

The Hunt Ban

Myth and Reality
A legal guide by Hunt Watch

What you need to know
to secure a conviction

Content

- Introduction - Page 3
- Hunting with dogs - Page 3
- Hare Coursing - Page 3
- Penalties for Illegal Hunting and Coursing - Page 3
- Powers of Arrest - Page 4
- Trail Hunting and Hound Exercise - Page 4
- Trail Hunting - Page 4
- Hound Exercise - Page 4
- Control of Hounds - Page 5
- Hound Exercise or Trail Hunting in Woodlands, Gorse or Coverts - Page 5
- Exempt Hunting - Page 5
- Flushing Out - Page 6
- Use of a dog below ground to protect birds for shooting - Page 7
- Rat and Rabbit hunting - Page 8
- Retrieval of Hares - Page 8
- Falconry - Page 8
- Recapture of a wild mammal - Page 9
- Rescue of a Wild Mammal - Page 9
- Research and Observation - Page 10
- Other Laws - Page 10-11
- Protection of Animals Act 1911 - Page 10
- Wild Mammals (Protection) Act 1996 - Page 11
- Protection of Badgers Act 1992 - Page 11
- Section 35 of the Game Act 1831 - Page 11

Introduction, hunting with dogs, hare coursing and the penalties for illegal hunting and hare coursing

Introduction

Hunting wild mammals with dogs has been banned in England and Wales. People who engage in such activity can now be prosecuted under the Hunting Act 2004, the Protection of Animals Act 1911, the Wild Animals Act 1996 and the Protection of Badgers Act 1992. Certain forms of hunting are exempt and cannot be prosecuted, but most forms of hunting are now illegal. In this booklet we will look at the law, how it applies to hunting and the various ways in which hunters may attempt to circumvent its provisions.

Hunting with Dogs

The Hunting Act 2004 ('the Act') makes it an offence to hunt a wild mammal with a dog, unless that hunting is exempt. The Countryside Alliance has stated that the Act is unenforceable as it does not make clear what kind of hunting is illegal. The law is perfectly clear however. It states that a person will be deemed to be hunting if he

- engages or participates in the pursuit of a wild animal, and
- one or more dogs are employed in that pursuit (whether or not by him, and whether or not under his control or direction)

There can be no such thing as "accidental hunting". If hounds are placed in a position where they are certain to pursue a wild mammal, then illegal hunting will have taken place.

Hare Coursing

Hare coursing is now illegal under the Act. It is a criminal offence to participate, attend or facilitate a hare coursing event or to permit land to be used for the purpose of such an event.

Penalties for Illegal Hunting and Coursing

The maximum penalty for contravening the Act is a fine. Anyone convicted of hunting or coursing illegally will have a criminal record. Any convictions will have to be disclosed in job applications and these may affect a person's chances of entering certain professions. As well as being fined, anyone hunting illegally may also be penalized in the following ways:

- Police and magistrates have the power to issue bail conditions, which could include a condition stating that whilst on bail a hunter may not take part in any form of hunting. A hunter who repeatedly breached such a bail condition could be imprisoned until the trial of the offence.
- People who have been convicted of hunting and fined can be imprisoned if they refuse to pay the fine.
- Any articles which are used for the purpose of illegal hunting or in the possession of a hunter at the time of the offence can be seized and, following conviction, destroyed.
- Anyone convicted of hunting may be disqualified from driving for such a period as the court sees fit.
- Hunters who repeatedly break the law in future could be issued with "Anti-Social Behaviour Orders" restraining them from taking part in future hunting activities. Breach of such an Order is an arrestable offence punishable by up to 5 years imprisonment.
- Hunters can now be prosecuted – where appropriate – under other laws such as Section 1 of the Protection of Animals Act 1911 (causing unnecessary cruelty to animals). If convicted they could be imprisoned for up to 6 months.

3

Powers of arrest, trail hunting and hound exercise

Powers of Arrest

A constable may arrest anyone whom he reasonably suspects to be hunting or to have been hunting or to be about to hunt. A constable also has power to demand the name and address of anyone whom he reasonably suspects to be hunting or to have been hunting. Any such person who refuses to give their name and address can be arrested.

