

TROUBLED BY THE SHOOT?

A Guide to the Legal Rights of
Those Affected by Shooting



Introduction

Are you concerned about the activities of shooters in your area? Perhaps you have seen shooting estates killing wildlife close to your property, or you have encountered a shooting party when enjoying a stroll in the countryside, perhaps along a public footpath. Do you live nearby to a shoot that causes noise which scares family pets, or perhaps the shooters allow their shot to fall on your property?

If the answer is “yes” we hope that the information in this leaflet will help you to understand your rights by summarising what shooting activities might constitute a criminal offence, and those which may amount to a civil wrong.

This leaflet is intended as a brief guide only and should not be regarded as an authoritative statement of the law. If you do find yourself involved in a dispute concerning shooting or shooting rights with any individual or organisation then it is recommended that you seek professional advice from a solicitor who can advise you fully on your legal position and the solutions which might be available to you.

The information provided in this leaflet relates only to the legal position in England and Wales. It does not cover Scotland or Northern Ireland.

This leaflet refers at times to 'criminal' and 'civil' law. For the purposes of this leaflet, the key differences between the two are:

- **Prosecutor** - The Crown Prosecution Service (CPS) can prosecute criminal cases on evidence passed to them from the Police. The CPS does not prosecute civil cases, and it is down to the aggrieved party to take the case
- **Burden of Proof** - The burden of proof is lower in a civil case. Here, it must be proven that the defendant is 'likely to be guilty'. In a criminal case, the defendant must be proven guilty 'beyond reasonable doubt'.



The Law on Owning and Using a Gun

Firearms and Shotgun Certificates

It is illegal to own a gun without a valid Firearm or Shotgun Certificate, with only certain limited exceptions, such as antique guns which are not fired.

Five year certificates are issued by the Chief Officer of Police for the area in which the applicant lives, and both types of certificate require that the guns are stored in a safe place when not in use and that the police are notified of any change of address.



Firearms:

All Firearms must be held on a Firearms Certificate.

The term "Firearm" is defined in the Firearms Acts as a lethal barrelled weapon of any description, from which any shot, bullet or other missile can be discharged. "Firearms" include what are known as section 1 shotguns, also known as pump action or semi-automatic shotguns. These differ from conventional shotguns in that they are capable of holding more than two cartridges.

The requirements for obtaining a Firearms Certificate are more stringent than those for a Shotgun Certificate (see below), as each individual weapon held on a Firearms Certificate must be authorised for a specific use; for example, shooting deer, clay pigeon shooting, etc. For this reason, the applicant is required to satisfy the Chief Officer of Police of their reasons for requiring the weapon for the purpose given.

Accordingly, an application for a Firearms Certificate can be refused if the Chief Officer of Police feels the applicant does not have a good reason for possessing the firearm, or cannot be permitted to possess the firearm without danger to public safety or the peace. 'Good reason' is normally satisfied by the applicant showing that they have acceptable facilities to use the type of firearm concerned. This would normally mean that they are either an active member of a Home Office approved shooting club, or that they have authority to shoot on specific areas of land. It also has to be shown that the weapons are suitable for the reasons given.

A Firearms Certificate may not be granted to a person under the age of 14.

Shotguns:

Apart from section 1 shotguns (as defined above), shotguns must be held on a Shotgun Certificate. Shotguns are defined as smooth bore guns (other than air guns or revolvers), which have a barrel of at least 24 inches in length, a bore of no more than 2 inches and hold no more than two cartridges. (The bore is the inside diameter of the barrel of a gun.)

The holder of a Shotgun Certificate can acquire as many shotguns as they can safely accommodate, without having to prove any reason for needing each individual weapon.

There is no minimum age for the possession of a shotgun certificate. However, a person under the age of 15 may have an assembled shotgun with them if:

- the shotgun is in a securely fastened gun cover so that it cannot be fired, or;
- the young person is under the direct supervision of someone over the age of 21 (although that person does not need their own certificate, nor indeed any experience of shooting).

