

N.W.T.F. CONCERNS AND SUGGESTED AMENDMENTS.

(Suggested amendments in red)

1. ISSUES RELATING TO REVISED TERMS & DEFINITIONS:

a) The inclusion of rabbits within the definition of a “wild mammal”.

Rabbits are an agricultural pest and dogs are widely used in order to control their numbers. By including rabbits within the scope of this Bill creates a whole series of practical and legislative issues. It risks turning a relatively minor, straightforward, none contentious and very necessary pest control activity into a legal minefield.

For example it is normal practice on a “rough shoot” to use more than 2 dogs (say for example 3 or more single spaniels) to flush game from cover above ground in order for it to be shot. This may or may not include rabbits and this cannot be determined until after the event has taken place. By which time an offence will already been committed (ie. using more than 2 dogs to search for or flush a “wild mammal”).

Dogs are also widely used when working rabbit warrens and while the rabbits are below ground. Ferrets are used to flush the rabbits into nets placed over the entrance/exit holes and the dog’s role (typically a terrier or lurcher) is to indicate which earths are most likely to contain rabbits (it’s termed “marking”) and also to catch any rabbits which may escape from the nets, or from an un-netted hole, or a hidden “bolt hole”. Any rabbits caught in the nets are then normally despatched by hand. This too would now become an offence and on a variety of fronts including:

- Using a dog to search for a wild mammal below ground which is not a fox or a mink.
- Using a dog to search for a wild mammal below ground without intending to shoot it, or for it to be killed by a bird of prey.

Similarly, under the cover of darkness, a warrener will also use “long nets” to help prevent, or reduce crop damage. These nets, which come in 25–50 metre lengths and above, are set in an upright position on rods, and placed between the crops where the damage is occurring and the most active rabbit warrens. The feeding rabbits are then gently “disturbed” and encouraged to head back towards the warren and into the nets where they are then despatched by hand. To use a dog in flushing the rabbits towards the nets would also become an offence as the intention is not to shoot them. Clearly if the dog is used to physically catch and/or kill a rabbit, this too would be committing an offence.

We do not believe the intention of this Bill is to restrict or interfere with normal game shooting practices, or to criminalise legitimate pest control activities, unfortunately in its present form it most definitely would.

We would suggest removing rabbits from within the scope of the Bill and to explore a more viable solutions to the possible hare coursing issue.

b) Clarification and use of the term “below ground”.

Section 5 (1) (a) of the new regulations simply uses the term “below ground”, whereas the 2002 Act refers to “from below ground, or from an enclosed space within rocks or other secure cover above ground”. The 2002 Act is written in that way because foxes will frequently reside or seek refuge in places which it could technically be argued are located above ground. Typical examples are rock faces, cairns and rock piles, log stacks, areas of wind-blown forestry, hay bale stacks, rubbish piles etc.

We would suggest reinstating the wording used within the 2002 Act to include “from below ground, or from an enclosed space within rocks or other secure cover above ground”. It would easily resolve the issue, clarify the regulations and also prevent malicious prosecution.

c) Section 5 (3) (b) The revised definition of “under control”.

Under the new regulations in Section 5. (3) (b), the revised and shortened definition of “under control” would effectively prevent the use of dogs below ground. It requires that “the person who is responsible for the dog must be able to direct the dog’s activity by physical contact or verbal or audible command”, which has no relevance to the activity taking place. Not only is it contrary to best practice, but if followed to the letter of the law it would also have negative welfare implications.

The most basic requirement when using dogs below ground is to ensure that silence is maintained at all times. The quarry must feel it is more secure in leaving its earth, rather than stay where it is to be chided by an annoying little terrier dog. To engage in any form of “verbal or audible command” would only serve to destroy that illusion. It would discourage the quarry from leaving and create an underground standoff situation. As the dog is below ground “physical contact” is not possible either.

This issue could easily be resolved, either by reverting back to the definition used in the 2002 Act which includes the alternative that “the dog is carrying out a series of actions appropriate to the activity undertaken, having been trained to do so.”

