



Update on the Hunting Act 2004

The Hunting Act 2004 has now been in force for nearly seven years and has already proven to be an effective and integral piece of the legislative framework protecting wildlife in England and Wales.

The Act had a controversial passage through Parliament, but was welcomed by the majority as setting out what Parliament and the public believes is acceptable practice in the twenty first century.

The Act is clear in its scope:

- It prohibits hare coursing and makes it an offence to hunt a wild mammal with a dogⁱ unless the hunting is exempt under schedule 1; and
- Also makes it an offence for a landownerⁱⁱ to knowingly permit his land to be used to hunt wild mammals with dogs illegally (as set out in section 1) or prohibits hare coursing outright.

The Act's critics have questioned whether it is enforceable, legitimate, rational and proportionate. This briefing aims to examine these claims, restate the importance of the Act, why it was passed and what it can deliver.

Is the Hunting Act enforceable?

One of the criticisms of the Act is that it is difficult to enforce, a point that its detractors attempt to illustrate by what is claimed to be the small number of prosecutions under the Act since it was passed. This claim is not borne out by a review of the prosecutions and convictions made under the Act.

Since the Act came into force, excluding 2011 for which figures are not yet available, there have been 261 defendants prosecuted for offences under the Hunting Act, of whom 184 were found guilty (an overall success rate of 70%). The number of prosecutions under the Hunting Act compares favourably with other wildlife legislation. For example, in 2010 there were forty nine prosecutions under the Hunting Act 2004, forty eight cases taken relating to the Badgers Act 1991, six in relation to the Wild Mammals (Protection) Act 1996 and ten in relation to the Deer Act 1991.

In December 2011 the Chief Constable for Lincolnshire police and also the ACPO lead for hunting, Mr Richard Crompton, wrote to the RSPCA on the issue of the Hunting Act and said:

*"There have been a substantial number of convictions under the Hunting Act 2004. Such evidence, in my view, demonstrates that the Act is enforceable."*ⁱⁱⁱ

Table 1 Number of defendants proceeded against under wildlife legislation^{iv}

	2005	2006	2007	2008	2009	2010
Badgers Act 1991	39	22	20	34	50	48
Deer Act 1991	4	1	3	4	3	10
Wild Mammals (Protection) Act 1996	3	7	7	6	8	6
Hunting Act 2004	3	11	62	44	92	49

Table 2 Number of defendants found guilty of offences under wildlife legislation^v

	2005	2006	2007	2008	2009	2010
Badgers Act 1991	20	7	6	22	30	29
Deer Act 1991	3	0	1	1	2	5
Wild Mammals (Protection) Act 1996	1	4	3	5	5	4
Hunting Act 2004	3	5	48	33	59	36

Table 3 Success rate of prosecutions taken

	2005	2006	2007	2008	2009	2010
Badgers Act 1991	51%	32%	30%	65%	60%	60%
Deer Act 1991	75%	0%	33%	25%	67%	50%
Wild Mammals (Protection) Act 1996	33%	57%	43%	83%	63%	67%
Hunting Act 2004	100%	45%	77%	75%	64%	73%

For further information on this issue please contact the RSPCA public affairs team at politicalaffairs@rspca.org.uk



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These tables show that, despite the legal challenges it has faced, offences under the Hunting Act have been successfully prosecuted more often than comparable wildlife legislation.

Is the aim of the Hunting Act rational and proportionate?

Clearly not everyone will agree that the Hunting Act is rational and proportionate piece of legislation. In fact there have been a number of challenges to the Act on precisely this point, however the Courts have been clear in their judgements:

On this point the High Court concluded that:

“...the Hunting Act has a legitimate aim; that it is rationally related to that aim; that it does not go further than is necessary to achieve that aim; that it is necessary in a democratic society; that it satisfies the test of proportionality; and that Parliament had sufficient evidential material to reach such conclusions on a rational basis.” (para 337)^{vi}

Later in their judgment the Judges stated:

“We think that there was ample basis for a legislative judgment that the registration scheme in the original Michael Bill was unworkable, and that it would result in Parliament delegating to the registrar an intensely difficult series of decisions which Parliament itself ought to take. In any event, if, as we think, the legislative judgment was that hunting with dogs is unethically cruel and should be banned, a registration scheme was obviously not the way to implement that judgment.” (para 345)^v

Eventually the various human rights and Treaty of Rome challenges to the Hunting Act reached the House of Lords. There the arguments had clearly crystallised, with Lord Bingham, the then senior Law Lord, stating:

“If, as has been held, the object of the Act was to eliminate (subject to the specified exemptions) the hunting and killing of wild animals by way of sport, no less far-reaching measure could have achieved that end. As already noted, the underlying rationale could have been relied on to justify a more comprehensive ban. The Michael Bill was rejected because it did not go far enough. I am on the opinion that the 2004 Act is proportionate to the end it sought to achieve.” (para 46)^{vii}

It is quite clear that the Judiciary has accepted the aim of the Act: to prevent or reduce unnecessary suffering to wild animals in the context of a moral judgement that causing suffering to animals for sport is unethical and should, as far as is practical and proportionate, be stopped.

