

STILL TROUBLED BY THE HUNT?

A Guide to your Property Rights after the
Implementation of the Hunting Act 2004





Introduction

Are you concerned about the activities or threatened activities of certain hunts or individuals associated or connected with hunts? Are those activities, whether or not involving the pursuit of our native wildlife, likely to pose a threat to you, your family, livestock, pets or property?

If the answer is “yes” then we hope that the information in this leaflet will be of use to you in explaining your rights and the practical steps that you should take if, you have the misfortune to suffer the wanton destruction wreaked by hunters and their hounds running amok across land which you own or occupy.

This document is however intended as a guide only and should not be regarded as an authoritative statement of law. If you do find yourself involved in a dispute with the hunt or any individuals connected with hunting then it is recommended that you seek professional advice from a solicitor who can advise you fully on your legal position and the remedies which are available to you. It is also important that you should contact the League Against Cruel Sports which keeps a record of all disputes involving hunts, and who may be able to advise you on the next best course of action.

The information provided in this leaflet relates only to the legal position in England and Wales.

The Criminal Law – The Hunting Act 2004

In the past, every hunting season has seen numerous recorded incidents of hunts invading private property, causing damage, worrying livestock and even killing pets. However, criminal prosecutions arising from such activities were rare and the majority of incidents were a matter of civil law only.

Now under the Hunting Act a person commits a criminal offence punishable with a fine of up to £5000 if he hunts a wild mammal with a dog, unless the hunting he is involved in falls within certain limited exemptions set out in the schedule to the Act (for further details please refer to the Hunting Act 2004 which can be found in full on the Government website; <http://www.opsi.gov.uk>).

It should be borne in mind however that even if the hunting activity being undertaken appears to fall within one of the exemptions in the schedule to the Act (say for example the hunting of rabbits) that hunting can only in fact be exempt if the individual(s) engaging in the hunt own, manage or control or occupy the land over which the hunting takes place. If the land does not belong to him/her then permission must be obtained by the landowner or occupier of the land. **Therefore, any hunting of wild mammals with a dog carried out on land belonging to or occupied by you is a criminal offence if you have not given your consent to it.**

If you witness what you suspect to be a breach of the Hunting Act, it should be reported to the police as soon as possible whether or not it involves an incursion on your land. The police are obliged to record the incident in accordance with the Home Office National Standard for Incident Recording, so please ensure your report is properly recorded by asking the police for the 'incident log number'.

You can also report the matter to the League Against Cruel Sports, which is happy to supply initial advice to any individual who continues to be troubled by the activities of hunts or those associated with them.

The Civil Law

No hunt, its members, followers or hounds have any right to cross your land for any purpose unless expressly authorised by you to do so. This is so even if the activity they are engaged in does not involve chasing and killing our native wildlife e.g. drag hunting. If they enter your land without your consent they commit a trespass and may be liable to you in damages. This is so regardless of whether any physical damage has been caused to your property, livestock or anything else belonging to you although in the absence of any actual damage the monetary compensation you might secure would be nominal.

It has for some time been established law that the entry onto land by hounds alone (i.e. without huntsman or followers) can itself constitute a trespass. If the Master of the Hunt knew that there was a risk, whilst in pursuit of quarry, that hounds might enter or cross private land during the hunt, then he could be liable under the civil law of trespass for allowing them to enter the land or for failing to prevent them from doing so by exercising proper control over them. The liability of the Master could also extend to the hunt's servants or followers¹.

¹ League Against Cruel Sports v Scott [1986] QB 240.

Sporting Rights over Land

An area of land may be subject to various rights that have been granted to certain parties. Huntsmen or shooters may have “sporting rights” in respect of the land or there may be an easement over the land allowing persons to use the land in a certain way or for certain purposes, such as hunting. A grant of such rights or easements will usually appear in the title deeds to your land.

However, in so far as they involve a hunting activity which is now illegal under the Hunting Act such rights will no longer be exercisable.

If you know or suspect that your land may be subject to “sporting rights” then it is advisable to consult your solicitor who will be able to check your deeds and advise you on the nature of those rights.

Public Rights over Land

Land may also be subject to certain “rights of way” such as footpaths and bridle paths. The existence of these rights of way can be checked by reference to the local authority for your area. The hunt and its riders are not entitled to use a public footpath and an act of trespass is committed against the landowner if horses are ridden or led over such a path. The hunt may however use a bridle path. However, whether the right of way is a footpath or bridle path anyone who travels along it with a dog must keep the dog under “close control” which means that they must not allow the dog to stray off the path otherwise they may be liable in trespass to the owner of the land onto which the dog has strayed. Hunt vehicles cannot be driven on a bridle path.

It makes no difference to these principles if land is fenced as they apply equally to enclosed or unenclosed land.