There is no power of citizen's arrest to prevent hunting. However any member of the public - e.g. a hunt saboteur or hunt watch monitor - may use reasonable force to prevent crime from taking place (Section 3 Criminal Law Act 1967) and this could include physically intervening to stop a huntsman or whipper-in from encouraging hounds to hunt. If a hunt supporter threatens the sab or monitor with violence, they can be physically arrested to prevent a breach of the peace. Any hunter arrested in these circumstances should be handed over to the police as soon as possible.

Trail Hunting and Hound Exercise

The Countryside Alliance is encouraging hunts across the country to reconstitute themselves as "trail hunts". Trail hunting would involve the hunting of an artificial scent based on the scent of the fox, hare etc. They are also encouraging hunts to take part in "hound exercise", as an alternative to hunting. They say that both forms of activity would not amount to an offence under the Act.

Trail/Drag Hunting (In this booklet Trail and Drag hunting will be described as Trail)

In our opinion trail hunting could well amount to an offence under the Act, depending on the circumstances of the case. In the case of trail hunting, this could only be legal if the hounds are kept under extremely close control throughout the entire exercise.

If hounds are used to draw areas where they are accustomed to hunting, then they will inevitably come across the scent of a fox and begin to hunt it. This in our view would constitute illegal hunting. Hunt supporters may say in such circumstances that they did not want to hunt a fox or that this was not the object of the exercise, but this is not the issue. If a court finds that they must have known that hounds, once placed in this position, would be likely to hunt a wild mammal, then this would amount to intentional hunting contrary to the Act.

"Trail hunting" would also be suspicious if hounds were seen to be following a scent where a trail was unlikely to have been laid, for example through crops or along main roads or railway lines.

Hound Exercise

We believe that "hound exercise" may also be illegal, particularly if carried out in combination with flushing to guns. One form of hunting which is exempt is the use of two hounds to flush a fox from a cover in order for the fox to be shot. The Countryside Alliance states that it would not be illegal to flush foxes to guns whilst at the same time exercising a full pack of hounds.

In our opinion this would in fact be an offence under the Act. If a pack of hounds, which has been bred and trained to hunt foxes, is positioned outside a covert which is being flushed, then they are bound to give chase to any fox which is thereby flushed. Anyone "exercising" hounds in this way will know that there is a high probability that they will hunt and kill a fox, and a court would almost certainly find that this amounts to illegal hunting. Even if steps are taken immediately to call the hounds off the fox in order for it to be shot, the offence of hunting will already have been committed.

Foxes have already been reported to have been "accidentally hunted" since the Act came in to force. Any such "accidental hunting" is nothing of the sort and will amount to an offence under the Act if the hounds are put in a position where they would be certain to hunt a fox or other wild mammal.

"Hound exercise" would certainly be illegal if the hounds were cast across a wide area or through woodland or crops in order to allow them to pick up a scent.

4

2

Control of hounds, hounds in woodland, gorse or coverts, exempt hunting

Control of Hounds

As we have indicated on the page four, we believe that "hound exercise" or "trail hunting" may well be an offence under the Act, if the hounds are placed in a position where they would be certain to hunt a fox or other wild mammal. In any event, if hounds do begin to hunt a wild mammal during the course of such activity, the hunt staff would have to attempt to bring the hounds under control straight away. Any hunt employee or supporter who did not attempt to bring the hounds under control, or encouraged them to continue hunting would then be hunting illegally.

Hound exercise or trail hunting in woodlands, gorse or coverts

The exercise of hounds or "trail hunting" in woodlands, gorse or coverts would certainly be illegal. The Act specifically states that a maximum of two hounds can be used for flushing out. The only purpose of placing foxhounds in a covert is to flush out a fox, so the use of any more than two hounds would amount to a criminal offence.

Exempt Hunting

The Act makes the following forms of hunting exempt:

- Stalking and flushing out with no more than two dogs
- Use of dog below ground to protect birds for shooting
- Rat hunting
- Rabbit hunting
- Retrieval of shot hares
- Falconry
- Recapture of a wild mammal
- Rescue of a wild mammal
- Research and observation

5

Flushing out

This exemption allows a wild mammal to be stalked or flushed out of cover in order for it to be shot. This may only take place under the following conditions.

- No more than two dogs may be used.
- The land on which the flushing out is taking place must be either
 - owned by the hunter, or
 - land which the hunter has been given permission to use for the purpose of flushing out by the occupier or, in the case of unoccupied land, the owner.
- Dogs must not be used below ground (unless to protect birds for shooting - see page 7)
- Reasonable steps must be taken
 - for the purpose of ensuring that the wild mammal is shot dead as soon as possible after being flushed out, and
 - to keep any dog used in the flushing out under close control, to ensure that it does not prevent or obstruct the shooting of the wild mammal.

