



BRIEFING PAPER

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Amending the Hunting Act 2004

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Summary

Hunting with dogs was banned in England in 2004 under The Hunting Act. The legislation includes several exemptions which allow the use of a maximum of two dogs for certain hunting activities, including stalking and flushing. The exemptions under the Act can be amended using a statutory instrument with the approval of both Houses.

The Conservative Government included a manifesto commitment to repeal the Hunting Act. However, in July 2015 the Government announced that it intended to amend the legislation to remove the limit on the number of dogs, and instead replace it with a requirement that the number of dogs used is appropriate to the terrain and any other relevant circumstance. The Government's aim is to bring the legislation in line with that in Scotland.

Countryside organisations have welcomed the move stating it addressed the needs of rural communities. However, animal welfare organisations are concerned that it will make the legislation a lot more difficult to enforce.

1. The Hunting Act

The [Hunting Act 2004](#) covers England and Wales, bans the hunting with dogs of all wild mammals, and all hare coursing. However, there are exemptions set out in [Schedule 1](#) of the Act, which allow hunting activities to take place in limited circumstances and with the consent of the occupier or owner of the land:

- stalking and flushing wild mammals with up to two dogs;
- use of dogs below ground to protect birds for shooting;
- ratting, r兔biting, retrieval of hares and flushing for falconry;
- recapture of wild mammals;
- rescue of wild mammals;
- research and observation.

A person found guilty of an offence under the Act faces a fine of up to £5,000, and could have their dogs, vehicles or articles used in hunting confiscated.¹ The Crown Prosecution Service has produced guidance on enforcing the Act, available on its [website](#).²

Further background on the legislation and the debate during its passage through Parliament is available in Library briefings [RP02/82](#), [RP01/89](#) and [RP00/96](#).

Despite the restriction allowing a maximum of two dogs to flush out wild mammals, which then have to be shot, hunts in England and Wales have continued to meet. The ban does not cover drag hunting which is still permitted under the legislation. The [Master of Foxhounds Association](#) lists 171 packs in England and Wales on its website.

1.1 The legislation in practice

England and Wales

The level of proof required for a court of law was established in a [High Court ruling](#) in 2009 which held that the burden was not on a defendant to prove the exemptions set out in Schedule 1 to the Hunting Act 2004 applied and that the term “hunt” did not include the activity of searching for a wild animal for the purpose of stalking or flushing it.³

Following criticism of the RSPCA for the effort and cost involved in some of its private prosecutions of hunts the organisation decided to examine how it took its decisions on whether or not to prosecute. It commissioned Stephen Woller, a former Chief Inspector of the Crown Prosecution Service Inspectorate, to carry out an independent review. One of the conclusions of [his report](#), published in 2014, was that the legislation as it currently stood risked public confidence in the ability to uphold criminal law.

¹ Defra, [Brief guide to the Hunting Act 2004](#), 21 February 2011

² CPS, [The Hunting Act 2004: Legal Guidance](#), [accessed 25 March 2014]

³ [Director of Public Prosecutions v Wright \[2009\]](#) EWHC 105 (Admin) (04 February 2009)

5 Amending the Hunting Act 2004

The evidence reviewed leaves no room for doubt that, despite the 2004 legislation, traditional fox hunting remains “business as usual” in many parts of the country. Extensive flouting of the law risks bringing Parliament, the police and prosecuting authorities into disrepute. Widely publicised criticism of the RSPCA over the costs of the Heythrop Hunt case undoubtedly caused it reputational damage even though the prosecution itself was fully justified. Two further consequences are likely: first, public confidence is damaged when the authorities appear unable to uphold criminal law; secondly, there is a risk of public disorder and violence as the result of confrontations between on the one hand followers and supporters of hunting, and on the other hand those who seek to protest or gather evidence of suspected illegality.

