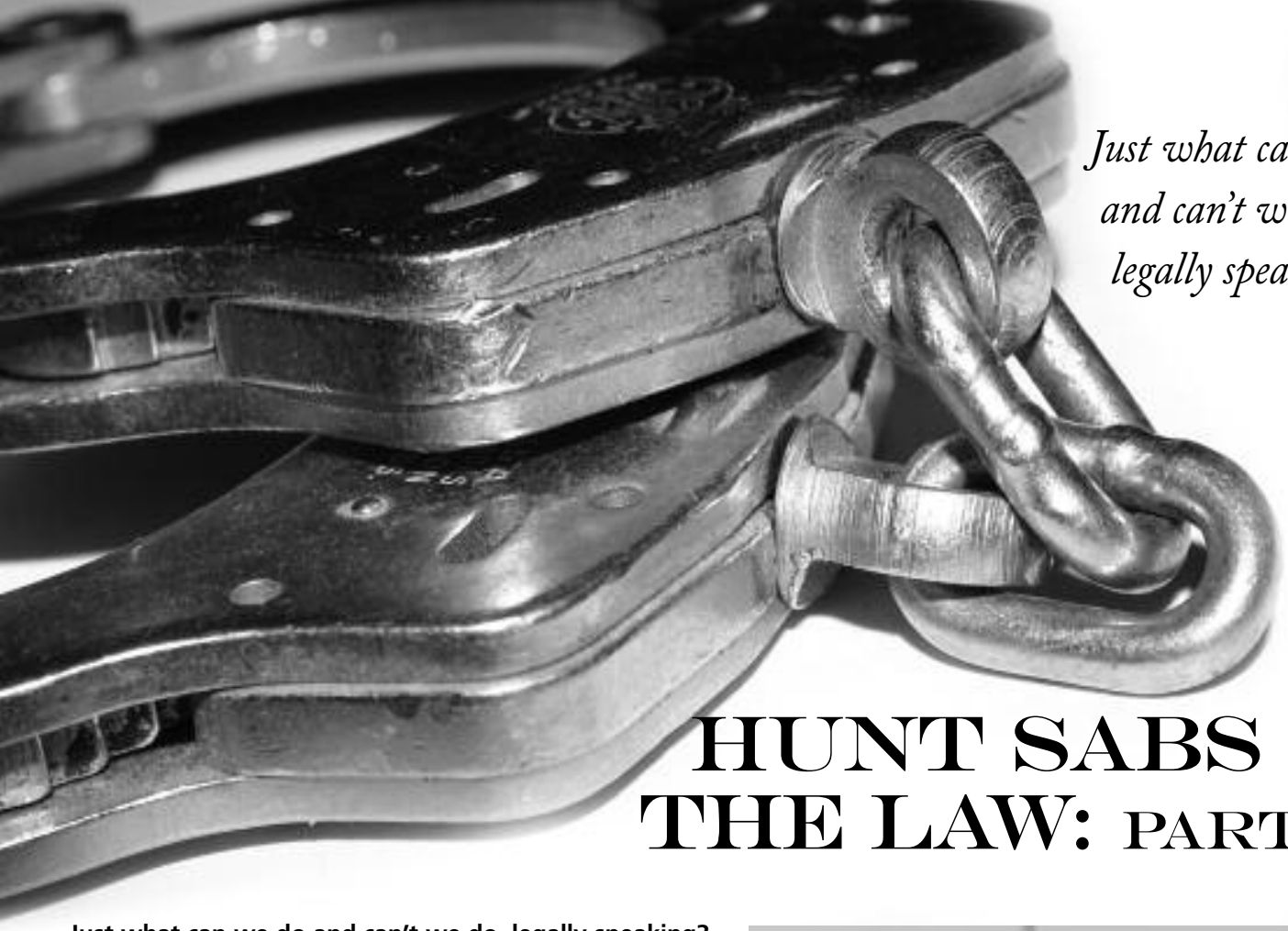

Just what can we do and can't we do, legally speaking?