The Countryside Alliance has stated that this activity can be carried out in combination with hound exercise (see "Hound Exercise" - Page four). However we believe that if flushing out takes place with a pack of hounds outside the covert, and the hounds give chase to any fox which is flushed out, then this would amount to an offence under the Act. The Act clearly envisages that only two hounds will be used for the purpose of flushing out, and whilst it might be possible to keep two hounds under close control once an animal had been flushed out, this clearly would not be the case for an entire pack.

It would not be unlawful for the two hounds which had been used for flushing out to kill the wild mammal, so long as the hunt had taken reasonable steps to prevent this from happening, such as using the horn, whips and voice calls to bring the animals under control. Any huntsman who did nothing to prevent the hunting from continuing would be committing an offence.

If, however, the flushed fox were killed by an entire pack of hounds which was being "exercised" outside the covert, then this would amount to illegal hunting. Those taking part in the hunt would know that the hounds would be certain to give chase to the fox once it was flushed, and that they would be very difficult to bring under control. Even if the fox were not killed in such circumstances, the hunt would still be breaking the law.

6

Using a dog below ground

Use of a dog below ground to protect birds for shooting

A dog must not be used below ground for flushing out, unless the following conditions are satisfied.

- The flushing out must be done to prevent or reduce serious damage to game birds or wild birds kept for the purpose of being shot.
- The person doing the flushing must have with him written evidence stating either
 - that the land belongs to him or
 - that he has been given permission to use the land for that purpose by the occupier of the land or, in the case of unoccupied land, the owner of the land.
- The flushing out must not involve the use of more than one dog below ground at any one time.
- Reasonable steps must be taken
 - to ensure that the animal is flushed out as soon as it is found, and shot by a competent person as soon as it is flushed out.
 - to keep the dog under control to ensure that it does not prevent or obstruct the shooting of the animal
 - to prevent injury to the dog

The flushing out must also comply with any code of practice which has been issued for this purpose by the Secretary of State. The current code of practice states the following:

The following principles must always be observed when a terrier is used below ground to stalk or flush out a wild mammal:

- The terrier's role must be to locate the wild mammal underground and cause it to 'bolt' (leave the earth or den) as soon as possible so that it can be shot by a competent person and humanely dispatched. It should not be intended that a terrier will fight the wild mammal.
- Only terriers that are 'soft' (those that habitually stand off and bark at the wild mammal) must be used. Terriers that are 'hard' (those that habitually fight) must not be used.
- Care must always be taken to ensure the safety of those involved and to minimise the risk of injury to either the wild mammal or terrier during the bolting process.
- The terrier's time underground should be kept as short as possible so as to minimise any potential distress to the wild mammal.
- The terrier being used must always be fitted with an electronic locator so that its exact position underground can be tracked.
- Once it is determined that a terrier has become trapped assistance must be given to release it.

The person doing the flushing out commits an offence, if he does not have written evidence stating that the land belongs to him OR he does not have written evidence from the owner or occupier of the land stating that he has permission to use the land *for the purpose of flushing out the wild mammal*.

Digging out foxes with dogs will now be generally illegal unless the above conditions are satisfied. Persons found digging for badgers with dogs often state in their defence that they are digging for foxes. This defence will now be made more difficult, as they would have to show that they were complying with the above conditions.

It is still not illegal to block fox earths. However any such activity by hunt supporters would now be deeply suspicious as a hunt would have no legitimate reason for doing so.

If flushing out below ground is accompanied by "hound exercise", then this would amount to unlawful hunting – see "Flushing out" - Page 6.

7

Rat and rabbit hunting, retrieval of hares and falconry

Rat and Rabbit hunting

Rat and rabbit hunting are "exempt hunting". Any such hunting must take place on land which is either

- owned by the hunter, or
- land which the hunter has been given permission to use for the purpose of rabbit or rat hunting by the occupier or, in the case of unoccupied land, the owner.

The Countryside Alliance is encouraging mink hunts to reclassify themselves as "rat hunts" and hare hunts to reclassify themselves as "rabbit hunts". Unless, however, they are genuinely hunting rats and rabbits then such hunting would amount to an offence under the Act.

