burns and gunshot wounds, was found alive the next day and had to be put down by a vet. The RSPCA prosecuted but, despite the chairman of the bench saying that it was the most horrific case of cruelty he had ever come across, was forced to withdraw the charges because it was not unlawful to act in that way towards a hedgehog.

... The mutilated bodies of at least seven foxes were found on a cricket pitch in Shirehampton, Bristol, last summer. It appeared that the animals had been set upon by dogs and then disembowelled and mutilated. The RSPCA mounted an investigation but was unable to bring a prosecution because, despite some evidence, what had happened was not illegal.

The final case occurred on 13th April this year. Three dead foxes were found on the site of a fire at Cuxton Quarry in Kent. One of the foxes was positioned as though sitting up with its head turned. The fox had wire around its neck and had been half throttled. A vet later confirmed that at least one of the foxes had been burned, alive. Again, because it was a wild mammal, no prosecution could be brought. Those are the kind of cases that we seek to prevent by the Bill. I have been given many more examples of that type of mindless cruelty. We do not aim the Bill at the legitimate activities of farmers and landowners but merely at those offenders.'

---

<sup>6</sup>RSPCA *Animal life* Spring 1994 p.7

<sup>7</sup>HL Deb 19 October 1995 c.863

Other recent examples of hedgehogs being used as footballs, crushed under a paving slab, spray painted, set on fire and impaled, and of foxes being killed with spades are listed in the RSPCA's lobby notes on the present Bill<sup>8</sup>.

### III Mr McFall's *Wild Mammals (Protection) Bill 1994/95*

Mr McFall's *Wild Mammals (Protection) Bill* [Bill 14 1994/95] was seventh in the ballot. The bill initially contained a clause seeking to ban the setting of dogs after wild mammals; this would have effectively outlawed hunting although exemptions were made, for example, for protecting livestock and for using dogs to catch rabbits and rodents. Another clause sought to ban the setting of snares. However, Clause 1 was a general measure seeking to close the perceived loophole in the Protection of Animals Acts which presently apply only to captive or domestic animals. As the Bill was originally printed Clause 1 read;

'If, save as permitted by this Act, any person cruelly kicks, beats or tortures any wild mammal, he shall be guilty of an offence'.

During the second reading debate<sup>9</sup> Mr McFall said that

The purpose of my Bill is to remove the illogical and ridiculous anomaly in law that makes it a criminal offence to inflict cruelty on a domestic animal, but which, generally speaking, permits cruelty to be inflicted on wild mammals without penalty ... Clause 1 seeks to deal with such cases by making it an offence if any person

cruelly kicks, beats, or tortures any wild mammal

These are all specific offences under the *Protection of Animals Act 1911*, which not only could be, but ... have been, committed with impunity against wild mammals.

Mr McFall said the wording of Clause 1 was closely drawn to avoid farmers or pest control operators being drawn under its scope and to target deliberate and unnecessary acts of brutality. However, Mr Michael Colvin MP lamented the inclusion of anti-field sports measures in the Bill:

---

<sup>8</sup>*Parliamentary Update Wild Mammals (Protection) Bill*, RSPCA Public Affairs Department, undated

<sup>9</sup>HC Deb 3 March 1995 cc1297-1368



'...will the honourable Gentleman acknowledge that unspeakable things are done by a small minority of hooligans at football matches, which we all want to see stopped, but that that does not justify the banning of football? That is the analogy I draw with his intention, in clause 2, to ban field sports, when we all support what he proposes in clause 1.'

Sir John Cope said later in the debate<sup>10</sup>

'I support the general cruelty provisions in clause 1 ... If [Mr McFall] had confined his Bill to that clause and the necessary issues and enforcement clauses behind it, or if he were to do so subsequently in Committee, he would improve the statute book and have my support in so doing.'

The bill was passed at Commons Second Reading by 253 votes to nil<sup>11</sup> despite the opposition to it.

