

Hunting Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Environment, Food and Rural Affairs, are published separately as Bill 150-EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Alun Michael has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Hunting Bill are compatible with the Convention rights.

Hunting Bill

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A
B I L L

TO

Make provision about hunting wild mammals with dogs; to prohibit hare coursing; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

OFFENCES

1 Hunting wild mammals with dogs

A person commits an offence if he hunts a wild mammal with a dog, unless his hunting is exempt. 5

2 Exempt hunting

- (1) Hunting is exempt if it is within a class specified in Schedule 1.
- (2) The Secretary of State may by order amend Schedule 1 so as to vary a class of exempt hunting.

3 Hunting: assistance 10

- (1) A person commits an offence if he knowingly permits land which belongs to him to be entered or used in the course of the commission of an offence under section 1.
- (2) A person commits an offence if he knowingly permits a dog which belongs to him to be used in the course of the commission of an offence under section 1. 15

4 Hunting: defence

It is a defence for a person charged with an offence under section 1 in respect of hunting to show that he reasonably believed that the hunting was exempt.

5 Hare coursing

- (1) A person commits an offence if he –
- (a) participates in a hare coursing event,
 - (b) attends a hare coursing event,
 - (c) knowingly facilitates a hare coursing event, or 5
 - (d) permits land which belongs to him to be used for the purposes of a hare coursing event.
- (2) Each of the following persons commits an offence if a dog participates in a hare coursing event –
- (a) any person who enters the dog for the event, 10
 - (b) any person who permits the dog to be entered, and
 - (c) any person who controls or handles the dog in the course of or for the purposes of the event.
- (3) A “hare coursing event” is a competition in which dogs are, by the use of live hares, assessed as to skill in hunting hares. 15

PART 2

ENFORCEMENT

6 Penalty

A person guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale. 20

7 Arrest

A constable without a warrant may arrest a person whom he reasonably suspects –

- (a) to have committed an offence under section 1 or 5(1)(a), (b) or (2),
- (b) to be committing an offence under any of those provisions, or 25
- (c) to be about to commit an offence under any of those provisions.

8 Search and seizure

- (1) This section applies where a constable reasonably suspects that a person (“the suspect”) is committing or has committed an offence under Part 1 of this Act.
- (2) If the constable reasonably believes that evidence of the offence is likely to be found on the suspect, the constable may stop the suspect and search him. 30
- (3) If the constable reasonably believes that evidence of the offence is likely to be found on or in a vehicle, animal or other thing of which the suspect appears to be in possession or control, the constable may stop and search the vehicle, animal or other thing. 35
- (4) A constable may seize and detain a vehicle, animal or other thing if he reasonably believes that –
- (a) it may be used as evidence in criminal proceedings for an offence under Part 1 of this Act, or
 - (b) it may be made the subject of an order under section 9. 40

- (5) For the purposes of exercising a power under this section a constable may enter –
- (a) land;
 - (b) premises other than a dwelling;
 - (c) a vehicle.
- (6) The exercise of a power under this section does not require a warrant.

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9 Forfeiture

- (1) A court which convicts a person of an offence under Part 1 of this Act may order the forfeiture of any dog or hunting article which –
- (a) was used in the commission of the offence, or
 - (b) was in the possession of the person convicted at the time of his arrest.
- (2) A court which convicts a person of an offence under Part 1 of this Act may order the forfeiture of any vehicle which was used in the commission of the offence.
- (3) In subsection (1) “hunting article” means anything designed or adapted for use in connection with –
- (a) hunting a wild mammal, or
 - (b) hare coursing.
- (4) A forfeiture order –
- (a) may include such provision about the treatment of the dog, vehicle or article forfeited as the court thinks appropriate, and
 - (b) subject to provision made under paragraph (a), shall be treated as requiring any person who is in possession of the dog, vehicle or article to surrender it to a constable as soon as is reasonably practicable.
- (5) Where a forfeited dog, vehicle or article is retained by or surrendered to a constable, the police force of which the constable is a member shall ensure that such arrangements are made for its destruction or disposal –
- (a) as are specified in the forfeiture order, or
 - (b) where no arrangements are specified in the order, as seem to the police force to be appropriate.
- (6) The court which makes a forfeiture order may order the return of the forfeited dog, vehicle or article on an application made –
- (a) by a person who claims to have an interest in the dog, vehicle or article (other than the person on whose conviction the order was made), and
 - (b) before the dog, vehicle or article has been destroyed or finally disposed of under subsection (5).
- (7) A person commits an offence if he fails to –
- (a) comply with a forfeiture order, or
 - (b) co-operate with a step taken for the purpose of giving effect to a forfeiture order.