Much will depend on the terrain which is hunted. If, for example, mink hunts hunt on river banks with a pack of hounds which has been bred and designed to hunt mink, then it will really make no difference that they are now calling themselves a "rat hunt". If hounds are placed in a position where they would be bound to hunt mink, then this would amount to illegal hunting under the Act.

Similarly in the case of hare hunting, the members of a "rabbit hunt" would be breaking the law if they were deliberately drawing their hounds over typical hare terrain. They would be bound to chase hares illegally and the offence of hunting would be committed, even if the hunt members made efforts to call the hounds off immediately afterwards. In any event the pursuit of a "rabbit" for longer than a minute or so would be suspicious as unlike hares rabbits will quickly go to ground to avoid pursuit.

Retrieval of Hares

Hares which have been shot may be lawfully retrieved by the use of dogs if the land is either

- owned by the hunter, or
- land which the hunter has been given permission to use for the purpose of hunting hares by the occupier or, in the case of unoccupied land, the owner.

Unfortunately no limit is placed on the number of hounds which may be used to recover hares which have been shot and this section is open to abuse by those wishing to hunt or course hares illegally. Illegal hunters caught in the act of hunting could state falsely in their defence that the hare had been shot prior to being hunted. This will of course be a matter of evidence.

In this situation dogs would have to be kept under close control until the point at which the hare was actually shot. Hunting for this purpose would be illegal if no-one was actually shooting at the hares or if they were deliberately missing or firing blank cartridges in order for illegal hunting to take place.

Falconry

Flushing a wild mammal from cover is exempt hunting if this is done for the purpose of enabling a bird of prey to hunt the wild mammal. The hunting must be on land which is either

- owned by the hunter, or
- land which the hunter has been given permission to use for the purpose of falconry by the occupier or, in the case of unoccupied land, the owner.

Unfortunately no limit is placed on the number of hounds which can be used for this purpose, and this section is open to abuse by those wishing to hunt illegally. Hunting for this purpose would be illegal if it could be shown that no bird of prey was present for the purpose of hunting, or that any such bird of prey were merely being used as a cover for illegal hunting.

8

Recapture and rescue of a wild mammal

Recapture of A wild mammal

Hunting of a wild mammal is exempt if the mammal has escaped or been released from confinement. The following conditions apply.

- The hunting must be on land which is either
 - owned by the hunter, or
 - land which the hunter has been given permission to use for the purpose of recapture of a wild mammal by the occupier or, in the case of unoccupied land, the owner.
- Reasonable steps must be taken
 - for the purpose of ensuring that the wild mammal is shot dead as soon as possible after being found, and
 - to keep any dog used in the hunting under close control, to ensure that it does not prevent or obstruct the shooting of the wild mammal.
- The wild mammal must not have been released or permitted to escape for the purpose of hunting.

This section is open to abuse by illegal hunters, as there is no limit placed on the number of hounds who may "recapture" a wild mammal. Any such hunting would be illegal if it could be shown that the wild mammal had been deliberately released or permitted to escape in order to hunt it.

Rescue of a Wild Mammal

Hunting is exempt for the purpose of rescue of a wild mammal if the following conditions are satisfied.

- The hunter must reasonably believe that the wild mammal is or may be injured.
- The hunting must be undertaken to relieve the animal's suffering.
- The hunting must not involve the use of more than two dogs.
- The hunting must not involve the use of a dog below ground.
- The hunting must be on land which is either
 - owned by the hunter, or
 - land which the hunter has been given permission to use for the purpose of rescuing a wild mammal by the occupier or, in the case of unoccupied land, the owner.
- Reasonable steps must be taken
 - for the purpose of ensuring that, as soon as possible after the wild animal is found, appropriate action (if any) is taken to relieve its suffering.
 - to keep any dog used in the hunt under close control, to ensure that it does not prevent or obstruct the achievement of the objective
- The wild mammal must not be harmed for the purpose of enabling it to be "rescued".

This form of hunting is severely limited as no more than two dogs may be used. The hunter must "reasonably believe" that the wild mammal is or may be injured. This means that there is no need to prove that the animal was actually injured, but the hunter must have objective grounds for believing this for example if the animal was bleeding. This form of hunting would certainly be illegal if carried out in conjunction with "hound exercise".

9

Research and observation and other laws

Research and observation

Hunting is exempt if it is carried out for the purpose of the observation or study of a wild mammal under the following conditions.