Harassment and Abuse

Some landowners and others who are opposed to hunting with hounds have in the past found themselves subjected to harassment and abuse by hunt staff and followers.

Threatening, abusive or insulting words or behaviour causing harassment, alarm or distress can in some circumstances amount to a serious criminal offence. A person who believes that he or she is a victim should call the police immediately.

The police have the power to arrest the harasser but if the involvement of the police proves to be ineffective, it is possible to sue in a civil court for damages and / or an injunction.

This procedure is not easy and legal advice should be sought before a summons is issued because an unsuccessful court action could result in an order for costs against the person bringing the claim.



Who is Responsible for the Hunt's Actions?

The conduct of the hunt is the responsibility of the Master or the Joint Masters of that hunt. Any correspondence relating to matters involving the hunt should be addressed to the Master or Senior Joint Masters. Legal proceedings in respect of the actions of the hunt will usually be brought against these individuals although in some circumstances they may be brought against other identified persons. The League Against Cruel Sports can usually supply the names and addresses of the current Masters of all the hunts.

What Can I do to Prevent Trespass and Damage Occurring?

In the past many hunts have sent out cards warning people that they would be in an area on a particular day. If the hunt officials were not informed to the contrary, they sometimes assumed, incorrectly, that they could enter onto private land.

Since the introduction of the Hunting Act in 2005 the League has noticed an increased reluctance by the hunting community to advertise hunting fixtures and it is unclear which hunts continue to send out any form of notification to local landowners if they plan to continue some form of legal activity. It is presumed that they will not send out notification in any event if their planned activities are illegal. Either way therefore you may not be forewarned that they are in the vicinity of your property with their followers and hounds.

However, a short but firm "warning off" letter from the landowner normally makes the position clear and ensures that there can be no dispute about your property's boundaries or whether or not the hunt has permission to cross your land. If you are concerned that your local hunts or other individuals ignore the Hunting Act or perhaps carry out some other activity such as drag hunting, which involves them entering or threatening to enter your land, then you should consider sending such a letter, preferably by recorded delivery, to the Master or Joint Masters of the various hunts that operate in your area. The letters should formally advise the Masters that they, their followers, their hounds and their servants do not have any permission to enter onto your land for any purpose whatsoever and that should they do so, legal action will be taken by you. A plan of your property clearly showing its boundaries should accompany each letter and it is important to retain copies of any letters sent, as these may be useful if it becomes necessary to take any further action.

If you have any particular concerns over and above trespass such as fear and distress that could be caused to livestock, pets, children or that there are dangers on your land it would be advisable to set these out in the letter. By doing this you are effectively putting the hunt on notice that if they trespass on your land that your action for damages will not be limited to just the trespass but that you might also claim for damage and distress. Should this matter need to be referred to a court then the clearer you have been in explaining your situation to the hunt the more sympathetic a court is likely to be.



Sample letter:-

RECORDED DELIVERY

Date

Dear Sir,

I wish to advise you that my property is closed at all times to the officials, followers, horses and hounds of your hunt for whatever purpose.

I enclose a map of my property showing its boundaries.

In the event of there being any unauthorised entry onto my property, legal action may be taken against you both to recover damages in respect of any trespass and to prevent further incursions.

Please acknowledge receipt of this letter.

Yours faithfully,

What Can I do if the Hunt has Trespassed onto my Land and / or Caused Damage?

- 1) If you believe that they did so in the course of hunting wild mammals report the matter as quickly as possible to the police. You can contact the police as soon as you reasonably fear that there might be an incursion onto your land because a Police Constable now has the power under the Hunting Act to arrest anyone whom he reasonably suspects is about to commit a breach of the Act.

Trespass is a civil matter so unless the hunt are trespassing at the time and that you are in fear of damage to yourself, family or property the police are unlikely to attend. If you need to call the police because you are fearful of your or others safety you must make it very clear that this is a public order problem, not a civil trespass.

- 2) **Collect and keep evidence.**

It is always sensible to keep a loaded camera handy if you anticipate an unauthorised entry by the hunt onto your land. A photograph or a video recording can provide undeniable evidence of acts committed by the hunt. If possible, try to make sure the date and time are recorded onto the photograph or video tape. If there is likely to have been a breach of the Hunting Act let the police have a copy of the recording or photographs but retain copies yourself in case you decide to take civil proceedings later (it is recommended that you allow the police time to investigate the matter and pursue any potential criminal prosecution first. Evidence of a criminal conviction might help you in making a civil claim in your local County Court later)

If there is any visible damage caused by the hunt or any physical signs of the trespass, then these should be filmed or photographed as soon as possible before they are removed or rectified.

Eyewitness evidence is very important. If anybody has witnessed the trespass or damage, give their details to the police if they are investigating the matter and they should then take statements from them. If the police are not going to investigate (because perhaps they believe there has been no breach of the Hunting Act and no other criminal offence committed²) then speak with the witnesses yourself and ask them to record what they saw in writing before they forget.