HUNT SABS & THE LAW: PART 1

Just what can we do and can't we do, legally speaking? What can the hunt do? What is aggravated trespass? What is breach of the peace? What is illegal hunting? When do we have to give our details to the police? What is a policeman/woman? Why do they have funny shaped heads? Confused?!! Have no fear! In a series of articles about legal matters, the HSA's legal officer will guide you through the minefield that is the law, and try not to lose any limbs in the process…In this first article in the series, we will look at how the general legal landscape has changed post-Hunting Act, considering the legal position of hunt sabs and our relationship with the police. We will also look in detail at the most important law that affects sabs: aggravated trespass. It promises to be a bumpy ride, so hang on…

The Legal Landscape

Before the Hunting Act came into force, everything was very simple. The hunt was there to hunt, the sabs were there to disrupt the hunt, and the police were there to protect the hunt and stop (or, if possible, arrest) the sabs. Disrupting the hunt sometimes (though by no means always) involved committing minor criminal offences, especially aggravated trespass. The police tried to arrest us whether or not we had broken the law, the hunt tried to get away from us, or failing that, beat us up, and we tried to keep away from the police and keep up with the hunt (or keep away from them as well if they were trying to beat us up). This was not a pleasant state of affairs, but it was at least straightforward and everyone knew where they stood.

The Hunting Act has muddied the water. Are we now hunt saboteurs, simply disrupting the hunt as before, or are we hunt monitors, collecting evidence of illegal hunting? I'm sure all groups have wrestled with this question. Initial optimism in the early days of the Hunting Act led to many sabs thinking we could discard the hunting horn, whip and spray in favour of the video camera. There was even talk of changing the name of the Hunt Saboteurs' Association to the Hunt Monitors' Association. However, following the very small number of prosecutions of organised hunting, the lack of interest shown by the police in enforcing the Hunting Act, and the business-as-normal attitude of most hunts, that optimism has all but died out. Recognising that the Hunting Act does not do what it says on the tin, most groups now take a more realistic view of their role, and a consensus seems to have emerged that we are still, and always will be, hunt saboteurs. Our main role must always be that of saving hunted animals from a cruel death, and given that the Hunting Act is not doing what it was meant to do, and probably cannot do so, many groups continue to disrupt hunting in the traditional way.

However, the Hunting Act exists and has changed the legal and practical landscape of hunting and hunt sabotage. Most hunts seem to be hunting as normal under the cloak of supposed "trail hunting". Such hunts are scared of their illegal hunting being recorded on camera, so blowing their cover. Despite the ineffectiveness of the so-called ban, it is vital that we record, and archive, as much evidence as possible of illegal hunting. Video cameras have always been essential for hunt sabs, but nowadays are even more important. There are four main purposes of carrying video cameras. They still perform the function they always have performed in protecting hunt sabs from, and recording, hunt violence. However, there are three additional functions that they perform post-ban. Firstly, we may obtain sufficient evidence for a prosecution of the hunt. Secondly, even if we don't achieve this, we may record sufficient evidence to defend us against potential prosecutions for disrupting the hunt (more on this later). Thirdly, and perhaps most importantly, many hunts become shy when sabs point a video camera at them, and stop hunting. Thus, the Hunting Act gives us another tool in our hunt sabbing toolbox; the video camera is just another means of disrupting the hunt, along with the traditional horn, spray and whip. Some groups have found that video cameras are indeed the most effective tools they have for stopping hunting. This does not mean that those groups are hunt monitors and not hunt saboteurs. Rather, they are saboteurs who have found an alternative means of hunt sabotage. In my view, this is the best way of thinking about the Hunting Act; it has not banned hunting but it has given those who take direct action against hunting an additional means of sabotage.

There is, however, another way in which the Hunting Act has confused things, and that is in terms of the relationship between hunt saboteurs and the police. Prior to the Act, our relationship was antagonistic, but simple. We all knew the police were not (and are not) impartial, or simply "stuck in the middle" between hunters and hunt sabs. We all knew where their sympathies lay. It was best to keep away from the police at all times. Any interaction with the police was not likely to be beneficial to hunt sabs, and was likely to be detrimental to the practice of hunt sabotage. We knew exactly where we stood. Now, however, we are in uncharted territory. Just as sab groups struggled with their identity after the Act came into force, so we struggled, and still do struggle, to define our relationship with the police. On the one hand, we want to maintain some sort of constructive relationship with the police because they are, in principle at least, potentially on our side. We share (again, at least in principle) a common aim, which is to prevent illegal hunting. This means that we may at times want to point out to them instances of illegal hunting in the hope that they will take action against it. It also means that we may at times want to make complaints of illegal hunting, make statements and give the police video evidence. On the other hand, most police take very little interest in enforcing the Hunting Act, take at face value the claims made by the hunt that they are trail hunting, and simply try and obstruct or arrest hunt saboteurs exactly as they did before the Hunting Act came into force.

