

Rough Shooting for Ground Game

The rough shooting of wild mammals, for example hare or deer may involve the use of a dog to flush or stalk a wild mammal. Because of the involvement of the use of a dog, it counts as hunting not shooting and is therefore covered under the Hunting Act.

While rough shooting for ground game the danger of prosecution arises when you are in breach of the conditions above for example:

- You use more than two dogs
- If you are shooting with others and your dogs collectively form a pack, which goes onto to flush a hare or deer. If prosecuted you would have to show that this was not your intention and every reasonable action was taken to demonstrate this intent, for example separating and calling back the dogs

Mammals Exempt from the Act

- Rats and rabbits are exempt from the Hunting Act. Permission of the landowner or occupier is required to hunt them.
- Any number of dogs may be used (with permission of the landowner or occupier) to hunt a hare that has been shot.

There are other minor exemptions to the ban on hunting but these concern research purposes and the recovery of escaped mammals and they are not thought to be relevant to shoots and gamekeepers.

Assisting Hunting

A person commits an offence if he knowingly permits land that belongs to him to be entered or used in the course of the commission of a hunting offence.

Hare Coursing

The Act also specifically bans hare coursing events, defined as "a competition in which dogs are, by the use of live hares, assessed as to skill in hunting hares."

An offence is also committed if a person knowingly facilitates a hare coursing event, or permits land which belongs to him to be used for the purposes of a hare coursing event.

Penalties

All the offences under the Hunting Act are punishable by a fine of up to £5,000. Dogs, vehicles and equipment used in a hunting offence may be confiscated and, if appropriate, destroyed. Anyone refusing to pay a fine or comply with a confiscation order can ultimately be sent to prison.



Shooting and The Hunting Act

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The new Hunting Act that comes into effect on 18th February 2005 may affect some shoot and game keeping practices particularly the use of dogs for beating and flushing. It will also leave shoots, guns and gamekeepers open to the possibility of malicious prosecution.

The Act will certainly provide opportunities for increased scrutiny of shooting by animal rights groups and we expect to see an increase in anti-shooting propaganda and saboteur attacks on shooting.

To continue game shooting and avoid malicious prosecutions you must be aware of the ambiguities in the legislation.

Prosecutions

It is unlikely that a prosecution would succeed against a formal game shoot as it would be clear that the intention was not to hunt wild mammals. For rough shooting, however, the situation may be more problematic as it may be more difficult to prove that the intention was not to hunt a wild mammal.

Either way if the activity is reported to the police, the onus and effort will be on the shoot or gun to explain why an offence has not been committed, that the flushing was of wild birds and if also of wild mammals, that the requirements of the Hunting Act had been complied with.



For a prosecution to succeed under the Hunting Act the court must not only have evidence that the criminal act has occurred but also that the person responsible for that criminal act intended to commit that offence. Thus while a criminal act may occur during shooting (e.g. three dogs pursuing a hare or deer), as long as it can be demonstrated that the intention was not to hunt a wild mammal the prosecution should not succeed.

The Act

Under the Act, "a person commits an offence if he hunts a wild mammal with a dog, unless his hunting is exempt."

Exemptions

Game Birds The Act deals only with wild Mammals so the flushing of game birds by any number of dogs remains legal.

Flushing of Mammals The Act allows dogs to be used for stalking and flushing of wild mammals, subject to a number of restrictions. No more than 2 dogs may be used to "stalk or flush" a wild mammal from cover for defined purposes.

These include:

- The protection of game birds, wild birds, fisheries, crops and livestock; obtaining meat; and field trials.
- To qualify as exempt, the above activities must always be done with the permission of



the owner or occupier of the land and "reasonable steps must be taken for the purpose of ensuring that as soon as possible after being found, or flushed, the wild mammal is shot dead by a competent person." (Competent person is undefined in the Act).

- Each dog used in the stalking or flushing out must be kept under sufficiently close control to ensure that it does not prevent or obstruct the shooting of the mammal in question.
- A single dog may be used below ground to "stalk or flush" a wild mammal for the sole purpose of preventing or reducing serious damage to game birds or wild birds being kept or preserved for shooting. In this case, the person using the dog must carry written permission (or evidence that he himself is the landowner), which he must produce if asked by a constable. This exemption also requires that all the following conditions are met:
- 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.
- 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.
- In particular, the dog is brought under sufficiently close control to ensure that it does not prevent or obstruct the mammal being shot.

- Reasonable steps are taken for the purpose of preventing injury to the dog.
- The manner in which the dog is used complies with any code of practice that is issued or approved for the purpose of this paragraph by the Secretary of State. (No such code has yet been issued).
- Up to two dogs may be used to hunt a wild mammal that the hunter reasonably believes may be injured. Such hunting must be done with permission, must not extend below ground and must end with appropriate action being taken to relieve the animal's suffering. The mammal must not be injured for the purpose of allowing such hunting.

Rough Shooting and Driven Shooting for Game or Wild birds

Where the intended quarry is game birds or wild birds the Hunting Act does not apply, as your chosen quarry is not a wild mammal.

The danger arises, and could lead to a malicious prosecution were a wild mammal, for example a hare or deer, to be flushed. The Hunting Act would then cover this action and a prosecution may be brought if the conditions as above were breached. For example:

- If more than two dogs were involved in flushing or stalking a wild mammal.
- A wild deer was flushed and you were unable to shoot it dead because you either did not have a suitable firearm, it was not safe to shoot or the deer was not in season. There is a presumption that one Act of Parliament does not contradict another Act but the courts would have to rule on this were a prosecution to arise.

It would be a defence for the accused to demonstrate that their intention was not to flush wild mammals, however were unintentional hunting to occur court might take the view that the shooting was in fact a 'cover' for illegal hunting.