Standing Committee C usually deals with Private Members' Bills, but this was occupied for some time with the immediately preceding *Dogs (Fouling of Land) Bill*. However, Standing Committee A had a free slot late in the Session but just in time for the Bill still to be considered afterwards on Report by the Commons. Before sending the Bill into Committee Mr McFall amended it substantially to increase its chances of success. In essence, he removed all clauses except Clause 1 and those needed for enforcement. The provisions removed included those preventing the setting of dogs after wild mammals (which would in effect have banned hunting with hounds), and prohibiting the setting of snares.

During Committee<sup>12</sup> Mr McFall said that the British Field Sports Society and the National Farmers Union supported Clause 1, but he further amended its wording to make it more acceptable to opponents of the Bill. Mr Elliot Morely MP noted

The Bill and the new clause do not go as far as those of us who supported the Bill from the beginning would have wished ... In the end however, we have to recognise the realities of the House, the fraught and somewhat arcane procedures for private Members' Bills and what is achievable. I agree with my hon. Friend the Member for Dumbarton that this is an historic occasion as there will now at least be some protection for wild mammals.

---

<sup>10</sup>c1317

<sup>11</sup>HC Deb 3 March 1995 cc1297-1368

<sup>12</sup>Standing Committee A Wild Mammals (Protection) Bill First Sitting Wednesday 12 July 1995; Second Sitting Thursday 13 July 1995

## Research Paper 96/13

'Matters would have been much easier if the definition within clause 1 had included 'torture', as did the definition in the Protection of Animals Act 1911, or the words 'deliberate mistreatment', which were not acceptable to some hunting groups.'

In the event Mr Morely was being over-optimistic because of course the Bill ran out of Parliamentary time (see below). However, when it left Committee, Clause 1 read<sup>13</sup>;

If, save as permitted by this Act, any person cruelly kicks, beats, impales, burns, crushes, or drowns any wild mammal, he shall be guilty of an offence.

Several exemptions followed in Clause 2 (permitting the lawful setting of snares and traps, the killing of injured animals, the unavoidable injuring or killing of an animal as a result of any lawful action and the lawful use of a poison).

During the Bill's Second Reading in the Lords its sponsor Baroness Nicol said that the Bill's supporters had received about half a million letters in its favour<sup>14</sup> and that the wording of the Bill as it then stood had been cleared with the Home Office and MAFF. Baroness Nicol acknowledged that the Country Landowner's Association (CLA) was still worried about the implications of Clause 1 but discounted several fears either on the basis of the exemptions listed above, or on the basis that any action would have to be done 'cruelly' (so as to cause substantial and unnecessary suffering). Baroness Nicol said that an inadvertent act which resulted from a lawful action (such as a bulldozer crushing rabbits during building work or a plough destroying a nest of fieldmice) would be exempted by Clause 2.

On the other hand Lord Renton, a member of the British Field Sports Society, said that unless the Bill were amended it would have some 'unexpected results which are clearly contrary to the public interest';

'Clause 1 creates an offence of absolute liability, sometimes called criminal liability. That is an offence where the prosecution does not have to prove the intention underlying the act which constitutes the offence, but may do so. It is a question of no criminal intent having to be proved under Clause 1. Even if a person kicks, beats, impales, burns, crushes or drowns a wild mammal accidentally or without intending to do it, or without intending to be cruel, it is assumed under the clause as drafted that that person is doing so cruelly.

In principle, we should not turn people into criminals when they have no criminal intent...'

---

<sup>13</sup>Bill 167 Official Report of Standing Committee A Wild Mammals (Protection) Bill 12-13 July 1995

<sup>14</sup>HL Deb 19 October 1995 cc860-884; Baroness Nicol's remarks at c.861

Someone out walking who kicked and injured a rabbit unintentionally, someone who burnt an animal in a pile of garden rubbish, or a driver who ran over a hedgehog could be held to be guilty under Clause 1 according to Lord Renton; words such as 'intentional', 'knowing' or 'wilful' needed to be inserted<sup>15</sup>. Lord Renton subsequently tabled amendments to such effect.