The view that illegal hunting activities do take place is also reflected by commentators. An [article](#) in the Telegraph from 18 February concluded that the legislation as it stands fudges the question, satisfying neither animal rights nor personal liberties:

What is certain is that, far from dying out, the process of hunting has prospered, with some 45,000 people regularly taking part and 250,000 turning out across the country for the most recent Boxing Day meets. Officially these are “drag hunts”, where hounds follow a chemical trail laid across the countryside, or “trail hunts”, where the hunt’s path loops and overlaps to simulate unpredictable vulpine meanderings. Yet it would be wrong to say that hunting is now a bloodless sport, because – whisper it – some foxes are still pursued to their deaths. There’s no way to know for certain how often this happens.⁴

A [Guardian article](#) from July 2015 also highlighted flaws in the existing legislation, and the failure of the proposed amendments to address these:

The League Against Cruel Sports is claiming that a vote next week for this change will mean the return of hunting “by the backdoor”, and they are right. A great deal of flouting of the law already takes place – using birds of prey to accompany packs was popular for a while to exploit one loophole – and it would now be even easier to circumvent the act. For all the government’s claims to be tidying up the legislation, a messy act will get even messier.

The League against Cruel Sport lists on its website activities it believes are [evidence](#) that illegal hunting by organised hunts is common.

There have been several successful prosecutions in the last few years of individuals connected to hunts for breaches of the Hunting Act, summarised on the [Hunting Act website](#) which is managed by the IFAW, LAGCS and RSPCA.

Convictions under the Hunting Act are reported together so it is not possible to distinguish those that are related to hunting foxes with dogs, from other offences such as hare coursing. Total figures are set out below:

⁴ The Telegraph, [Ten years on from the hunting ban, has anything really changed?](#), 18 February 2015

**Defendants proceeded against and found guilty of offences
under the Hunting Act 2004, England and Wales**

	Proceeded against	Found guilty
2005	2	2
2006	11	5
2007	62	48
2008	44	33
2009	92	59
2010	49	36
2011	72	56
2012	84	48
2013	110	56
2014	64	35

Source: Justice Statistics Analytical Services - Ministry of Justice.

As reported in PQ 214903 - 18 November 2014 and PQ 3270 - 23 June 2015

Scotland

Fox hunting in Scotland is covered under the [Protection of Wild Mammals \(Scotland\) Act 2002](#). As introduced to the Parliament, section 1 of the Bill would have ended hunting with dogs in Scotland. During debates on the Bill Parliament was persuaded that it needed to be amended to allow dogs to be used to flush foxes from dense cover, e.g. forestry plantations, with the intention of shooting them. Several packs of hounds are kept by gamekeepers and shepherds in upland areas for this purpose. The Bill was therefore amended, and section 2 of the Act includes an exemption which allows any number of dogs to be used for the purpose of flushing a wild mammal from cover.

The Scottish Act lists a series of exemptions, similar to those in England and Wales, for which a *dog* can be used. However it goes on to set out the meaning of dog as:

references to hunting with, or the use of, "a dog" are to be interpreted as also applying to hunting with, or (as the case may be) the use of, two or more dogs

There have been no successful prosecutions of a hunt in Scotland under the Act. In 2004 a prosecution was brought in *Fraser v Adams* for deliberately hunting a fox with 20 dogs, which was unsuccessful.⁵ The case made clear that the burden of proof was on the Crown to establish deliberate hunting of a wild mammal with dogs.

The exemption has allowed hunts to continue in Scotland, where packs of hounds are used to flush foxes, with the intention of shooting them. The Scottish Countryside Alliance, an organisation which supports hunting, published a press release to mark the tenth anniversary of the

⁵ *Fraser v Adams*, Sheriff Court (Lothian and Border), 10 December 2004, Case Analysis 2005 S.C.C.R. 54; 2005 G.W.D. 1-8

Act coming into force, in February 2013.⁶ This explained that of the 10 former foxhunts in Scotland, continued to operate and went on to say:

It was meant to sound the death toll of the centuries-old pursuit of fox hunting, but a decade on from the introduction of the Protection of Wild Mammals (Scotland) Act 2002 (the Act) which was fiercely opposed by the Scottish Countryside Alliance, local hunts continue to survive - and even flourish.