What would repeal of the Hunting Act mean?

The Hunting Act was not confined to prohibiting fox hunting – it also affected the activities of those who used terriers and lurchers to hunt foxes, deer, hares and mink. Repeal would not only give a green light to resuming hunting of foxes by dogs but also deer hunting, hare hunting and hare coursing.

In some instances where animals defined as ‘game’, such as hares, are involved, then other possible offences may be invoked, such as trespass in pursuit of game. However, if hare coursing is to be controlled it may not be seen as appropriate to rely on statutes such as the Game Act 1831 or the Poaching Prevention Act 1862.

Furthermore, repeal of the Act could have a significantly wider impact on rural communities and wildlife. As can be seen from the tables above badgers are still a persecuted species. By banning the hunting of foxes the Hunting Act simplified the legal situation regarding the obstruction of badger setts by those hunting foxes. Its repeal would therefore be likely to revive controversies and legal disputes over any stopping up of setts associated with hunting.



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What does the public think about the Hunting Act?

In December 2010 the League Against Cruel Sports commissioned Ipsos MORI to conduct a public survey about hunting (including fox, deer and hare hunting and hare coursing)^{viii}.

The results show for the general public that:

- Three quarters (76 per cent) support the ban on fox hunting
- Over eight in ten (84 per cent) think the ban on deer hunting should stay in place
- A similar number (84 per cent) say hare coursing and hunting should remain illegal

In rural communities this equated to seven in ten (71 per cent) people who wanted fox hunting to remain illegal, 81 per cent who believe deer hunting should remain illegal and 84 per cent who believe hare hunting and coursing should remain illegal.

In conclusion

The RSPCA believes that the Hunting Act is a workable, enforceable piece of legislation. Despite the upheaval and uncertainty created by the legal challenges it has faced, a significant number of prosecutions and convictions have been secured under the Act. Repeal would have a wider impact on wildlife and rural life. Finally, the public (including the RSPCA's many supporters) also continues to strongly support the Act.

It would seem that the Act has not had the dire economic and social consequences that some opponents had predicted – hunt supporters themselves are adamant that various forms of drag and trail hunting have apparently flourished. It is worth remembering that the Act did not stop foxes or other animals being killed: it banned the use of dogs in chasing and killing wild mammals. Thus fears about an 'explosion' in the numbers of foxes also so far seem to have been misplaced.

The RSPCA believes that the Hunting Act should be kept in place so that the cruelty of hunting wild mammals with dogs can continue to be addressed. The quality of legislation should not simply be judged by inaccurate perceptions about the number of prosecutions under it: laws are also there to express our collective values and to deter people from behaviour which society deems unacceptable. By this standard the Hunting Act has been successful, allowing people to continue to pursue traditional leisure activities whilst removing the element of animal cruelty previously associated with them.

ⁱ Defined in s11(2)

ⁱⁱ Defined in s11(3)

ⁱⁱⁱ Personal communication with RSPCA 5 December 2011

^{iv} Hansard, 23 June 2008, Col 52W, Hansard, 17 December 2008, Col 799W, Hansard, 13 January 2009, Col 713W, Hansard, 4 February 2010, Col 500W, Hansard 13 September 2010, col 707-708W, Hansard, 23 November 2011, col 427-428W

^v Hansard, 23 June 2008, Col 52W, Hansard 17 December 2008, Col 799W, Hansard, 13 January 2009, Col 713W, Hansard, 7 December 2009, Col 16W, Hansard, 4 February 2010, col 500W, Hansard, 13 September 2010, col 707-708W, Hansard, 23 November 2011, col 427-428W

^{vi} *The Countryside Alliance & Others v HM Attorney General, the Secretary of State for the Environment, Food and Rural Affairs & the RSPCA (Intervener)* [2005] EWHC 1677

^{vii} *R (on the application of Countryside Alliance and others and others (Appellants)) v Her Majesty's Attorney General and another (Respondents), R (on the application of Countryside Alliance and others (Appellants) and others) v Her Majesty's Attorney General and another (Respondents) (Conjoined Appeals)* [2007] UKHL 52

^{viii} http://www.ipsos-mori.com/Assets/Docs/Publications/sri_public-opinion-on-hunting-topline_tables_%20dec2010.pdf (accessed 01.12.11)