Or alternatively, the N.W.T.F. Code (Rule 11) requires the use of electronic locating equipment whenever a dog is below ground. This equipment enables the handler to track the dog’s movements and location with pinpoint accuracy throughout the entire process. Today, no responsible terrier owner would even consider permitting their dog to go below ground unless it was wearing a locator collar.

We would suggest that in Section 5 (3) (b) which states that “the dog used in the activity is under control” should be deleted and instead replaced with “the dog used is fitted with suitable electronic locating equipment”. In our view this is a far more desirable option and one which has very significant additional welfare and practical benefits way beyond the current proposal.

2. ISSUES RELATING TO SECTION 5 “THE USE OF DOGS BELOW GROUND”

a) A general comment:

From the moment a terrier enters an earth it's a fluid and evolving situation, we are dealing with Nature and no two circumstances will ever be the same. It's important to recognise that fact, particularly when imposing conditions which could easily result in unintended consequences.

b) Section 5 – The specific references to “foxes and mink”

Section 5 is the only part of the Bill which is species specific and which refers to “a fox or a mink”, elsewhere in the Bill it is simply “a wild mammal”. This anomaly, combined with the inclusion of rabbits within the scope of the Bill would make it illegal to use a dog to search for, or flush a rabbit from below ground. There's no logical reason or possible benefit for this anomaly which can only create problems for the future. Particularly should it ever prove necessary to control any other species of ground dwelling mammal eg coypu, or any other none native species ?

We would suggest replacing “a fox or a mink” with “a wild mammal” throughout Section 5 and to bring it in-line with the rest of the Bill.

c) Section 5 (2) (a) – The lack of any exception for environmental reasons.

In Section 5 (2) (a) we cannot understand why a dog can be used below ground in order to protect livestock etc. but not for environmental reasons. The existing law permits to use of a dog below ground for the full range of purposes as set out in 2(1) (a) to (f) of the 2002 Act. It can only be assumed this is a drafting oversight for something which could have a serious negative impact on the environment and biodiversity in general, and in particular with regards to ground nesting birds such as curlews and lapwings which are already in serious decline.

We would suggest this sub section is extended to include “ground-nesting birds, fowl (including wild fowl), game birds,”

d) Section 5 (3) – The removal of certain welfare friendly “Conditions”.

In Section 5 (3) (a - e) , when compared to the 2002 Act, we are disappointed to see the removal of some conditions which not only promoted best practice, but also had positive welfare implications. We believe there are welfare benefits in extending this sub section (rather than reducing it) and would suggest the reinstatement of the requirements that:

- **all reasonable steps are taken to ensure that the fox or mink (wild mammal ?) is flushed as soon as reasonably possible after it is located and shot as soon as possible after it is flushed;**

- all reasonable steps are taken to prevent injury to the dog including steps to prevent the dog becoming trapped underground and, if it does become trapped underground, steps to ensure it is rescued as soon as is practicable;

We would also suggest the addition of two further conditions that:

- the dog is fitted with suitable electronic locating equipment. (A simple welfare issue)
- other than if using nets, all entrance and exit holes must be left open and unblocked, and no actions taken which might deter or prevent the wild mammal from leaving whenever it chooses to do so. - (Once again a simple welfare issue and one which would also prevent the so called practice of “fox baiting” where it is suggested the animal is kept confined and a dog (or several dogs) are set upon it while it is contained).

e) Section 5 (3) (a) The use of a “single dog below ground”.

The 2002 Act does not refer to the use of “only one dog” below ground, nevertheless it is something which the NWTF does recommend and actively promotes in its Code of Conduct. However, there are also some situations and some very good reasons why in certain specific circumstances more than one dog may need to be used and for that reason a caveat was also included.

Rule 3.c. of the NWTF Code requires that “wherever possible and practical, only one terrier is entered to ground at a time.” That is the same wording which Lord Bonomy refers to and recommends at (6.20).

By way of example, when working large areas of cover with no clearly defined tunnel structures and multiple entrances and exits, such as large cairns, rock piles, areas of windblown forestry, using a single terrier in this situation is rather like trying to flush a fox from a large patch of forestry with a single hound. If the quarry is reluctant to leave, it will simply skulk around under cover all day long. Entering that second terrier makes the fox feel less secure and it will normally leave as soon as it starts to feel that’s the case. Not only does this expedite matters, but most important of all, it minimises the time which both the dog and the fox spend “below ground”.