And

It is legal to use dogs to flush a fox from cover for it to then be shot so long as this is done as a form of pest control. Ironically, evidence suggests three times as many foxes are being killed due to the introduction of guns than before the new laws were brought in to protect animal welfare. 10 years ago strong foxes would frequently succeed in escaping from the hounds, while weaker foxes were caught and killed.

1.2 Public opinion on fox hunting

An [Ipsos Mori](#) national poll on hunting commissioned by the League against Cruel Sports found in December 2014 that 80% of respondents did not think fox hunting should be made legal again, 17% thought it should be and 3% undecided. In rural areas results were similar with 78% opposing a change to legalise fox hunting and 19% supporting it.

A [YouGov poll](#) carried out in January 2015 found that 51% of respondents supported a ban on fox hunting with hounds, with 33% opposing it and 16% who supported neither or didn't know. A majority in rural areas, 49%, also supported a ban with 39% opposing it and 12% supporting neither or didn't know. The region with most support for hunting was the south, excluding London, although even there the majority still supported the ban. Full poll results are available [here](#).

2. Proposals to amend the Act

In March 2014 there had been speculation that a Statutory Instrument amending the Hunting Act was imminent. It was suggested that the limit on the number of dogs used to stalk or flush a mammal may be removed, to align the situation in England and Wales with that in Scotland.

The issue was raised by Chris Williamson MP during Prime Minister's Questions:

Chris Williamson (Derby North) (Lab): Will the Prime Minister end the speculation over the future of the Hunting Act 2004 by confirming that he does not intend to use a statutory instrument to repeal or amend the Act by removing the limit on the number of dogs that can be used to flush an animal to guns?

The Prime Minister: This will quite properly be a matter for the House of Commons. As the hon. Gentleman will know, a group of Welsh and other Members of Parliament have looked at a particular problem of pest control in upland areas of Wales and

⁶ Scottish Countryside Alliance, [Press Release](#), 19 March 2013

other parts of the country. They are making a proposal, which will be properly examined by the Department and, in the end, the House of Commons will be able to decide.⁷

The decision not to pursue the issue was confirmed by David Cameron during Prime Minister's Questions on the 26 March. He said there would be no changes to the Hunting Act due to a lack of Coalition Government agreement on the subject:

Proposals were made on a cross-party basis to the Environment Secretary about an amendment to the Hunting Act that would help in particular upland farmers deal with the problem of fox predation of their lands. That letter has been received and is being considered, but I regret to say that I do not think there will be Government agreement to go forward.⁸

2.1 Procedure to amend the Act

[Section 2](#) of the Hunting Act 2004 on exempt hunting allows for the hunting exemptions contained in Schedule 1 to be amended by Statutory Instrument:

- (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.

Any amendment would require approval by both Houses as set out in the Explanatory Notes:

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.

A statutory Instrument is a form of secondary legislation. In this case approval of each House is required and both Houses will have a chance to debate the Instrument. However, there will not be an opportunity to amend it (as there would be in the case of primary legislation).

2.2 July 2015 announcement

The Conservative manifesto contained a commitment to repeal the Hunting Act:

A Conservative Government will give Parliament the opportunity to repeal the Hunting Act on a free vote, with a government bill in government time.⁹

However on 8 July 2015, the Telegraph reported that MPs would get a free vote to relax fox hunting ban the following week.¹⁰ On 9 July 2015 Defra published a [statement](#) setting out proposals for what it referred to as a small number of technical amendments to the Hunting Act 2004. In this the minister stated the aim was to more closely align the legislation with Scotland:

⁷ HC Deb c887, 5 March 2014

⁸ HC Deb 26 Mar 2014 : Column 346

⁹ [Conservative Party Manifesto 2015](#)

¹⁰ The Daily Telegraph, [MPs to get free vote to relax fox hunting ban next week](#), 8 July 2015

A small number of technical amendments to the Hunting Act have been proposed to more closely align legislation in England and Wales with that in Scotland, while maintaining safeguards.

