

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

HUNTING ACT 2004

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Hunting Act 2004 which received Royal Assent on 18th November 2004. They have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act prohibits all hunting of wild mammals with dogs, except where it is carried out in accordance with the conditions of an exemption, and all hare coursing events.

TERRITORIAL APPLICATION: WALES

4. All provisions of the Act apply to both England and Wales.

COMMENTARY ON SECTIONS

PART 1: OFFENCES

Section 1: Hunting wild mammals with dogs

5. *Section 1* makes it an offence for a person to hunt a wild mammal with a dog unless the hunting is exempt.

Section 2: Exempt hunting

6. *Subsection (1)* provides that the classes of hunting which are exempt from the offence in *section 1* are specified in *Schedule 1*. *Subsection (2)* confers a power on the Secretary of State to vary a class of exempt hunting by order, which under *section 14* may not be made unless a draft has been approved by a resolution of each House of Parliament.

Section 3: Hunting: assistance

7. *Section 3* makes it an offence for a person knowingly to permit land which belongs to him to be entered or used, or to permit a dog which belongs to him to be used, in the commission of an offence under *section 1*.

Section 4: Hunting: defence

8. *Section 4* provides that it is a defence for a person charged with an offence under *section 1* to show that he reasonably believed that the hunting concerned was exempt under *section 2*.

Section 5: Hare coursing

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9. *Section 5* prohibits hare coursing events. *Subsection (1)* makes it an offence for a person to participate in, attend or knowingly facilitate a hare coursing event or to permit land which belongs to him to be used for a hare coursing event. Under *subsection (2)* when a dog participates in a hare coursing event an offence is committed by any person who enters the dog for the event, who permits the dog to be entered for the event or who controls or handles the dog in the course of or for the purposes of the event.

PART 2: ENFORCEMENT

Section 6: Penalty

10. A person found guilty of an offence under the Act is liable on conviction in a magistrates' court to a fine not exceeding level 5 on the standard scale (currently £5,000).

Section 7: Arrest

11. *Section 7* authorises a constable to arrest without warrant a person who he reasonably suspects to have committed, to be committing or to be about to commit an offence of unlawful hunting (*section 1*), participating in or attending a hare coursing event (*section 5(1)(a)* and (*b*)) or entering, permitting to enter or controlling or handling a dog in a hare coursing event (*section 5(2)*). A warrant will be required in cases where a person commits an offence of knowingly permitting land which belongs to him to be entered or used for unlawful hunting (*section 3(1)*), knowingly permitting a dog which belongs to him to be used for unlawful hunting (*section 3(2)*), knowingly facilitating a hare coursing event (*section 5(1)(c)*) or permitting land which belongs to him to be used for a hare coursing event (*section 5(1)(d)*).

Section 8: Search and seizure

12. *Section 8* confers powers of search and seizure without a warrant where a constable reasonably suspects that a person is committing or has committed an offence under the Act. *Subsections (2)* and (*3*) authorise the constable to stop and search that person and any vehicle, animal or other thing in his possession or control, while *subsection (4)* authorises the constable to seize and detain any vehicle, animal or other thing if he reasonably believes that it may be used as evidence in criminal proceedings for an offence under the Act or may be subject to a forfeiture order under *section 9*.

13. *Subsection (5)* provides that for the purpose of exercising these powers of search and seizure a constable may enter land, premises other than a dwelling or a vehicle.

Section 9: Forfeiture

14. *Subsections (1)* and (*2*) give the court power to make an order for the forfeiture of any relevant dog, vehicle or hunting article against a person convicted of an offence under the Act. "Hunting article" is defined in *subsection (3)*. *Subsections (4)* to (*6*) make further provision in respect of forfeiture orders and the destruction, disposal or return of dogs, vehicles and hunting articles.

15. Under *subsection (7)* a person commits an offence if he fails to comply with a forfeiture order or fails to co-operate with a step taken to give effect to a forfeiture order.

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PART 3: GENERAL

Section 11: Interpretation

16. *Section 11* defines a number of expressions which appear in the Act. *Subsection (1)* defines wild mammal, *subsection (2)* concerns what constitutes hunting a wild mammal with a dog, and *subsections (3) and (4)* set out the circumstances in which land or a dog belong to a person for the purposes of the Act.

Section 14: Subordinate legislation

17. *Section 14* concerns the making of subordinate legislation. It provides that an order made by the Secretary of State under *section 2(2)* of the Act cannot be made unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

Section 15: Commencement

18. *Section 15* provides that the Act shall come into force three months after it receives Royal Assent.

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

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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.

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

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- 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.

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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

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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.

COMMENCEMENT

71. Under *section 15* the Act shall come into force three months after it receives Royal Assent.

HANSARD REFERENCES

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	9 September 2004	Vol. 424 Col 877
Second Reading	15 September 2004	Vol. 424 Cols. 1324-1409
Third Reading	15 September 2004	Vol. 424 Cols. 1409-1419
<i>House of Lords</i>		
Introduction	16 September 2004	Vol. 664 Col 1294

*These notes refer to the Hunting Act 2004 (c.37)
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Second Reading	12 October 2004	Vol. 665 Cols. 124-260
Committee	26-28 October 2004	Vol. 665 Cols. 1175-1278, 1292-1378, 1404-1442
Report	11 November 2004	Vol. 666 Cols. 1019-1070
Third Reading	15 November 2004	Vol. 666 Cols. 1270-1290
<i>House of Commons</i>		
Commons Consideration of Lords Amendments	16th November 2004	Vol. 426 Cols. 1264-1326
<i>House of Lords</i>		
Lords Consideration of Commons Reasons for disagreeing with certain Lords Amendments, and motion on the Commons Suggested Amendment	17 th November 2004	Vol. 666 Cols.1554-1600.
<i>House of Commons</i>		
Commons Consideration of Lords Amendments and Amendment in Lieu of a certain Lords Amendment	18 th November 2004	Vol. 426 Cols. 1473-1507
<i>House of Lords</i>		
Lords Consideration of Commons Insistence on Disagreement to Lords Amendments and Commons Amendment in Lieu	18 th November 2004	Vol. 666 Cols. 1644-1653

Royal Assent – 18th November 2004

House of Lords Hansard Vol. 666 Col.1659

House of Commons Hansard Vol. 426 Col. 1518

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