Air Weapons:

Air weapons now require a Firearms Certificate if, in the case of an air rifle, the weapon has a power of more than 12ft/lb or, if an air pistol, more than 6ft/lb. All air weapons sold should have this information with them.

Since the implementation of the Anti-Social Behaviour Act 2003 a person under the age of 17 must not be in possession of an air weapon.

Handguns:

All forms of handguns are now illegal, except for those held under special license such as humane slaughter captive bolt pistols, which are used for stunning animals before they are killed. It is an offence for anyone previously sentenced to more than three months imprisonment for a criminal offence to handle, possess or shoot a gun. If the imprisonment lasted for less than three years, then this ban will be in place for five years following their release from prison. If the imprisonment was for longer than three years a permanent ban is given¹.

The Law on Firearms in Public Places

It is an offence to have in a public place (without lawful authority or reasonable excuse) the following²:

- 1) A loaded shotgun
- 2) An air weapon (whether loaded or not)
- 3) Any other firearm (whether loaded or not) together with ammunition suitable for use in that firearm
- 4) An imitation firearm

It is up to the person who has the firearm in the public place to prove that they have lawful authority or reasonable excuse for doing so.

A "public place" includes "any highway and any other premises or place to which at the material time the public have or are permitted to have access whether on payment or otherwise."³ This includes anywhere that the public have the right to go, regardless of who owns the land, for example a public footpath across a shooting estate. A person in possession of a firearm standing on a public right of way (which perhaps crosses land owned by that person or where they have permission to be) is in breach of the law unless they have a reasonable excuse. Shooting game on land adjoining the footpath and crossing the footpath to get to the other side would be considered a reasonable excuse.

¹ Under Section 21 of the Firearms Act 1968 (as amended)

² Under Section 19 of the Firearms Act 1968 (as amended by Section 37 of the Anti-Social Behaviour Act 2003)

³ Under Section 57(4) of the Firearms Act 1968 (as amended by Section 37 of the Anti-Social Behaviour Act 2003)

The Law on Shooting Near or Over Roads and Footpaths



Shooting on or near Public Highways

It is an offence⁴ for a person without lawful authority or excuse to shoot a firearm within fifty feet of the centre of any highway which comprises a carriageway (that is a highway, other than a cycle track, over which the public have a right of way for the passage of vehicles. This, therefore, does not include footpaths).

An offence is only committed if, in consequence, any user of the highway is injured, interrupted or endangered. For example, by someone standing on their own land close to a public highway, who allows falling shot, falling birds, or shooting noise to alarm highway users.

It is not an offence in itself to shoot across a public highway, but to do so may amount to common law nuisance (which is a civil wrong) or intimidation or harassment (which is a criminal offence), according to the circumstances.

Public rights of way

Public rights of way include footpaths, bridleways and cycle paths.

If an individual stands on private land they have a right to shoot on, and shoots across a public right of way, they are not necessarily committing an offence. However, doing so could potentially amount to a common law nuisance (see below), wilful obstruction of the highway, a breach of the Health & Safety at Work Act 1975 or even intimidation/harassment, depending upon the particular circumstances. Further legal advice should be taken to assess whether an offence has been committed.

The British Association for Shooting and Conservation (BASC) issues guidance to its members in relation to shooting over rights of way which reads, "If a member of the public is using a right of way that crosses or is in the vicinity of your shoot/drive that is being driven, the member of the public has the right to pass and re pass over the right of way. Therefore any shooting should be refrained from until they are at a distance where your activity should not cause any concern. This is particularly important if a bridleway is in use and a horse rider could be injured or endangered".

⁴ Under Section 161 of the Highways Act 1980

The Law on Shooting Over Land

Shooting over owned or occupied land

A person holding a valid firearms or shotgun certificate can shoot over private land if they have the permission of the owner or occupier of the land. The occupier generally means the person with occupation or physical control of the land, which includes a tenant of land under a lease or tenancy agreement.