The amendments to the Act would enable farmers and gamekeepers to make a judgement, based on the terrain and other circumstances, to use more than two dogs to flush out and stalk wild animals for effective and humane shooting as part of the existing exemption in the Act that allows for pest control.

This is important in upland areas where the current limit of using two dogs across large and often wooded areas is not regarded as effective or practical for pest control purposes. There is no limit on the number of dogs that can be used to flush out or stalk an animal in this way in Scotland.

The Hunting Act will remain in place and will still prohibit the pursuit and killing of a wild animal by dogs.

2.3 Proposed amendments to Schedule 1

A draft [statutory instrument](#) setting out the proposed amendments is available on the legislation website, with a 90 minute debate to take place in the House of Commons on 15th July. If approved it is expected to be debated in the Lords after the summer recess, and would come into force the day after it passed.

The proposed amendments to [Schedule 1](#) of the Act would increase the maximum number of dogs that can be used for some exempted activities, including stalking and flushing, from two to a number that is "appropriate to the terrain and any other relevant circumstance", although these are not defined.

The proposed amendments would also add diseased mammals to those that can be hunted in the paragraph in the Schedule on *Rescue of Wild Mammals*. This would then read "first condition is that the hunter reasonably believes that the wild mammal is or may be injured or diseased". In addition the use of dogs underground to protect birds for shooting would be extended to include the protection of livestock.

The provisions are not exactly the same as those in Scotland, where there are no limits on the number of dogs that can be used or the specific circumstances of when they can be used. With regards to diseased animals the exceptions allowed in Scotland is stalking and flushing of wild mammals to "prevent the spread of disease".

Passage through Parliament

The Guardian [reported](#) that any vote could be close and may depend on whether the SNP decides to vote on the issue:

Ahead of a free vote on the issue next Wednesday, it is understood English and Welsh MPs are currently split almost equally on whether to approve changes to the law that would bring England into line with Scotland.

Given the likely closeness of the vote, the SNP will come under intense pressure from the anti-hunting lobby to break with tradition and vote against the changes, even though they only apply to England.

However, the Guardian understands the SNP is currently minded not to intervene, making a change in the law more likely. No formal decision has yet been taken by the SNP and it could change its position after studying the amendment, which was published on Thursday morning¹¹

The Telegraph [speculated](#) that the approach is a compromise because of concerns about whether there would be a majority in Parliament supporting a repeal of the Act:

Pro-hunting MPs were concerned that there were not enough supporters in the Commons to win a free vote on overturning the ban.

Number 10 had been considering trying to force through a vote in a Private Members' Bill tabled by a Tory MP supporter, but this was dropped because it did not meet the manifesto commitment.

Mr Hart added: "This route stands the best chance of closing the chapter. OK it doesn't go the whole distance – but it recognises there are problems which we are attempting to deal with.

"The Government is planning to do as much as it reasonably can do in the circumstances and I think that it would be churlish of me to criticise it.

"It has moved quickly and is taking into account everybody's concerns. I am a purist, but as a pragmatist I think this is a sensible way forward and the PM should be congratulated for it."¹²

On 13 July the Times reported that MPs who have supported scrapping the Hunting Act, may be satisfied by the proposed amendments and withdraw their calls for primary legislation to repeal the Act.¹³

The Telegraph [reported](#) that SNP MPs were considering their position, and that the Scottish Government had "ordered an investigation into the effectiveness of the ban north of the border amid concerns that illegal hunting is taking place."¹⁴ The SNP website on the same date stated:

While SNP MPs have tended not to participate in votes on domestic English/Welsh legislation which do not apply to Scotland, the party's Westminster Group will not decide a position on this matter until such time as any proposed legislation can be studied and assessed.

