

# HUNTING ACT 2004

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## EXPLANATORY NOTES

### SCHEDULES

#### *Schedule 1: Exempt hunting*

19. *Schedule 1* sets out the classes of hunting with dogs which are exempt under *section 2* from the offence in *section 1* if carried out in accordance with specified conditions. These exemptions are as follows.

#### **Stalking and flushing out**

20. *Paragraph 1* provides that dogs may be used to stalk or flush out a wild mammal if five conditions are satisfied. This provision should be read with *paragraph 2*, which sets out the conditions under which a dog may be used below ground to stalk or flush out a wild mammal.
21. The first condition in *sub-paragraph (2)* sets out three possible purposes for which stalking and flushing out may be carried out:
- preventing or reducing serious damage which the wild mammal would otherwise cause to livestock; game birds or wild birds; food for livestock; crops; growing timber; fisheries; other property; or the biological diversity of an area;
  - obtaining meat to be used for the purposes of human or animal consumption; or
  - participation in a field trial in which dogs are assessed for their likely usefulness in connection with shooting.
22. In *sub-paragraph (2)(a)(ii)* game birds and wild birds are defined by reference to section 27 of the Wildlife and Countryside Act 1981. This provides that ““game bird” means any pheasant, partridge, grouse (or moor game), black (or heath) game or ptarmigan” and ““wild bird” means any bird which is ordinarily resident in or is a visitor to Great Britain in a wild state but does not include poultry or . . . any game bird”.
23. In *sub-paragraph (2)(a)(viii)* the biological diversity of an area is defined by reference to the United Nations Environmental Programme Convention on Biological Diversity of 1992. Article 2 of that Convention provides that ““biological diversity” means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems”.
24. The second condition in *sub-paragraph (4)* requires the stalking or flushing out to take place on land which belongs to the person doing the stalking or flushing out or which he has been given permission to use for that purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs.
25. The third condition in *sub-paragraph (5)* is that only up to two dogs may be used in the stalking or flushing out.

*These notes refer to the Hunting Act 2004 (c.37)  
which received Royal Assent on 18th November 2004*

26. The fourth condition in *sub-paragraph (6)* is that the stalking or flushing out must not involve the use of a dog below ground unless the requirements of *paragraph 2* are complied with.
27. The fifth condition in *sub-paragraph (7)* is that reasonable steps are taken to ensure that as soon as possible after being found or flushed out the wild mammal is shot dead by a competent person. Each dog used must be kept under sufficiently close control to ensure that it does not prevent or obstruct this.

### **Use of dogs below ground to protect birds for shooting**

28. *Paragraph 2* sets out the limited circumstances in which a dog may be used below ground to stalk or flush out a wild mammal without the commission of an offence under *section 1*. This provision should be read with *paragraph 1*.
29. The first condition in *sub-paragraph (2)* is that the stalking or flushing out is undertaken for the purpose of preventing or reducing serious damage to game birds or wild birds which are being kept or preserved for shooting. Game birds and wild birds are defined by reference to section 27 of the Wildlife and Countryside Act 1981 (see paragraph 22 above).
30. The second condition in *sub-paragraph (3)* requires the person doing the stalking or flushing out to carry written evidence either that the relevant land belongs to him or that he has been given permission to use it for that purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs. This evidence must be shown to a police constable immediately on request.
31. The third condition in *sub-paragraph (4)* is that only one dog is used below ground at any time to stalk or flush out a wild mammal.
32. The fourth condition in *sub-paragraph (5)* requires that:
  - reasonable steps are taken to ensure that as soon as possible after being found the wild mammal is flushed out from below ground;
  - reasonable steps are taken to ensure that as soon as possible after being flushed out from below ground the wild mammal is shot dead by a competent person;
  - the dog used is brought under sufficiently close control to ensure that it does not prevent or obstruct the shooting of the wild mammal;
  - reasonable steps are taken to prevent injury to the dog; and
  - the dog is used in compliance with any code of practice which is issued or approved by the Secretary of State for the purpose of this exemption.

These conditions replace those applicable under *paragraph 1(7)* to stalking and flushing out not involving the use of a dog below ground.

### **Rats**

33. *Paragraph 3* permits dogs to be used to hunt rats on land which belongs to the person hunting or which he has been given permission to use for that purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs.

### **Rabbits**

34. *Paragraph 4* permits dogs to be used to hunt rabbits on land which belongs to the person hunting or which he has been given permission to use for that purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs.

### **Retrieval of hares**

35. *Paragraph 5* permits dogs to be used to retrieve a hare which has been shot on land which belongs to the person hunting or which he has been given permission to use for that purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs.

### **Falconry**

36. *Paragraph 6* permits dogs to be used to flush a wild mammal from cover to enable a bird of prey to hunt it, provided that the flushing out takes place on land which belongs to the person hunting or which he has been given permission to use for that purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs.