- The hunting must not involve more than two dogs.
- The hunting must not involve the use of a dog below ground.
- The hunting must be on land which is either
 - owned by the hunter, or
 - land which the hunter has been given permission to use for the purpose of observation or study by the occupier or, in the case of unoccupied land, the owner.
- The dog used in the hunt must be kept under close enough control to ensure that it does not injure the wild mammal.

This form of hunting is very limited for two reasons. Firstly no more than two dogs can be used. Secondly any dog used must be prevented from injuring the wild mammal. Unlike under some of the other exemptions, it will not be a defence for a hunter to say that he took reasonable steps to prevent the dog injuring the mammal – if the mammal is injured then the offence will be committed.

Other Laws

The Hunting Act 2004 amends other legislation so as to confer further protection on hunted animals.

Protection of Animals Act 1911

Section 1 of this Act makes it an offence to cruelly beat, kick, ill-treat, over-ride, overdrive, overload, torture, infuriate, or terrify any captive or domestic animal, or cause any such animal unnecessary suffering.

The Act stated that this offence did not apply to those involved in the hunting or coursing of a captive animal, but this section has now been repealed. It means that if there was evidence of a hunt releasing a bagged fox for the purpose of hunting, and the fox was subsequently hunted, then anyone taking part could potentially be prosecuted for causing unnecessary cruelty under the Act. Similarly if a hare were released for the purpose of coursing, those taking part could be prosecuted under the Act.

This offence is punishable by up to 6 months imprisonment or a fine or both. A constable may arrest without warrant anyone whom he has reason to believe is guilty of an offence. There is no power of citizen's arrest, but any person may use reasonable force to prevent an offence taking place. If an offender uses or threatens you with violence they can be arrested to prevent a breach of the peace. In such a case, they should be handed over to the police as soon as possible.

10

Other laws

Wild Mammals (Protection) Act 1996

Section 1 of this Act makes it an offence to mutilate, kick, beat, nail or otherwise impale, stab, burns, stone, crush, drown, drag or asphyxiate any wild mammal with intent to inflict unnecessary suffering. The Act previously stated that this offence could not be committed if the animal was killed as a result of its having been injured or taken in the course of lawful hunting. The Hunting Act 2004 makes it clear that hunting will only be treated as lawful for this purpose if it is exempt hunting within the meaning of the Act.

This means an offence could now be committed under Section 1 of the Wild Mammals (Protection) Act 1996 if the animal had initially been injured or taken during the course of unlawful hunting. A huntsman, for example, who hunted a fox illegally and threw it alive to a pack of hounds could be prosecuted under Section 1 for mutilating the animal with intent to inflict unnecessary suffering.

This offence is punishable by up to 6 months imprisonment or a fine or both. There is no power of arrest, but a constable could arrest a suspect who refused to give their name and address. There is no power of citizen's arrest, but any person may use reasonable force to prevent an offence taking place. If an offender uses or threatens you with violence they can be arrested to prevent a breach of the peace. In such a case, they should be handed over to the police as soon as possible.

Protection of Badgers Act 1992

The Protection of Badgers Act 1992 has been amended so that it is now an offence for hunts to block badger setts, in order to prevent foxes from going to ground. It is also now an offence to allow hounds to mark at a badger sett.

Both offences are punishable by a fine and / or six months' imprisonment. There is no power of arrest, but a police officer can arrest a suspect who refuses to give their name and address. There is no power of citizen's arrest, but any person may use reasonable force to prevent an offence taking place. If an offender uses or threatens you with violence they can be arrested to prevent a breach of the peace. In such a case, they should be handed over to the police as soon as possible.

Section 35 of the Game Act 1831

This Section did make it a defence for hunts to trespass in order to hunt deers, hares or foxes, if hounds were in fresh pursuit of their quarry and the hunting had been started on other land. This defence is now repealed, which means that hare hunting will always be illegal if it involves trespass, even if the hunting is exempt under the Hunting Act 2004 (for example, the retrieval of hares which have been shot). The maximum penalty is a fine.

Hunt Watch
Po Box 3089, Norwich
Norfolk, NR3 2YP
Tel: 07952 550 054
Email: contact@huntwatch.info
Website: www.huntwatch.info

Thank you to Free B.E.A.G.L.E.S legal resource centre for the advice and help given in compiling this booklet. Take a look at www.freebeagles.org for a guide on other legal issues.

11