The position of some conservative MPs, [Conservatives against Hunting](#), was set out in a letter to colleagues asking them to vote against the amendments:

We believe that this is not some minor amendment, but would effectively legalise hunting again which is opposed by the vast majority of the public in both rural and urban areas. The current legislation of using no more than two dogs to flush a wild mammal to guns is very clear and easy to use when enforcing the law. Removal of this limited restriction is likely to make

¹¹ The Guardian, [Government publishes amendment to fox hunting act ahead of free vote](#), 9 July 2015

¹² The Telegraph, [MPs to get free vote to relax fox hunting ban next week](#), 8 July 2015

¹³ The Times, [Pro-hunting MPs will settle for relaxing the law](#), 13 July 2015

¹⁴ The Telegraph, [SNP considers helping Labour fight repeal of fox hunting ban](#), 12 July 2015

enforcement of the Act considerably more difficult and would pose a real threat to wildlife protection.¹⁵

3. Reactions to the proposals

The reaction to proposals to amend the legislation has been mixed. The Federation of Welsh Farmers Packs have been campaigning on this issue for some time, calling for the limit on the number of dogs allowed to be used when flushing or stalking foxes to be removed. They welcome the proposal their [website](#), when the suggestion was first put forward:

Under the Hunting Act 2004 there is a limit of two dogs that can be used to flush a fox to a gun. In most practical circumstances and, especially in upland areas where foxes maybe found in forestry plantations or low, dense areas of vegetation spread over thousands of acres, this exemption makes effective and successful management much more difficult.

The Federation of Welsh Farmers Packs is campaigning to amend the two dog exemption so that a number of dogs can be used to flush a fox to a gun, which is a quicker and more effective method of managing the fox population for farmers.

The Countryside Alliance welcomed the proposals in its briefing for MPs, in July 2015, stating that the amendments did not change the existing legislation, rather they made existing exemptions work for the purposes they were included. It was of the view that “None of these changes would alter the ban on the use of dogs to pursue and kill wild mammals, which is what the proponents and supporters of the Hunting Act have stated is the purpose of the Act”:

The amendments do not change any of the purposes for which dogs can be used under the Hunting Act, other than enabling the protection of livestock as well as birds for shooting using a dog below ground, but rather seek to ensure that the exemptions actually work for the purposes for which they were included in the Act.

These amendments address the immediate needs of the rural community, are logical and evidence-based, and would ensure that farmers are able to decide how to manage wild mammal populations in the most effective and humane manner.¹⁶

The view of the League against Cruel Sports of the proposals is different:

By amending the Hunting Act, the government would be deliberately and cynically making it easier for hunts to chase and kill foxes, and harder for them to be convicted when they break the law. This is not about hunting foxes for pest control. It’s about hunting foxes for fun.

The [joint brief](#) by IFAW, LACS and the RSPCA sets out their reaction to the amendments and the view that it is worded so loosely that it in

¹⁵ Conservatives against hunting, [The Minister For Sport, the President of Conservative Animal Welfare and the Co Chairman of the All Party Group For Animal Welfare urge colleagues to protect the Hunting ban from amendment](#), 13 July 2015

¹⁶ Countryside Alliance, Brief on The Draft Statutory Instrument amending the Hunting Act 2004, 9 July 2015

effect allows for packs of hounds to be used in a wide variety of circumstances.

It is claimed this would bring the legislation on hunting in England and Wales more closely in line with that in Scotland.

These amendments would be disastrous for wildlife, animal welfare and the Hunting Act. They would allow those who wish to engage in the cruel 'sport' of hunting, where wild animals are chased to the point of exhaustion, before being killed by packs of hounds, to escape the consequences. In many respects they are the first steps at dismantling the Act and the protection it provides for wildlife.

[Shooting UK](#) called for support for the change in the legislation:

Farmers will be able to call on the services of the local hunt to use more than two dogs to protect livestock, as well as game birds. The amendments will also make it easier to despatch foxes suffering from mange and other diseases.

Many people think that the hunting ban was bad law and even its instigator Tony Blair has said he regrets having introduced it and admitted not knowing enough about the debate. Police have been overstretched trying to enforce the ban and it has cost the taxpayer millions.

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