Sporting Rights

A person might, however, be neither the owner of the land nor the occupier but might hold the sporting rights to the land. Depending upon the precise terms of those sporting rights, this might entitle them to be on the land for the purpose of shooting.

If you are the owner or occupier of land over which another person holds the sporting rights, then it is recommended that you seek legal advice in order to establish precisely the extent and nature of those rights. A grant of sporting rights will be found in the deeds to the property and it will state exactly what the holder of the rights can do and to what extent, and perhaps also at what times the right can be exercised.



Shooting over land without permission

It is recommended that if someone fires any weapon on or over a piece of land without the permission of the landowner the incident should be reported to the Police. Similarly, if a person appears to be behaving dangerously with a weapon or you believe that they are likely to, then again the matter should be reported to the Police. Never approach the person.

If, for some reason, the Police appear reluctant to investigate your complaint, or perhaps even refuse to do so, you should first of all ask them to tell you, preferably in writing, why they take that stance. If you are dissatisfied with their response, you can write a letter addressed to the Superintendent of Police at your local Police station explaining the circumstances of your complaint and asking them to review their Officer's decision not to investigate.

Trespass

Land trespass: Trespass to land consists of any unjustifiable intrusion by one person upon land in possession of another. The slightest crossing of the boundary is sufficient and it is no defence that the trespass was due to a mistake of fact or law (e.g. the trespasser cannot claim that they did not know the land belonged to someone else), provided the physical act of entry was voluntary. If you have a trespass claim it is not necessary to prove that you have suffered actual damage and nor do you need to show a motive on the part of the trespasser. If a person is standing on their own land and shoots game which falls on neighbouring land they cannot enter that land to retrieve it without permission. It should also be remembered that an individual does not have to enter the land themselves - if they invite others to do so then they are liable for trespass as well as those who enter the land. Allowing a dog onto another's land is also a trespass.

Airspace trespass: A person who owns land also owns the airspace above it, up to a height required for the reasonable enjoyment of the land. If someone flies over the land without the land owner's permission then this constitutes a trespass for which the land owner can pursue a civil claim (see definition in introduction).

Dealing with trespass: The normal remedy for trespass is to sue in the County Court for damages and, as stated above, no proof of actual physical damage suffered is needed. However, in the absence of any physical damage, the amount of damages awarded to you by the court would usually be small. Awarded damages may be more substantial if there were aggravating circumstances, for example if the trespasser threatened you when on your land, so if this happens to you make sure to mention it when you take legal advice. In some cases, where it is feared that the trespasser will come onto your land again an injunction can be applied for as well as damages. An injunction is an order that the court can make to prevent someone coming on to your land. However, the court does not grant injunctions as a matter of course and the Judge will have to be persuaded that an injunction is necessary to stop future trespasses by the individual(s) concerned. For another possible route, see ASBOs, below.

Trespass with a Firearm: A person commits a criminal offence if they enter, or are in any part of, a building or land without reasonable excuse whilst carrying a firearm⁵. As this form of trespass is a criminal offence, you should contact the police if this happens. The burden of proving reasonable excuse for carrying a firearm onto private land lies on the trespasser.

Lamping: Lamping - shooting at night with the aid of powerful lights - can involve individuals operating officially with the permission of the landowner, often to kill foxes. However, without the permission of the landowner it is simply poaching by night. Individuals will often take the opportunity to carry out poaching activities under the cover of darkness and often in isolated places, targeting not only rabbits and foxes but sometimes deer and other wildlife. They will normally be armed with high-powered rifles with powerful telescopic sights and will be aided by powerful lights, sometimes mounted on vehicles, which will dazzle their prey. These people can be particularly dangerous and should not be approached - if you encounter them, keep clear. There was an incident in 2004 when a teenager was killed when a lamping hunt went wrong and he was shot when mistaken for a fox. If you have reason to suspect that such activities may not be lawful, report it to the police.

Nuisance

There are two types of nuisance: public or private. A nuisance is an act or omission (i.e. something someone does or does not do) which is interference, disturbance or an annoyance.