### **Recapture of a wild mammal**

37. *Paragraph 7* provides that dogs may be used to recapture a wild mammal which has escaped or been released from captivity or confinement if three conditions are satisfied.
38. The first condition in *sub-paragraph (2)* is that the hunting takes place on land which belongs to the person hunting or which he has been given permission to use for that purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs, or with the authority of a constable.
39. The second condition in *sub-paragraph (3)* is that reasonable steps are taken to ensure that as soon as possible after being found the wild mammal is recaptured or shot dead by a competent person. Each dog used must be kept under sufficiently close control to ensure that it does not prevent or obstruct this.
40. The third condition in *sub-paragraph (4)* is that the wild mammal was not released or permitted to escape for the purpose of being hunted.

### **Rescue of a wild mammal**

41. *Paragraph 8* provides that dogs may be used to rescue a wild mammal if seven conditions are satisfied.
42. The first condition in *sub-paragraph (2)* is that the hunter reasonably believes that the wild mammal is or may be injured.
43. The second condition in *sub-paragraph (3)* is that the hunting is undertaken for the purpose of relieving the wild mammal's suffering.
44. The third condition in *sub-paragraph (4)* is that only up to two dogs may be used.
45. The fourth condition in *sub-paragraph (5)* is that the hunting must not involve the use of a dog below ground.
46. The fifth condition in *sub-paragraph (6)* is that the hunting takes place on land which belongs to the person hunting or which he has been given permission to use for that purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs, or with the authority of a constable.
47. The sixth condition in *sub-paragraph (7)* is that reasonable steps are taken to ensure that as soon as possible after being found appropriate action is taken to relieve the wild mammal's suffering. Each dog used must be kept under sufficiently close control to ensure that it does not prevent or obstruct this.
48. The seventh condition in *sub-paragraph (8)* is that the wild mammal was not harmed so that it could be hunted under this exemption.

## **Research and observation**

49. *Paragraph 9* provides that dogs may be used to track a wild mammal if five conditions are satisfied.
50. The first condition in *sub-paragraph (2)* is that the hunting is undertaken for the purpose of or in connection with the observation or study of the wild mammal.
51. The second condition in *sub-paragraph (3)* is that is that only up to two dogs may be used.
52. The third condition in *sub-paragraph (4)* is that the hunting must not involve the use of a dog below ground.
53. The fourth condition in *sub-paragraph (5)* is that the hunting takes place on land which belongs to the person hunting or which he has been given permission to use for that purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs.
54. The fifth condition in *sub-paragraph (6)* is that each dog is kept under sufficiently close control to ensure that it does not injure the wild mammal.

## ***Schedule 2: Consequential amendments***

55. *Paragraph 1* amends section 35 of the Game Act 1831. Section 35 currently provides that various provisions of that Act which relate to penalties on trespassers and persons found on any land shall not apply to a person hunting or coursing on any land with hounds or greyhounds in pursuit of deer, hares or foxes. The amendment removes this exception.
56. *Paragraph 2* amends section 5 of the Game Licences Act 1860. Section 5 currently provides for a number of exceptions from the provisions of that Act and the duties to be paid for game licences. These include exceptions concerning the hunting of deer and hares by dogs and hare coursing, which the amendment removes.
57. *Paragraph 3* relates to the interpretation of section 1(3)(b) of the Protection of Animals Act 1911. Section 1(1) of that Act creates an offence of treating an animal cruelly or causing an animal unnecessary suffering, but section 1(3)(b) provides for an exception for the hunting or coursing of a captive animal. This paragraph provides that this exception shall not apply in respect of participation in a hare coursing event or in the coursing or hunting of a wild mammal with a dog.
58. *Paragraph 4* amends section 8 of the Protection of Badgers Act 1992. Section 3 of that Act currently makes it an offence to interfere with badger setts. Section 8(4) to (9) provides an exception to the offence by allowing for the obstruction of a badger sett entrance for the purpose of hunting foxes with hounds provided certain conditions are met. The amendment removes this exception.
59. *Paragraph 5* relates to the interpretation of section 2 of the Wild Mammals (Protection) Act 1996. Section 1 of that Act makes it an offence to do certain acts (such as mutilating, kicking and beating) to a wild mammal with intent to inflict unnecessary suffering. Section 2 provides exceptions from this offence in relation to certain acts. This paragraph provides that for the purpose of those exceptions the hunting of a wild mammal with a dog shall be treated as lawful only if it is exempt hunting within the meaning of *section 2* of the Act.
60. This amendment means that the only acts during exempt hunting which are excepted from the offence in section 1 of the Wild Mammals (Protection) Act 1996 are the attempted mercy killing or the killing in a reasonably swift and humane manner of a wild mammal injured or taken in the hunting, and acts done by dogs. No other acts involved in hunting with dogs or hare coursing will be excepted from the offence.