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10 Offence by body corporate

- (1) This section applies where an offence under this Act is committed by a body corporate with the consent or connivance of an officer of the body.

- (2) The officer, as well as the body, shall be guilty of the offence.
- (3) In subsection (1) a reference to an officer of a body corporate includes a reference to –
- (a) a director, manager or secretary,
 - (b) a person purporting to act as a director, manager or secretary, and
 - (c) if the affairs of the body are managed by its members, a member.

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PART 3

GENERAL

11 Interpretation

- (1) In this Act “wild mammal” includes, in particular –
- (a) a wild mammal which has been bred or tamed for any purpose,
 - (b) a wild mammal which is in captivity or confinement,
 - (c) a wild mammal which has escaped or been released from captivity or confinement, and
 - (d) any mammal which is living wild.
- (2) For the purposes of this Act a reference to a person hunting a wild mammal with a dog includes, in particular, any case where –
- (a) a person engages or participates in the pursuit of a wild mammal, and
 - (b) one or more dogs are employed in that pursuit (whether or not by him and whether or not under his control or direction).
- (3) For the purposes of this Act land belongs to a person if he –
- (a) owns an interest in it,
 - (b) manages or controls it, or
 - (c) occupies it.
- (4) For the purposes of this Act a dog belongs to a person if he –
- (a) owns it,
 - (b) is in charge of it, or
 - (c) has control of it.

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12 Crown application

- This Act –
- (a) binds the Crown, and
 - (b) applies to anything done on or in respect of land irrespective of whether it belongs to or is used for the purposes of the Crown or a Duchy.

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13 Amendments and repeals

- (1) Schedule 2 (consequential amendments) shall have effect.
- (2) The enactments listed in Schedule 3 are hereby repealed to the extent specified.

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14 Subordinate legislation

An order of the Secretary of State under this Act –

- (a) shall be made by statutory instrument,
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament, 5
- (c) may make provision which applies generally or only in specified circumstances or for specified purposes,
- (d) may make different provision for different circumstances or purposes, and
- (e) may make transitional, consequential and incidental provision. 10

15 Commencement

This Act shall come into force at the end of the period of three months beginning with the date on which it is passed.

16 Short title

This Act may be cited as the Hunting Act 2004. 15

17 Extent

This Act shall extend only to England and Wales.

SCHEDULES

SCHEDULE 1

Section 2

EXEMPT HUNTING

Stalking and flushing out

- | | | |
|---|---|----|
| 1 | (1) Stalking a wild mammal, or flushing it out of cover, is exempt hunting if the conditions in this paragraph are satisfied. | 5 |
| | (2) The first condition is that the stalking or flushing out is undertaken for the purpose of— | |
| | (a) preventing or reducing serious damage which the wild mammal would otherwise cause— | 10 |
| | (i) to livestock, | |
| | (ii) to game birds or wild birds (within the meaning of section 27 of the Wildlife and Countryside Act 1981 (c. 69)), | |
| | (iii) to food for livestock, | |
| | (iv) to crops (including vegetables and fruit), | 15 |
| | (v) to growing timber, | |
| | (vi) to fisheries, | |
| | (vii) to other property, or | |
| | (viii) to the biological diversity of an area (within the meaning of the United Nations Environmental Programme Convention on Biological Diversity of 1992), | 20 |
| | (b) obtaining meat to be used for human or animal consumption, or | |
| | (c) participation in a field trial. | |
| | (3) In subparagraph (2)(c) “field trial” means a competition (other than a hare coursing event within the meaning of section 5) in which dogs— | 25 |
| | (a) flush animals out of cover or retrieve animals that have been shot (or both), and | |
| | (b) are assessed as to their likely usefulness in connection with shooting. | |
| | (4) The second condition is that the stalking or flushing out takes place on land— | 30 |
| | (a) which belongs to the person doing the stalking or flushing out, or | |
| | (b) which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs. | |
| | (5) The third condition is that the stalking or flushing out does not involve the use of more than two dogs. | 35 |
| | (6) The fourth condition is that the stalking or flushing out does not involve the use of a dog below ground otherwise than in accordance with paragraph 2 below. | |