Keep a log of any infringements onto your land, no matter how minor, and if there have been incidents in the past try to recall details and approximate dates. A court will be interested in previous incidents.

3) Seek legal advice

If an unauthorised entry occurs you should contact a solicitor immediately to talk about a possible civil claim against the trespasser(s).

There are two possible remedies; an injunction to prevent the hunt from trespassing again and damages to compensate you for the trespass. An injunction is what is called a discretionary remedy which means that the court is not obliged to grant one and to do so it will need to see that there is not only evidence of repeat behaviour and a reasonable likelihood of the hunt trespassing again but that you as the landowner have tried all other possible remedies before turning to the court for help.

Before taking any civil action, your solicitor will therefore need to see copies of any letters passing between yourself and the Master of the hunt either before or after the incident, including any "warning off" letter. Your solicitor will also need to see the title deeds to your property in case they contain any reference to rights over your land. Any relevant photographs, video recordings and witness statements should also be made available to your solicitor. Your solicitor will be able to advise you in detail as to what evidence will be needed to support your particular case against the hunt or any individuals.

Before issuing any court proceedings, your solicitor will contact the Master (or if applicable Senior Joint Masters) of the relevant hunt to advise him that they have been instructed by you to pursue a claim on your behalf. This is commonly known as a "letter before action". The intention will be to try to get a written undertaking from the hunt that they will not trespass again. If this can be achieved it will have almost the same effect as an injunction and will save you the cost of going to court.

4) Consider any offers of settlement

Correspondence with the Master or indeed solicitors appointed by the hunt may result in the hunt tendering a formal apology and / or offering a sum of money to you by way of compensation for the inconvenience you may have suffered, and to reimburse you for the cost of any damage caused. Your solicitor will advise you as to whether or not it is appropriate to accept such offers. If you have not consulted a solicitor and the hunt makes any offers to you, it is advisable to seek legal advice before accepting or rejecting the offer.

² It is important to remember that the police are not routinely trained to deal with hunting matters and may not be familiar with the legislation. If told by the police that no offence has been committed the landowner should consider reporting the incident promptly to the League who can liaise with the police if we disagree with the advice given.

What if Court Proceedings are Necessary?

If the police take a written statement from you it may be used in criminal proceedings and you may be required to attend court to give your account of what happened. The police should explain the criminal process to you and give you an information leaflet entitled 'Giving a witness statement to police – what happens next?' If you feel that you are vulnerable or may feel intimidated you should be advised and reassured about a range of special measures that the police and the courts can take to help you. Specific care needs such as healthcare, childcare, disability, language, or mobility problems can all be properly addressed if you draw these to the attention of the police.

If your civil claim cannot be settled then your solicitor may advise you to commence a court action against the hunt or certain individuals.

Your solicitor will issue a claim form in your local County Court setting out your claim and this will be served upon the persons against whom the claim is being made. They will then have a set period of time in which to enter a defence. If they fail to enter a defence then judgment can be obtained against them. However, if your claim was not for a specified amount then it may be necessary for there to be a hearing before a judge who will assess the amount of damages to which you will be entitled.

If a defence is entered, then depending on the value of your claim, the court will either provide a timetable which should be followed to bring the matter to trial or if, as is likely to be the case unless substantial damage has been caused to your land or property, the claim is worth less than £5,000 (£1000 if it includes personal injury) then it will be referred to a small claims hearing.

Your solicitor will be able to advise you fully on the court procedure and whether or not in your particular case any costs could potentially be recovered against the hunt. He or she can also advise you whether your case is serious enough to warrant an application to court for an injunction against the hunt – (see below)

What Can I Do if the Hunt Persists in Entering upon my Property?

If the hunt repeatedly trespassed on to your property, whether or not it causes any damage, it may be possible to obtain what is known as an "injunction". This is an order made by the court which seeks to restrain the hunt (or potentially named individuals) from entering on to your land. If the hunt continues to enter upon your land then the court will impose further penalties, and has the power to commit the offending person to prison.

As with any civil court action, it is always advisable to take legal advice before commencing. As an injunction is a very extreme measure, the court will need to be satisfied that the circumstances merit an injunction being ordered. The court will consider all relevant factors before making a decision, such as frequency and extent of the trespass, whether there is any accompanying damage, what steps if any the hunt is taking to prevent trespass recurring, and whether the matter can be dealt with by way of an "undertaking". An undertaking is basically the hunt's promise to the court to cease the behaviour complained of. An undertaking will be given formally to the court and any breach of the undertaking is viewed most seriously as the hunt will be in contempt of court and again, the court has the power to commit the offending person to prison if circumstances merit it.