In addition to the above, it may also be necessary to enter a second terrier in the event of a locating equipment failure, or in order to facilitate a rescue. These are practical welfare issues both for the dog and the fox, the NWTF Code of Conduct reflects these facts and if possible it would be helpful if the Law did so too.

We would suggest amending section 5 (3) (a) as follows:

- (a) wherever practical and possible, the activity mentioned in subsection (1)(a) does not involve the use of more than one dog,

or alternatively

- (a) in earths which are located below ground and consist of clearly defined tunnel structures, the activity mentioned in subsection (1)(a) does not involve the use of more than one dog,

f) Section 5 (3) (c) – The replacement term for “as humanely as possible”:

We note that in Section 5 (3) (c), unlike in the 2002 Act, the long-established and widely accepted term “as humanely as possible” has been dispensed with and replaced with “the minimum possible suffering”. We would suggest that this latter term pays no regard to the circumstances at the time, or the fact that it may not be appropriate. We believe the original wording to be correct, as it requires the use of the method which is most humane in the circumstances.

We would suggest reverting back to the original wording used within the 2002 Act.

3. A SUMMARY OF THE ABOVE SUGGESTIONS:

The suggested amendments from above incorporated into Section 5 of the Bill.

- 5 Exception: management of ~~foxes and mink~~ **wild mammals** below ground
- (1) This section applies if—
- (a) a person is using a dog to—
- (i) search for a ~~fox or mink~~ **wild mammal** below ground, **or from an enclosed space within rocks or other secure cover above ground,** or
- (ii) flush a ~~fox or mink~~ **wild mammal** from below ground, **or from an enclosed space within rocks or other secure cover above ground,**
- with the intention of killing it for one or more of the purposes set out in subsection (2), and
- (b) the conditions set out in subsection (3) are met.
- (2) The purposes referred to in subsection (1)(a) are—
- (a) preventing serious damage to livestock, **ground-nesting birds, fowl (including wild fowl), game birds,** woodland or crops,
- (b) preventing the spread of disease,
- (c) protecting human health,
- (d) relieving the suffering of an injured or dependent fox or mink.
- (e) controlling the number of a pest species; or**
- (f) controlling the number of a particular species to safeguard the welfare of that species,**
- (3) The conditions referred to in subsection (1)(b) are that—

- (b) **wherever practical and possible**, the activity mentioned in subsection (1)(a) does not involve the use of more than one dog,
 - (c) the dog used in the activity is ~~under control~~, **(either amend the definition of “under control” to reflect the wording used in the 2002 Act, or delete)**,
 - (d) permission for the activity has been given by the owner of the land on which the activity takes place,
 - (e) if the ~~fox or mink~~ **wild mammal** which is being searched for or flushed is found or emerges from below ground, it is shot dead, or killed by a bird of prey, as soon as reasonably possible,
 - (f) if an attempt to kill the ~~fox or mink~~ **wild mammal**, as mentioned in paragraph (d), results in it being injured but not killed, reasonable steps are taken to kill it ~~in a way that causes it the minimum possible suffering~~ **as humanely as possible**,
 - (g) **all reasonable steps are taken to ensure that the wild mammal is flushed as soon as reasonably possible after it is located and shot as soon as possible after it is flushed;**
 - (h) **all reasonable steps are taken to prevent injury to the dog including steps to prevent the dog becoming trapped underground and, if it does become trapped underground, steps are taken to ensure it is rescued as soon as is practicable;**
 - (i) **the dog used in the activity is fitted with suitable electronic locating equipment.**
 - (j) **other than if using nets, all entrance and exit holes must be left open and unblocked, and no actions taken which might deter or prevent the wild mammal from leaving whenever it chooses to do so.**
- (4) In this section, “dependent” means that the mother of a ~~fox or mink~~ **wild mammal** is dead and it is too young to survive on its own.

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