Furthermore, because of the enormous loopholes in the Hunting Act, and the way in which the Act has so far been interpreted by the courts, there are occasions on which hunts are hunting live animals and yet are not in breach of the Hunting Act. Sabs who then disrupt such hunts face legal consequences that are exactly the same as those they faced prior to the Hunting Act. In my view, our relationship with the police is an issue that remains to be resolved satisfactorily, and each group will have to decide for itself, based on local policing, what is the best approach to take in dealing with the police. This is a purely tactical decision which should be made in the interests of maximising group effectiveness.

Aggravated Trespass

So, just what can sabs do, and what can they not do, legally? The most important law affecting the activities of hunt sabs is aggravated trespass (AT). Police powers in relation to AT are defined in sections 68 and 69 of the Criminal Justice and Public Order Act 1994. The full text of acts of parliament is freely available at www.statutelaw.gov.uk, and I shall only summarise sections 68 and 69 here. All the case law referred to below, with the exception of the Lancashire case, can be seen at www.freebeagles.org.

Section 68

Section 68 defines the offence of AT. There are four elements to this offence: (1) You must be trespassing on land, (2) people must be engaging in, or about to engage in, a lawful activity on that land or adjoining land, (3) whilst trespassing you must do something, and (4) you must do whatever it is you do with the intention of disrupting or obstructing the lawful activity, or of intimidating those people engaging in (or about to engage in) the lawful activity so as to deter them from engaging in it. This points to a second way in which the Hunting Act benefits hunt sabs (and therefore foxes), in addition to providing us with another tool of sabotage. Hunting wild mammals is (at least in principle, although there are complications) illegal.

This means that if the hunt is hunting animals, it is not engaging in a lawful activity and sabs cannot be guilty of AT. If we are charged with AT for disrupting a hunt that is hunting animals, clearly one of our best defences is to show that the hunt was not a lawful activity. This is one reason, alluded to above, why it is more important now than ever to collect evidence of illegal hunting. Even if that evidence is insufficient to prosecute the hunt (i.e., to prove beyond reasonable doubt that the hunt is illegally hunting), it may well be sufficient to cast doubt on whether the hunt is engaging in a lawful activity (i.e. to cast doubt on the prosecution's case that the hunt is not hunting illegally), which should be sufficient to return a not guilty verdict on charges of AT.

Evidence of illegal hunting which might assist sabs includes, but is not limited to:

- footage of hounds on cry (even if it's just the sound)
- riders on point
- holloas and people waving their caps

- riders "holding up" around a covert as happens during cubbing
- footage of the hunt persistently going from covert to covert and other places where foxes are likely to be, and hounds being deliberately "drawn" through such places by the huntsman
- hounds in cry going across or through places where trails are unlikely to be have been laid, such as very thick undergrowth and hedgerows, through crops, over very rough or rocky ground, across main roads and railway lines, residential areas and domestic property, etc.
- any earths being blocked
- the presence of terriers and digging equipment

These are of course in addition to the obvious things such as hounds visibly chasing a fox and the huntsman hunting hounds onto the line of a fox. With regard to showing that the hunt is not engaging in a lawful activity, it is also worth sabs familiarising themselves with what real trail hunting looks and sounds like (and it's very different from hunting animals), so that should the need arise, your evidence of illegal hunting can be strengthened by pointing out to the court the differences between what you saw (and what you are charged with disrupting) and legal trail hunting. It should be noted when reading the case law described below, that these cases were prior to the Hunting Act, when hunting was lawful.

AT is not a simple offence; all four elements described above must be proved for a conviction under Section 68, and each one can be complex. The important points in relation to these four elements are described below:

Trespassing and the Definition of "Land"

There are two standards of trespass. Firstly, there is civil trespass which is basically being on land when the landowner doesn't want you there. This is straightforward - you either have permission to be there or you don't. If you don't have permission to be there and you're on private land to which the public have no legal or customary right of access, you're committing the civil offence of trespass. Then there's trespass as part of a criminal offence, such as AT or burglary (which is trespassing with intent to commit criminal damage or theft). When trespass is a component of a criminal offence, whether or not you are trespassing depends on your state of mind. In other words, you may not have permission to be on a certain piece of land, and the landowner may not want you there, but if you honestly, and with reasonable grounds, believe you are allowed to be there, you are not trespassing for the purpose of a criminal offence of which trespass is a part. It comes down to having what is known as an implied licence to be on a certain piece of land. An implied licence is something that makes us believe we are allowed to be in a certain place. For instance, a sign next to a gate saying "Visitors welcome" is an implied licence to go through the gate. However, implied licences do not have to be words or signs; postal workers have an implied licence to go into people's gardens to deliver mail. If we have an implied licence to be on a particular piece of land, we are not trespassing for the purpose of a criminal offence because we have an honest and reasonably held belief we are allowed to be there, and we cannot be guilty of the criminal offence of which trespass is a part.

However, an implied licence is not a get-out-of-jail-free card as far as disruption is concerned. For instance, implied licences typically evaporate if you start disrupting a lawful activity on the land in question; it will be argued that although you might think you are allowed to enter a certain piece of land, you cannot reasonably think that you have an implied licence to disrupt a lawful activity on that land. In other words, as soon as you start the disruption, you exceed your implied licence to be there and you become a trespasser. The same is true of any land, for example, Forestry Commission land, National Trust land and open access land (i.e., land where we have the "right to roam") to which the public are granted a general right of access either by the landowner or by act of parliament; the right of access is limited to the pursuit of certain activities, and once we go beyond what we are permitted to do, we become trespassers.

For the purposes of AT, "land" does not include roads, but does include footpaths, bridleways and byways open to all traffic ("green lanes"). You can be a trespasser on a footpath, bridleway or byway because although you have the right to pass and repass along these highways and also to make other uses of these highways such as are reasonable, once you start using these highways to disrupt lawful activities, you cease to make reasonable use of them. You then go beyond what you are permitted to do on them and you become a trespasser. Thus, you can commit AT from a footpath, bridleway or byway but not from a road (including its verges, which are part of the highway).

Definition of "Lawful Activity" and "Adjoining Land"

There are differing degrees of unlawfulness of activities. For instance, it is possible for an activity to be unlawful and yet not to amount to an actual offence, either civil or criminal. However, for the purposes of the offence of AT, the activity that one intends to disrupt is regarded as lawful if those engaged in it are not committing a criminal offence and are not trespassing. In other words, an activity might be unlawful in the wider sense of the word, but lawful for the purposes of AT, and one could be guilty of AT if one disrupts that activity.

Case law sheds further light on the meaning of "lawful activity". For instance, in the case of Hibberd v DPP, an anti-roads protestor was charged with AT for occupying a tree in the path of a by-pass under

construction. His defence was that the activity he was charged with obstructing (tree-felling) was not a lawful activity because one of the chainsaw contractors was not wearing gloves, in breach of health and safety law. However, the judge distinguished between the fundamental activity of the contractors in felling trees, and the manner in which that activity was carried out. He ruled that although the law had been broken in the manner in which the trees had been felled, the fundamental activity, that of felling trees, was lawful. Furthermore, this was the activity the protestors sought to obstruct. It is clear from this case that to use this defence, the activity that is disrupted must be fundamentally unlawful in itself, rather than have one or more incidental aspects that are unlawful. However, in a more recent case involving health and safety law, anti-shooting protestors were charged with AT in relation to disrupting a shoot in Lancashire. They were found not guilty, having successfully shown that the shoot was not a lawful activity because it had not conducted a health and safety risk assessment. In this case, the lack of the risk assessment was so fundamental as to render the shoot itself an unlawful activity.

In the case of Nelder and others v DPP, a hunt saboteur charged with aggravated trespass for disrupting a fox hunt argued that the hunt was not a lawful activity because it had trespassed on a railway line. However, the judge ruled that the fox hunt, taken as a whole, was a lawful activity because it had only trespassed on the railway line for a relatively short period of time, and for most of the time it was not trespassing. Had the saboteurs confined their disruption to the period of time that the hunt was on the railway line, they would not be guilty of AT. This case shows that an activity taken as a whole must be unlawful for this to be used as a defence against a charge of AT.

I am unaware of any case law relating to the definition of what constitutes "adjoining land", and this would be up to a court to determine. A pragmatic approach would be for the court take the view that any land close enough for you to be able to disrupt an activity that is taking place on it must be adjoining land. However, in this case it would be unnecessary for Section 68 to specify that the lawful activity that is disrupted must be taking place on the land on which you are trespassing or on adjoining land; disruption of a lawful activity taking place anywhere would be an offence. Therefore it is open to someone charged with AT to argue that the lawful activity they allegedly disrupted or intended to disrupt was taking place neither on the same land that they were on, nor on adjoining land. This could be argued if, for instance, there was more than one field boundary, or a major feature such as a road or river, between you and the activity you are charged with disrupting. It could also be argued if the land you were on was owned by someone (person A) other than that (person B) who owned the land the lawful activity was taking place on, and there was land in between you and the lawful activity owned by a third person (person C). I have no idea if these arguments would hold any weight; I merely suggest them as possibilities.

What Constitutes "Doing Something"?

Under normal circumstances, a specific act (other than the mere act of trespassing) must be carried out (with the intention of disrupting a lawful activity) in order to commit AT. However, it is important to be aware of the legal concept of attempted crime, by which it is possible to be guilty of an offence without actually committing that offence, if one intends to commit an offence and one carries out an act which is more than merely preparatory to committing that offence. An example is that you could be convicted of criminal damage after being arrested standing in front of a window with a brick held in your raised hand, even though you had not thrown the brick at the window. This is because the act of raising the brick in your hand is more than merely preparatory to the act of throwing the brick at the window. In other words, you are so close to

throwing the brick that you clearly intended to do so, and probably would have done so had you not been arrested, and from a legal point of view, you can be considered to have actually thrown the brick.

This principle has been used to convict hunt saboteurs of AT. In the case of Winder v DPP, a hunt saboteur was convicted of AT in relation to disrupting a fox hunt for running towards the hunt. The judge ruled that the saboteur intended to disrupt the hunt and was running towards the hunt in order to carry out that intention. The act of running was sufficiently closely connected to the intended disruption as to be more than merely preparatory to it. The judge therefore ruled that the saboteur had attempted to disrupt the hunt, and was guilty of the offence of AT. If the Crown Prosecution Service would apply creativity like that to prosecuting the hunt, I'm sure we'd see a few more convictions for illegal hunting.

Intent

From a legal point of view, a person's intent is anything which is a natural consequence of their actions. Thus, for instance, you could not argue that you did not intend to disrupt a hunt by blowing a horn because disruption of the hunt is a natural consequence of blowing the horn, and therefore you must have intended to disrupt the hunt. You could, however, argue that you did not intend to disrupt a hunt by holding up a banner proclaiming your disapproval of hunting because it does not follow that the hunt will be disrupted as a result of your holding the banner.

Section 69

Section 69 gives the police the power to order trespassers to leave the land if they believe those trespassers are committing, have committed, or intend to commit aggravated trespass. Having been ordered to leave the land, those people commit an offence if they fail to leave the land as soon as practicable, or if they re-enter the land within three months. The important points about this section are:

1. It confers on the police a power to order people to leave the land they are trespassing on. In other words, you must be trespassing before the police can use this power, and the only order the police can give is to leave the land. The police cannot order you to do anything other than leave the land, and they cannot order you not to enter land you are not yet on (something they often try to do).
2. The police can only use this power if they reasonably believe you have been committing, are committing, or intend to commit aggravated trespass. In other words they cannot order you to leave land just because you are trespassing; they must have reason to believe you are there to disrupt a lawful activity.
3. Having been ordered to leave, it is not an offence not to leave as soon as practicable, or to re-enter within three months, if you have a reasonable excuse for not leaving or for re-entering.
4. Section 69 does not confer on the police the power to require people who they have ordered to leave the land to give their details, nor does it give the police the power to search those people. This is not to say that the police cannot search you, or require you to give them your details, in these circumstances, just that the police would have to rely on powers other than Section 69 if they wanted to search you or obtain your details.

I hope that this article has been informative and will give sabs more confidence in the field because they are more aware of their rights (or lack thereof) and police powers. Future articles in this series will build on this. The article in the next issue of Howl will focus on the main law that affects the hunt: Hunting Act.

Disclaimer

Nothing in this article is intended to incite, encourage or condone illegal acts. The author is not a solicitor; the information contained in this article is for general information only and does not constitute legal advice. For legal advice, always seek the services of a trusted solicitor recommended by activists (see below).

Legal Information for Activists

The following websites are good sources of legal information:
www.freebeagles.org
www.liberty-human-rights.org.uk

Recommended Solicitors

The solicitors below all regularly work with animal rights and other activists and are trusted.

Birds Solicitors
Tim Greene
1 Garratt Lane
Wandsworth
London
SW18 2PT
020 8874 7433
Out of hours arrests: 07966 234994
Email: info@birds.eu.com
Website: http://www.birds.eu.com

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Sonn MacMillan Walker Solicitors
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020 7377 8889
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Email: enquiry@criminalsolicitor.co.uk
Website:www.criminalsolicitor.co.uk

Kellys Solicitors
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Bindmans Solicitors
Mike Schwarz & Shauna Gillan
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