- (7) The fifth condition is that—
- (a) reasonable steps are taken for the purpose of ensuring that as soon as possible after being found or flushed out the wild mammal is shot dead by a competent person, and
 - (b) in particular, each dog used in the stalking or flushing out is kept under sufficiently close control to ensure that it does not prevent or obstruct achievement of the objective in paragraph (a). 5

Use of dogs below ground to protect birds for shooting

- 2 (1) The use of a dog below ground in the course of stalking or flushing out is in accordance with this paragraph if the conditions in this paragraph are satisfied. 10
- (2) The first condition is that the stalking or flushing out is undertaken for the purpose of preventing or reducing serious damage to game birds or wild birds (within the meaning of section 27 of the Wildlife and Countryside Act 1981 (c. 69)) which a person is keeping or preserving for the purpose of their being shot. 15
- (3) The second condition is that the person doing the stalking or flushing out—
- (a) has with him written evidence—
 - (i) that the land on which the stalking or flushing out takes place belongs to him, or 20
 - (ii) that he has been given permission to use that land for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs, and
 - (b) makes the evidence immediately available for inspection by a constable who asks to see it. 25
- (4) The third condition is that the stalking or flushing out does not involve the use of more than one dog below ground at any one time.
- (5) In so far as stalking or flushing out is undertaken with the use of a dog below ground in accordance with this paragraph, paragraph 1 shall have effect as if for the condition in paragraph 1(7) there were substituted the condition that— 30
- (a) reasonable steps are taken for the purpose of ensuring that as soon as possible after being found the wild mammal is flushed out from below ground,
 - (b) reasonable steps are taken for the purpose of ensuring that as soon as possible after being flushed out from below ground the wild mammal is shot dead by a competent person, 35
 - (c) in particular, the dog is brought under sufficiently close control to ensure that it does not prevent or obstruct achievement of the objective in paragraph (b), 40
 - (d) reasonable steps are taken for the purpose of preventing injury to the dog, and
 - (e) the manner in which the dog is used complies with any code of practice which is issued or approved for the purpose of this paragraph by the Secretary of State. 45

Rats

- 3 The hunting of rats is exempt if it takes place on land—

- (a) which belongs to the hunter, or
- (b) which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs.

Rabbits 5

- 4 The hunting of rabbits is exempt if it takes place on land –
- (a) which belongs to the hunter, or
 - (b) which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs. 10

Retrieval of hares

- 5 The hunting of a hare which has been shot is exempt if it takes place on land –
- (a) which belongs to the hunter, or
 - (b) which he has been given permission to use for the purpose of hunting hares by the occupier or, in the case of unoccupied land, by a person to whom it belongs. 15

Falconry

- 6 Flushing a wild mammal from cover is exempt hunting if undertaken –
- (a) for the purpose of enabling a bird of prey to hunt the wild mammal, and 20
 - (b) on land which belongs to the hunter or which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs.

Recapture of wild mammal 25

- 7 (1) The hunting of a wild mammal which has escaped or been released from captivity or confinement is exempt if the conditions in this paragraph are satisfied.
- (2) The first condition is that the hunting takes place –
- (a) on land which belongs to the hunter, 30
 - (b) on land which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs, or
 - (c) with the authority of a constable.
- (3) The second condition is that – 35
- (a) reasonable steps are taken for the purpose of ensuring that as soon as possible after being found the wild mammal is recaptured or shot dead by a competent person, and
 - (b) in particular, each dog used in the hunt is kept under sufficiently close control to ensure that it does not prevent or obstruct achievement of the objective in paragraph (a). 40
- (4) The third condition is that the wild mammal –
- (a) was not released for the purpose of being hunted, and

- (b) was not, for that purpose, permitted to escape.