A Committee of the Whole House was held on 31 October 1995<sup>16</sup>. Further amendments were proposed by Peers to reduce the possibility that the Bill might be used against country sports; Baroness Nicol accepted all amendments to expedite the Bill's passage. For instance, one adopted amendment exempted

'the killing, in a reasonably swift and humane manner, of any such wild mammal if he shows that the animal had been injured or trapped in the course of either lawful sporting activity or vermin extermination'.

The Lords Third Reading took place on 3 November 1995<sup>17</sup>. Baroness Nicol said there had been reports in the *Daily Telegraph* that Peers had tried to kill the Bill by not dealing with it promptly. However, she pointed out that the House had given the Bill a Second Reading within four days of resuming after the recess and had completed the remaining stages that week. The amendments which had been made were she thought, necessary amendments; it was not the Upper House's place to rubber stamp legislation; there was a duty not to create a 'playground for lawyers'. Several Peers agreed and the Bill was returned to the Commons with amendments.

Despite this Mr McFall said that 'the country will not understand these arcane procedures'. The RSPCA was reported to have said it was 'disgusted' at the wrecking tactics of the Bill and at the lack of support from the Government, which had 'taken no notice of public opinion'; an NOP RSPCA opinion poll had shown that '94% of the public thought wild animals should be protected from acts of cruelty.'<sup>18</sup> Mr Alan Meale, who has reintroduced a version of Mr McFall's Bill, has said that it was<sup>19</sup>:

'sabotaged by the bloodsports lobby in the Lords ... Even one amendment in the Upper House would have endangered the Bill, but this did not deter hunting Peers from tabling eight further alterations! These unnecessary changes were reluctantly accepted, but back in the Commons

---

<sup>15</sup>c865

<sup>16</sup>HL Deb cc1406-1416

<sup>17</sup>HL Deb 3 November 1995 cc1542-1545

<sup>18</sup>*Daily Telegraph* 3 November 1995 Peers use delays to foil hedgehog cruelty measure

<sup>19</sup>*House Magazine* 'Wild Mammals (Protection) Bill 15 January 1996 p.10

the Government refused to allow the few seconds necessary to "wave through" the Bill for Royal Assent.'

At the Commons Business Statement<sup>20</sup> taking the House up to Prorogation on 8 November 1995 (obviously the last date on which that Session's business could be completed) Mrs Ann Taylor asked the Leader of the House whether time could not be found for the Bill, which she said had passed all of its stages in the Lords and was now unopposed. Mr Newton said that time for Private Members' Bills was allotted at the start of each parliamentary session, and the Government could not make special arrangements for one Private Members' Bill over others. However, he added;

I should say, however, that I am extremely sympathetic to the Bill. I hope that it will prove possible for it to be passed speedily in the next Session of Parliament, given the extent of the agreement that is said to exist and which I hope does exist.'

### IV *Wild Mammals (Protection) Bill 1995-96*

The *Wild Mammals (Protection) Bill 1995-96* [Bill 16 1995/96] has been introduced by Alan Meale MP, who came second in the Ballot. The Bill seeks to incorporate many of the amendments made in the Commons and Lords to Mr McFall's Bill of the same name, and further seeks to avoid impinging on pest control or field sports activities. Crucially, although Mr Meale came higher in the Ballot than Mr McFall, he has decided not to incorporate anti-field sports measures in the Bill. The League Against Cruel Sports is according to one report<sup>21</sup>, likely to be disappointed 'because the Bill will not seek to ban fox hunting, stag hunting or hare coursing. But the sponsors have limited its scope to enhance its chances of becoming law.'

The British Field Sports Society<sup>22</sup> says it 'strongly supports' the principles behind the present Bill, which is not aimed at restricting field sports but at such peculiar and cruel practices as those outlined in section II above. However, it does not feel that wild mammals can be given the same 'blanket protection' as is offered to captive and domestic animals, and it says that wild mammals do already enjoy some degree of protection. The BFSS will be producing a briefing note on the present Bill which it will be sending to all Members, but this was unavailable at the time of writing.

---

<sup>20</sup>HC Deb 2 November 1995 cc393-4

<sup>21</sup>*Independent*, 7 December 1995 'Politics: MP backs Bill to ban animal cruelty'

<sup>22</sup>source: British Field Sports Society, 22 January 1996

In his article on his Bill in the *House Magazine*<sup>23</sup>, Mr Meale said that he would be reintroducing Mr McFall's Bill 'in the form which received the unanimous support of the House last July'. This would have made it illegal cruelly to kick, beat, impale, burn, crush or drown any wild mammal.

However, in response to this the British Field Sports Society said that such wording would leave 'the way open for prosecution of farmers and sportsmen going about their regular business'<sup>24</sup>, preferring the version as amended in the Lords;

'We were happy with the way that it came back to the Commons with all the amendments agreed from all sides in the House of Lords ... The fact that Mr Meale has refused to use that amended version indicates something more than a desire to bring in an animal welfare measure.'

In the event some of the Lords amendments have been incorporated in an attempt to accommodate field sports supporters. Despite this Mr Meale had threatened to insert a clause banning all hunting with dogs (to force another Commons vote on the subject of hunting) if the hunting lobby threatened to block the present Bill with amendments<sup>25</sup>.

**Clause 1** of the Bill states that

If, save as permitted by this Act, any person mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, drags or asphyxiates any wild mammal with intent to inflict unnecessary suffering he shall be guilty of an offence.

**Clause 2** deals with exemptions, which are

- the killing of wild mammals as an act of mercy;
- the killing in a reasonably swift and humane manner of wild mammals injured or taken in the course of either lawful shooting, hunting, coursing or pest control;

---

<sup>23</sup>Wild Mammals (Protection) Bill *House Magazine*, 15 January 1996 p.10

<sup>24</sup>Animal lobby lives to fight on' *Herald*, 8 December 1995

<sup>25</sup>Wild Mammals (Protection) Bill *House Magazine*, 15 January 1996 p.10

## Research Paper 96/13

- doing anything authorised by or under any enactment
- any act made unlawful under section 1 if the act was done by means of any snare, trap, dog or bird lawfully used for the purpose of killing or taking any wild mammal
- lawfully using any poisonous or toxic substances on a wild mammal

**Clause 3** states that 'wild mammal' means any mammal which is not a domestic or captive animal under the meaning of the Protection of Animals Act 1911 and Protection of Animals (Scotland) Act 1912.

**Clause 4** allows a constable without a warrant to stop and search a person and any vehicle or article he may have with him and to seize evidence, if the constable has reasonable grounds for suspecting that that person has committed an offence under the Act.

**Clause 5** states that the maximum fine under the Act will be a fine not exceeding level 5 on the standard scale [£5000] or imprisonment for up to six months or both. If an offence is committed against more than one wild mammal, the maximum fine shall be determined as if the person had been convicted of a separate offence in respect of each animal.

**Clause 6** allows the Court to order the confiscation of any vehicle or equipment used in an offence and the Secretary of State to make regulations for the disposal or destruction of such equipment.

**Clause 7** states that the Act will come into force two months after receiving Royal Assent, and that it shall not apply to Northern Ireland. Section 6 (confiscation and destruction of equipment) shall not apply to Scotland, and so much of section 4 as refers to that section shall also not apply there.

## Further Reading

- House of Commons Library research paper 95/26 *Hunting: Wild Mammals (Protection) Bill* [Bill 14 1994/95]
- *Report of the Committee on Cruelty to Wild Animals* Home Office/Scottish Home Department, Cmd. 8266, June 1951, reprinted 1975
- Second reading of Mr McFall's Bill: HC Deb 3 March 1995 cc1297-1368
- *The Handbook of British Mammals*, Third Edition, Eds. Corbet and Harris 1991