A public nuisance materially (substantially) affects the comfort and quality of life of members of the public, and is a criminal offence. To make a complaint about a public nuisance you should contact the Environment Protection Service of the Local Authority for the area where the nuisance is occurring. They have powers to prosecute the offenders under the Environment Protection Act 1990.

A private nuisance is something which arises or is generated on one piece of land and interferes with the quiet enjoyment of an adjoining owner or another property for a significant period of time. A private nuisance is a civil matter. If you think you might be affected by a private nuisance, it is recommended that you contact a solicitor who can advise you on whether you have a case that would justify taking action. Shooting activities could constitute a nuisance in certain circumstances, depending upon their frequency, the noise they cause, and how they affect you as an individual, or members of the public in the vicinity. If you are affected by such activities, you should consider taking legal advice to establish precisely what rights you may have in the particular circumstances you have encountered.

⁵ Under section 20 of the Firearms Act

Negligence

There is no test of competence associated with applying for a gun license. However, someone using a firearm might be liable for the civil wrong of negligence if they behave in a way that falls short of the degree of care, competence and skill to be 'reasonably' expected of them. It is quite often the case that if an individual has committed a nuisance, then they may also have been negligent. However, negligence is a particularly complex area of the law upon which a solicitor can advise you in detail, depending on the facts of your situation.

Anti-Social Behaviour Orders (ASBO)

It is possible that some shooting activities could amount to anti-social behaviour. In essence, this is behaviour which causes, or is likely to cause, harassment, alarm or distress to one or more people who are not living in the same household as the perpetrator. For example, causing excessive noise can be anti-social behaviour or harassment/intimidation of passers by. A member of the public **cannot** apply for an ASBO but the Police or a Local Authority can. If you feel that you have been the victim of antisocial behaviour you can approach the anti-social behaviour team at your nearest Police Station or your Local Authority. They should gather evidence and will then decide whether to apply to the court for an ASBO. Victims do not have to appear in court - they can merely give a witness statement. If an ASBO is obtained it will last for a minimum of 2 years and any breach of it is a criminal offence.

How to establish who Owns Land

In England and Wales most land is now registered at HM Land Registry. If it is, then details of the owner can be obtained by making a search at the Land Registry using the Land Register Online website (www.landregisteronline.gov.uk), which enables the download of title information for a £2 fee payable by credit or debit card (only payable if the land concerned is registered). Where land or property cannot be easily identified by a postal address, you may be asked to provide a plan showing its location.

What animals and birds is it lawful/unlawful to shoot?

The key piece of legislation dealing with the protection of wildlife is the Wildlife and Countryside Act 1981. So far as mammals are concerned, schedule 5 to the Act lists those which are granted special protection, and a copy of the schedule can be seen in Appendix One (at the back of this booklet).

Generally speaking all wild birds are protected, which means that not only is it unlawful to kill them but also to capture them or take their eggs. However, the level of protection afforded to different species varies. An "authorised person" may kill certain common species of birds listed in the appropriate schedule to the Wildlife and Countryside Act. "Authorised person" means the owner or occupier of the land or any person authorised by them. For example, a trespasser shooting pigeons commits not only the offence of armed trespass but he also contravenes the law on the protection of birds because he is not an "authorised person".



Other species of birds are given special protection, in some cases throughout the year and in others during the close season (the periods during which they may not be killed or taken) for that species. The relevant schedules to the Wildlife and Countryside Act are reproduced in Appendix Two. Details of the seasons are also shown.



Game Birds

Game birds can only be killed or taken at certain times of the year and are defined under the Wildlife and Countryside Act 1981 as any pheasant, partridge, grouse (or moor game), black (or heath) game or ptarmigan. The open seasons (the periods during which they may be killed or taken) are set out in Appendix Three. It is an offence to shoot game birds outside these seasons. It should also be noted that it is an offence to take or kill game on Sundays and on Christmas Day⁶.

Ownership of Wild Animals

Animals living in the wild are not owned by anyone. However, if a wild animal is killed or dies on someone's land, then it becomes the property of the owner or occupier of the land, or of an individual who has the sporting rights over the land on which they die. An animal shot on one person's land, which then crosses onto another person's land before dying, becomes the property of the person on whose land it died, or in the case of a fallen bird, on whose land it fell. No shooter has the right to retrieve fallen or dead game, either themselves or by the use of a dog or other means, from land which they do not have permission to enter.

⁶ Under the Game Act 1831

Appendix One – Mammals

Mammals Protected under Schedule Five of the Wildlife and Countryside Act 1981

Common Name	Sections applicable
Water vole	Damage/destruction of place of shelter/ protection and disturbance while in a place of shelter only
All dolphins, porpoises, whales	All
Wildcat	All
Otter	All
Pine marten	All
Dormouse	All
Walrus	All
Red squirrel	All
All bats	All

Appendix Two – Birds

Birds with special protection under Schedule One of the Wildlife and Countryside Act 1981

Avocet	Goshawk	Sandpiper, green
Bee-eater	Grebe, black-necked	Sandpiper, purple
Bittern	Grebe, Slavonian	Sandpiper, wood
Bittern, little	Greenshank	Scaup
Bluethroat	Gull, little	Scoter, common
Brambling	Gull, Mediterranean	Scoter, velvet
Bunting, ciril	Harriers (all species)	Serin
Bunting, Lapland	Heron, purple	Shorelark
Bunting, snow	Hobby	Shrike, red-backed
Buzzard, honey	Hoopoe	Spoonbill
Capercaillie (in Scotland - see note below)	Kingfisher	Stilt, black-winged
Chough	Kite, red	Stint, Temminck's
Corncrake	Merlin	Swan, Bewick's
Crake, spotted	Oriole, golden	Swan, whooper
Crossbill (all species)	Osprey	Tern, black
Curlew, stone	Owl, barn	Tern, little
Diver (all species)	Owl, snowy	Tern, roseate
Dotterel	Peregrine	Tit, bearded
Duck, long-tailed	Petrel, Leach's	Tit, crested
Eagle, golden	Phalarope, red-necked	Treecreeper, short-toed
Eagle, white-tailed	Plover, Kentish	Warbler, Cetti's
Falcon, gyr	Plover, little ringed	Warbler, Dartford
Fieldfare	Quail, common	Warbler, marsh
Firecrest	Redstart, black	Warbler, Savi's
Garganey	Redwing	Whimbrel
Godwit, black-tailed	Rosefinch, scarlet	Woodlark
	Ruff	Wryneck

Birds with special protection under Schedule One of the Wildlife and Countryside Act 1981 during the close season (1 February to 31 August for birds other than ducks and geese when below high water mark, for which the close season is 21 February to 31 August.)

Coot	Goose, pink-footed	Pochard
Duck, tufted	Goose, white-fronted	Shoveler
Gadwall	Mallard	Snipe, common (<i>close season 1 Feb - 11 Aug</i>)
Goldeneye	Moorhen	Woodcock (<i>close season 1 Feb - 30 Sep</i>)
Goose, Canada	Pintail	Teal
Goose, greylag	Plover, golden	Wigeon

Birds permitted to be killed or taken for the purposes of: (i) preventing the spread of disease; and (ii) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber, fisheries or inland waters, under general license WLF18 as produced by DEFRA

Canada Goose	Gull, Lesser Black-backed	Magpie
Crow	Gull, Herring	Pigeon, Feral
Dove, Collared	Jackdaw	Rook
Gull, Great Black-backed	Jay	Woodpigeon

Appendix Three – Gamebirds

It is an offence to shoot game birds outside the seasons listed below.

Species	Dates of open season
Pheasant	1 Oct to 1 Feb
Partridges	1 Sept to 1 Feb
Grouse & Ptarmigan	12 Aug to 10 Dec
Wildfowl	1 Sept to 31 Jan, and to 20 Feb (below high water mark)
Coot	1 Sept to 31 Jan
Snipe	1 Sept to 31 Jan
Woodcock	1 Oct to 31 Jan