Rescue of wild mammal

- 8 (1) The hunting of a wild mammal is exempt if the conditions in this paragraph are satisfied.
- (2) The first condition is that the hunter reasonably believes that the wild mammal is or may be injured. 5
- (3) The second condition is that the hunting is undertaken for the purpose of relieving the wild mammal's suffering.
- (4) The third condition is that the hunting does not involve the use of more than two dogs. 10
- (5) The fourth condition is that the hunting does not involve the use of a dog below ground.
- (6) The fifth condition is that the hunting takes place –
- (a) on land which belongs to the hunter,
- (b) on land which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs, or 15
- (c) with the authority of a constable.
- (7) The sixth condition is that –
- (a) reasonable steps are taken for the purpose of ensuring that as soon as possible after the wild mammal is found appropriate action (if any) is taken to relieve its suffering, and 20
- (b) in particular, each dog used in the hunt is kept under sufficiently close control to ensure that it does not prevent or obstruct achievement of the objective in paragraph (a). 25
- (8) The seventh condition is that the wild mammal was not harmed for the purpose of enabling it to be hunted in reliance upon this paragraph.

Research and observation

- 9 (1) The hunting of a wild mammal is exempt if the conditions in this paragraph are satisfied. 30
- (2) The first condition is that the hunting is undertaken for the purpose of or in connection with the observation or study of the wild mammal.
- (3) The second condition is that the hunting does not involve the use of more than two dogs.
- (4) The third condition is that the hunting does not involve the use of a dog below ground. 35
- (5) The fourth condition is that the hunting takes place on land –
- (a) which belongs to the hunter, or
- (b) which he has been given permission to use for the purpose by the occupier or, in the case of unoccupied land, by a person to whom it belongs. 40
- (6) The fifth condition is that each dog used in the hunt is kept under sufficiently close control to ensure that it does not injure the wild mammal.

SCHEDULE 2

Section 13

CONSEQUENTIAL AMENDMENTS

Game Act 1831 (c. 32)

- 1 In section 35 of the Game Act 1831 (provision about trespassers: exceptions) the following words shall cease to have effect: “to any person hunting or coursing upon any lands with hounds or greyhounds, and being in fresh pursuit of any deer, hare or fox already started upon any other land, nor”. 5

Game Licences Act 1860 (c. 90)

- 2 In section 5 of the Game Licences Act 1860 (exceptions) exceptions 3 and 4 (hares and deer) shall cease to have effect. 10

Protection of Animals Act 1911 (c. 27)

- 3 In section 1(3)(b) of the Protection of Animals Act 1911 (offence of cruelty: exceptions) a reference to coursing or hunting shall not include a reference to— 15
- (a) participation in a hare coursing event (within the meaning of section 5 of this Act), or
 - (b) the coursing or hunting of a wild mammal with a dog (within the meaning of this Act).

Protection of Badgers Act 1992 (c. 51)

- 4 Section 8(4) to (9) of the Protection of Badgers Act 1992 (exception for hunting) shall cease to have effect. 20

Wild Mammals (Protection) Act 1996 (c. 3)

- 5 For the purposes of section 2 of the Wild Mammals (Protection) Act 1996 (offences: exceptions) the hunting of a wild mammal with a dog (within the meaning of this Act) shall be treated as lawful if and only if it is exempt hunting within the meaning of this Act. 25

SCHEDULE 3

Section 13

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
The Game Act 1831 (c. 32)	In section 35, the words “to any person hunting or coursing upon any lands with hounds or greyhounds, and being in fresh pursuit of any deer, hare or fox already started upon any other land, nor”.	30
The Game Licences Act 1860 (c. 90)	In section 5, exceptions 3 and 4.	35

<i>Short title and chapter</i>	<i>Extent of repeal</i>
The Protection of Badgers Act 1992 (c. 51)	Section 8(4) to (9).

Hunting Bill

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B I L L

To make provision about hunting wild mammals with dogs; to prohibit hare coursing; and for connected purposes.

*Presented by Alun Michael
supported by
The Prime Minister, Mr Secretary Prescott,
Mr Secretary Blunkett,
Secretary Margaret Beckett and Mr Peter Hain.*

*Ordered, by The House of Commons,
to be Printed, 9th September 2004.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON: THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx net